

CHAPTER 3

NUISANCE TREE ABATEMENT

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4-3-1: **DECLARATION OF POLICY:** The City Council has determined that the health of elm, oak, ash and pine trees within the city is threatened by fatal diseases known as Dutch elm disease, oak wilt, emerald ash borer and pine bark beetle. It has further determined that the loss of elm, oak, ash, pine and other species of 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 intention of the City Council to preserve shade trees as well as to control and prevent the spread of these diseases, other epidemic diseases of shade trees and hazardous trees by enacting this chapter in conjunction with the Tree Preservation Policy, Diseased Tree Removal/Sanitation Enforcement Policy and Emerald Ash Borer Management Plan/Program. (Ord. 305, 2-24-2005; Amended Ord. 462, 5-3-16)

4-3-2: **NATURAL RESOURCES TECHNICIAN (NRT):**

- A. Positions Created: The position of Natural Resources Technician is hereby created within the city. The NRT must be a Certified Tree Inspector (CTI) as determined by the Minnesota Department of Agriculture and/or Minnesota Department of Natural Resources. (Amended Ord. 462, 5-3-16)

- B. Duties: It is the duty of the NRT to coordinate, under the direction and control of the Council, all activities of the city relating to the control and prevention of Dutch elm disease, oak wilt, emerald ash borer, pine bark beetle, other epidemic diseases of shade trees and hazardous trees. The NRT will be responsible for establishing and prioritizing control areas, promulgate rules, regulations, standards and specifications to be approved by the City Council, and advise the City Council of appropriate actions. (Amended Ord. 461, 5-3-16)
- C. Interference Prohibited: It is unlawful for any person to prevent, delay or interfere with the NRT or designee while engaged in the performance of the duties imposed by this chapter. (Ord. 305, 2-24-2005)

4-3-3: **TREE COMMISSION:** (Rep. by Ord. 305, 2-24-2005)

4-3-4: **TREE CONTRACTORS:**

- A. License Required: It shall be unlawful for any individual, partnership or corporation to conduct, as a business for profit, the cutting, trimming, pruning, removing, spraying or otherwise treating of trees, shrubs or vines in the city without first having secured a license from the city to conduct such business.
- B. Application For License: Application for a license under this chapter shall be made at the office of the City Clerk. The application for a license shall be made on a form approved by the city which shows, among other things, the name and address of the applicant, the number and names of the employees of the applicant, the number of vehicles of the applicant, together with a description and license number of each, and the type of equipment proposed to be used.
- C. Insurance Requirements: No license or renewal of a license shall be granted, nor shall the same be effective, until the applicant has filed with the City Clerk a certificate of insurance evidencing the holding of liability insurance and the limits required by Minnesota Statutes and proof of workers' compensation insurance. The city shall be named and the insurance provided shall include the city as an additional party insured. Said policy shall provide that it may not be canceled by the insurer except after ten (10) days' written notice to the city, and if such insurance is so canceled and licensee shall fail to replace the same with another policy conforming to the provisions of this chapter, said license shall be automatically suspended until such insurance shall have been replaced.

- D. License Fees: Fees shall be in such amounts as set forth by this code¹.
- E. Chemical Treatment Requirements: Applicants who propose to use chemical substances in any activity related to treatment or disease control of trees, shrubs or vines shall file with the City Clerk proof that the applicant or an employee of the applicant administering such treatment has been certified by the Agronomy Division of the Minnesota Department of Agriculture as a commercial pesticide applicator for category "E: Turf and Ornamentals" if the chemical and/or type of application warrants it. Such certification shall include knowledge of tree disease chemical treatment. (Ord. 305, 2-24-2005; Amended Ord. 461, 5-3-16))

¹ See section 1-7-3 of this code.

