

## CHAPTER 70. VEGETATION

### ARTICLE III. Diseased Trees\*

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\*State law reference--Shade tree disease control, Minn. Stats. § 18.023.  
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#### **Section 70-61. 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 the 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, and this article is enacted for that purpose.

#### **Section 70-62. Administration.**

- (a) *Administrator.* A qualified person within the park and recreation department shall be designated as the administrator by the City Council. The administrator shall exercise the powers and duties necessary to enforce the provisions of this article. The administrator shall be a certified pesticide applicator and tree inspector under the laws of the State. The powers and duties of the administrator may be assigned to other qualified persons in the park and recreation department in his absence.
- (b) *Duties of administrator.* It is the duty of the administrator 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 disease and other epidemic diseases of shade trees. By January 15<sup>th</sup> of each year, he shall recommend to the designated tree board and City Council the details of a program for the control of such diseases and shall perform the duties incident to such a program adopted by the Council.
- (c) *Tree inspector.* There shall be designated persons or employees within the department of park and recreation 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.
- (d) *Duties of tree inspectors.* It is the duty of the tree inspectors, under the direction and control of the administrator, to know the appropriate state laws and rules relative to oak wilt, Dutch elm and other epidemic diseases of shade trees and to know the approved control methods of these diseases. The tree inspectors must know the proper method of collecting samples of diseased diagnosis. The tree inspector must plan, direct, and supervise all requirements for controlling shade tree disease within the geographical limits of his control area.

**Cross reference--**Administration, ch. 2.

**Section 70-63. Epidemic disease program.**

*Intent.* It is the objective of the tree commission and the City Council to conduct a program of plant pest control pursuant to the authority granted by Minn. Stats. § 18.022. This program is directed specifically at the control and elimination of the Dutch elm disease fungus, elm bark beetles, oak wilt fungus, and other injurious insects or diseases of shade trees and it is undertaken at the recommendation of the State Commissioner of agriculture. The administrator shall act as coordinator between the State Commissioner of agriculture, the tree commission, and the City Council in the conduct of this program.

**Section 70-64. Nuisances declared.**

- (a) *Public nuisances.* The following things are public nuisances whenever they may be found within the City:
- (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 miltistraiatus* (eichh), or *hylurgophinus refipes* (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 not 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<sup>st</sup> through March 1<sup>st</sup> 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 mils in thickness, and must remain contained in plastic throughout the period of March 1<sup>st</sup> through July 1<sup>st</sup>. Any wood not utilized by April 1<sup>st</sup>, will be removed by the City and the cost assessed to the private property owner.
  - (5) Other shade trees with injurious insects or diseases as determined by the tree inspectors.
  - (6) Elm firewood. It is unlawful for any person, firm or corporation to store bark-bearing elm firewood during the period April 1<sup>st</sup> through September 15<sup>th</sup>.
    - a. Elm firewood cannot be brought in from outside of a City or control area for use as firewood (Plant Quarantine No. 78-1 Elm Wood.)
    - b. Bark-bearing elm logs from trees cut within the boundaries of a City or control area can be kept from September 15<sup>th</sup> through April 1<sup>st</sup>, of the following year.

- c. During the period September 15<sup>th</sup> through April 1<sup>st</sup>, of the following year, bark-bearing elm firewood may be stored on homesteaded property so as to be in plain view and accessible for inspection by the tree inspectors.
  - d. Such woodpiles are subject to inspection by the City tree inspector prior to April 1<sup>st</sup>. Such inspections shall be conducted after written notice to each property owner or occupier is provided.
  - e. Any elm wood not utilized by April 1<sup>st</sup>, will be removed and disposed of by the City, or by authorized representatives of the City and the cost assessed to the private property owner.
  - f. This section does not include elm firewood that has been rendered pest-risk free by debarking as described in 3MCAR 1.0109.
- (b) *Abatement.* It is unlawful for any person to permit any public nuisance, as defined in this section, to remain on any premises owned or controlled by him within the city. Such nuisances may be abated in the manner prescribed by this article.
- (c) *Violations.* Any owner of real estate in the City who is notified of the existence of a diseased tree on his property as provided in section 70-67, must within 20 days from the mailing of such notice, cut down such diseased tree, either by himself, licensed private contractor, or City contractor. 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. All parts, branches and brush shall be removed by the property owner, licensed private contractor, or contractor contracted by the City, to a designated disposal site, designated from time to time by the state commissioner of agriculture, county or city, if it is possible to obtain use of such place, and there such diseased material will be burned, buried, or chipped. The City shall be responsible for the proper removal and disposal of all diseased trees on property legally designated as public right-of-way or boulevard and private property when authorized by the tree inspectors for performance of both. The City shall not be responsible for the disposal of diseased trees and tree parts from private property if the property owner cuts down such trees either by himself or by licensed contractor.

**Section 70-65.**

**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 defined in Minn. Stats. § 18.46, subd. 13, as often as practicable to determine whether any condition described in section 70-64 exists thereon. The tree inspector shall investigate all reported incidents of infection or infestation by the Dutch elm fungus, elm bark beetles, oak wilt fungus or any other epidemic diseases of shade trees. The term "private place" means every place except the private home.
- (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 him under this article.

- (c) *Diagnosis.* The tree inspector shall, upon finding symptoms indicating Dutch elm or oak wilt infestation, or other epidemic diseases of shade trees, immediately report such findings to the administrator who will notify the owner or occupier of the property of the existence of a diseased tree on his property and inform him of his responsibility to effectively remove such diseased material from the property in accordance with subsection 70-64(c). Diagnosis shall be made by field examination, as specified by the state commissioner of agriculture, unless a state agriculture pest lab is requested by the property owner. Except as provided in section 70-67, no action to remove infected trees or wood shall be taken until positive diagnosis is made.

**Section 70-66.**

**Abatement of epidemic tree disease nuisances.**

In abating the nuisances defined in section 70-64, the administrator 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, 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 State Commissioner of Agriculture.

**Section 70-67.**

**Procedure for removal of infected trees and wood.**

- (a) Whenever the administrator is notified with reasonable certainty that the infestation defined in section 70-64 exists in any tree or wood in any public or private place in the City, he shall proceed as follows:
- (1) If the administrator finds that the danger of infestation of other elm or oak trees is not imminent because of the dormancy of the infected tree or trees, he shall declare such trees as being in noncompliance with this article as of April 1<sup>st</sup>, 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 subsection 70-64(a).
  - (2) If the administrator finds that danger of infestation of other elm or oak trees is imminent, he shall notify the property owner by certified mail that the nuisance must be abated within a specified time, not more than 20 days from the date of mailing of such notice. After the expiration of the time limited by the notice the administrator may abate the nuisance.
- (b) The administrator shall keep a record of the costs, and 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.
- (c) On or before September 1<sup>st</sup> 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 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.

**Section 70-68.                   Transporting elm wood prohibited.**

It is unlawful for any person to transport within the City any bark-bearing elm without having obtained a permit from the administrator. The administrator shall grant such permits only when the purposes of this article will be served thereof.

**Section 70-69.                   Interference prohibited.**

It is unlawful for any person to prevent, delay or interfere with the administrator or his agents while they are engaged in the performance of duties set forth in this article.

**Secs. 70-70--70-90.           Reserved.**