4-3-5: **EPIDEMIC DISEASE PROGRAM:** It is the intention of the Council to conduct a program of plant pest control pursuant to the authority granted by Minnesota Statutes Chapter 18G, as amended, directed at the control and elimination of Dutch elm disease, oak wilt disease, and pine bark beetle, and elimination of other tree diseases, and is undertaken at the recommendation of the Minnesota Commissioner of Agriculture. (Ord. 305, 2-24-2005)

4-3-6: **NUISANCES DECLARED:** The following are public nuisances:

- A. Any elm tree or part thereof infected to any degree with either of two (2) species of Dutch elm disease fungi, *Ophiostoma ulmi* and *Ophiostoma novo-ulmi*, or which harbors any of the elm bark beetles, *Scolytus multistriatus* or *Hylurgopinus rufipes*.
- B. Any dead elm tree or part thereof, including logs, branches, stumps, firewood or other elm material not properly covered and sealed from which the bark has not been removed or sprayed with an effective elm bark beetle insecticide; except, that the stockpiling of uncovered bark bearing elm wood shall be permitted during the period from September 15 to April 1 of any year.
- C. Any northern red oak (*Quercus rubra*), northern pin oak (*Quercus ellipsoidalis*), black oak (*Quercus velutina*), and scarlet oak (*Quercus coccinea*), or part thereof, infected to any degree with the oak wilt disease, *Ceratocystis fagacearum*.
- D. Any white oak (*Quercus alba*), bur oak (*Quercus macrocarpa*), and swamp white oak (*Quercus bicolor*), that poses a threat of transmission of the oak wilt disease to other trees of the same species through interconnected root systems.
- E. Any diseased material of the red oak group that is potentially spore producing (PSP).
- F. Any ash tree (*Fraxinus* spp.) or part thereof, infected to any degree with emerald ash borer, *Agrilus planipennis*.
- G. Any standing pine tree infected with the pine bark beetles, *Ips pini*, *Ips perroti* or *Ips grandicollis*.
- H. Any standing dead pine tree that has been dead under one and one-half (1 1/2) years.
- I. Any exposed pine tree slash or logs cut from live trees or from trees

that have been dead under one and one-half (1 1/2) years. (Ord. 305, 2-24-2005)

- J. Any tree deemed by the Natural Resources Technician as "hazardous". This is a tree that has structural defects in the roots, stem and/or branches, that may cause the tree to fail; where if it fell, would land within a public right-of-way or property owned by another person or entity. (Amended Ord. 461, 5-3-16)

4-3-7: **NUISANCES PROHIBITED:** It is unlawful for any person to permit the spread of a public nuisance as defined in this chapter across his or her property lines and in any specified control areas as established by the city. Such nuisances shall be abated in the manner prescribed in Section 4-3-10 of this chapter. (Ord. 305, 2-24-2005)

4-3-8: **INSPECTIONS AND INVESTIGATIONS:**

- A. Annual Inspections And Investigations Required:

1. The NRT shall inspect all premises and places within the city as often as practicable to determine whether any condition described in Section 4-3-6 of this chapter exists thereon.
2. The NRT shall investigate all reported incidents of infestation of Dutch elm disease, oak wilt, emerald ash borer, pine bark beetle, other diseases of shade trees and hazardous trees as necessary to determine whether any condition described in section 4-3-6 of this chapter exists.

- B. Entry Powers: The NRT or designee may enter upon private properties during standard working hours for the purpose of carrying out any of the duties assigned to them under this chapter.

- C. Diagnoses:

1. The NRT shall make the initial identification of an infected area whenever possible.
2. The NRT may send appropriate specimens or samples to the Minnesota Department of Agriculture, University of Minnesota or any state certified testing lab for analysis.
3. A property owner or contractor who becomes aware of any condition described in Section 4-3-6 of this chapter shall notify the NRT within seven (7) days. (Ord. 305, 2-24-2005; Amended Ord. 461, 5-3-16)

4-3-9: **ABATEMENT BY CITY OF EPIDEMIC TREE DISEASE AND HAZARDOUS TREE NUISANCES:**

- A. No person shall allow, permit the spread of, or fail to abate a public nuisance as defined in this chapter. Such nuisances shall be abated in the manner prescribed in this chapter.
- B. The NRT shall enforce the treatment of nuisances by requiring the performance of one or more of the following tasks in order to destroy and prevent the spread of epidemic diseases of shade trees, including, but not limited to, Dutch elm disease, oak wilt, emerald ash borer, pine bark beetle and those trees deemed as hazardous. Such abatement procedures shall be carried out in accordance with current technical and expert opinions and plans as may be designated by the Minnesota Department of Agriculture, Department of Natural Resources or the University of Minnesota. Abatement procedures include:
 - 1. Root graft barrier installation (vibratory plowing or trenching) at least forty eight inches (48") deep in the soil to isolate the diseased trees;
 - 2. Removal of trees;
 - 3. Stump grinding;
 - 4. Burning, chipping, debarking or properly covering and sealing the potentially hazardous wood and/or stumps;
 - 5. Fungicide injections into healthy and/or infected oaks, ash or elms with the appropriate chemical to avoid or minimize the effects of oak wilt, emerald ash borer or Dutch elm disease;
 - 6. Spraying the infected trees and/or all nearby high value trees with an effective disease destroying concentrate. (Amended Ord. 461, 5-3-16)

4-3-10: **PROCEDURE FOR ABATEMENT OF INFECTED AND HAZARDOUS TREES AND WOOD:**

- A. Nuisance Declared; Notice; Appeal: Upon the determination of conditions constituting a nuisance as described in Section 4-3-6 of this chapter located on property within the City of Andover, excluding city property, the Natural Resources Technician shall declare the existence of a public nuisance and order abatement thereof. The process used is outlined in the Diseased Tree Removal/Sanitation enforcement policy. The Natural

Resources Technician shall send written notification to the owner of the nuisance declaration and the necessary abatement procedures. A property owner who disagrees with the determination of the Natural Resources Technician may appeal the determination to the City Council. Such appeal must be filed in writing with the City Clerk and within ten (10) days of receipt of notice of the determination by the Natural Resources Technician. The City Council shall consider the appeal at the next scheduled regular City Council meeting. The City Council shall affirm, reverse or modify the determination. (Amended Ord. 461, 5-3-16)

- B. **Failure To Abate; Contract For Abatement; Costs:** Should a property owner fail to abate the nuisance, or be unwilling or unable to abate the nuisance, as prescribed by the Natural Resources Technician, the Natural Resources Technician or designee shall then proceed to contract for the prescribed abatement procedure as soon as possible and shall report to the City Clerk all charges resulting from the abatement procedures carried out on such private property. The City Clerk shall list all such charges along with a city administrative cost against each separate lot or parcel by September 1 of each year as special assessments to be collected commencing with the following year's taxes. Administrative costs as set by City Council ordinance shall be assessed for each parcel and shall be added to each assessment. All assessments levied for the repayment of tree disease abatement cost may be repaid over a five (5) year period. Such assessments shall be levied under authority granted by Minnesota Statutes Section 429.101.
- C. **Imminent Danger Of Infestation:** If the Natural Resources Technician finds that danger of infestation of epidemic diseases in shade trees is imminent, the Natural Resources Technician shall notify the abutting property owners by mail that the nuisance shall be abated within a specified time. (Ord. 305, 2-24-2005)

4-3-11: **SPRAYING TREES:** Whenever the Natural Resources Technician determines that any tree or wood within the city is infected with disease, the Natural Resources Technician may require spraying of all nearby high value trees, as determined by the Natural Resources Technician, with an effective disease destroying concentrate. Spraying activities authorized by this section shall be conducted in accordance with technical and expert opinions and plans of the University of Minnesota or the Minnesota Department of Agriculture and under the supervision of the University of Minnesota or the Minnesota Department of Agriculture, or agents thereof, whenever possible. (Ord. 305, 2-24-2005; Amended Ord. 461, 5-3-16)

4-3-12: **TRANSPORTING EPIDEMIC DISEASED WOOD:** It is unlawful for

any person to transport within the city any diseased wood that is determined to be hazardous, as described in, but not limited to, Section 4-3-6 of this chapter, without taking the appropriate precautions. All county, state and federal quarantines shall be respected, and regulated articles may not be brought into or out of the City without an approved compliance agreement with the Minnesota Department of Agriculture. (Ord. 305, 2-24-2005; Amended Ord. 461, 5-3-16)

4-3-13: **VIOLATION; PENALTY:** Any person, firm or corporation who violates any section of this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a misdemeanor penalty as then defined by Minnesota law. Additionally, the city may exercise any civil remedy available under Minnesota law for the enforcement of this code including civil action, mandamus, injunctive relief, declaratory action, or the levying of assessments. (Ord. 305, 2-24-2005)