

CHAPTER 3

SHADE TREE DISEASE¹

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5-3-1: DECLARATION OF POLICY:

The City Council hereby determines that the health of shade trees and other plants within the Municipal limits are threatened by shade tree diseases. It further determines that the loss of such trees and other plants growing upon public and private property will substantially depreciate the value of property within the City and will have a detrimental effect upon the public safety, order, general welfare and convenience. It is the intention of this Chapter to control and prevent the spread of such diseases and to conform to the policies and procedures embodied in Laws 1974, chapter 355, section 66 and rules promulgated thereunder. (Ord. 51, 10-15-1974)

4-3-2: DEFINITIONS:

The terms defined in this Section have the meanings given to them:

!DEF! COMMISSIONER: The Commissioner of the State Department of Agriculture.

DISEASE CONTROL AREA: The entire City of Lauderdale.

SHADE TREE: Any oak or elm tree situated in the City of Lauderdale.

SHADE TREE CONTROL PROGRAM OR PROGRAM: A program developed by the City to combat shade tree disease in accordance with rules promulgated by the Commissioner.

SHADE TREE DISEASE: Dutch elm disease caused by *Ceratocystis Ulmi*, or oak wilt disease caused by *Ceratocystis fagaceorum*.

1. M.S.A. § 412.221, subd. 8.

TREE INSPECTOR OR INSPECTOR: A person having the necessary qualifications to conduct a shade tree program and who is so certified by the Commissioner. (Ord. 51, 10-15-1974) !DEFEND!

4-3-3: TREE INSPECTOR:

A. Position Created: The position of Tree Inspector is hereby created within the inspection division of the City.

B. Duties: It is the duty of the Tree Inspector to coordinate all activities of the Municipality relating to the control and prevention of shade tree disease. He may from time to time recommend to the Council the details of a program for the control of shade tree disease and shall perform the duties incident to such programs adopted by the Council. (Ord. 51, 10-15-1974)

4-3-4: SHADE TREE DISEASE PROGRAM:

It is the intention of the City Council to conduct a program of shade tree control pursuant to the authority granted by Minnesota Statutes, sections 18.022 and 18.023, as amended. This program is directed specifically at the control and elimination of shade tree diseases and is undertaken at the recommendation of the Commissioner of Agriculture, and in conformance with rules promulgated by the Commissioner. The City Tree Inspector shall act as coordinator between the Commissioner of Agriculture and the Council in the conduct of this program. (Ord. 51, 10-15-1974)

4-3-5: NUISANCES:

A. Nuisances Declared: The following things are public nuisances whenever they are found within the City:

1. Any living or standing elm tree or part thereof infected to any degree with the Dutch elm disease fungus *Ceratocystis Ulmi* (Buisman) Moreau or which harbors any of the elm bark beetles *Scolytus Multistriatus* (Eichh.) or *Hylurgopinus Ruf ipes* (Marsh).
2. Any dead elm tree or part thereof, including logs, branches, stumps, firewood or other elm material from which the bark has not been removed and burned or sprayed with an effective elm bark beetle insecticide.
3. Any living or standing Northern red oak, Northern pin oak, Black oak or Scarlet oak, or part thereof infected to any degree with oak wilt disease.

B. Violation: It is unlawful for any person to permit any public nuisance as defined in subsection A to remain on any premises owned or controlled by him within the City after he has been ordered to abate such nuisance. Such nuisances may be abated in the manner prescribed by this Chapter. (Ord. 51, 10-15-1974; 1996

Code)

4-3-6: INSPECTION; INVESTIGATION:

A. Inspection: The Tree Inspector shall inspect all premises and places within the City as often as practicable to determine whether any condition described in Section 4-3-5 exists thereon. He shall investigate all reported incidents of infestation by Dutch elm fungus, elm bark beetles, or oak wilt.

B. Entry On Private Premises; Notice Of Inspection: The Tree Inspector or his duly authorized agents may enter upon private premises at any reasonable time for the purpose of carrying out any of the duties assigned him under this Chapter. Such inspection shall be preceded by two (2) days' written notice to the owner of said private property, unless such notice is waived in writing by the owner.

C. Diagnosis: The Tree Inspector shall, upon finding conditions indicating shade tree disease, immediately send appropriate specimens or samples to the Commissioner of Agriculture for analysis, or take such other steps for diagnosis as may be provided by the Commissioner by rule. Except as provided in Sections 4-3-8 and 4-3-9, no action to remove infected trees or wood shall be taken until positive diagnosis of the disease has been made. (Ord. 51, 10-15-1974)

4-3-7: ABATEMENT OF NUISANCES:

In abating the nuisances defined in Section 4-3-5, the Tree Inspector shall cause the infected tree or wood to be sprayed, removed, burned or otherwise effectively treated so as to destroy and prevent as fully as possible the spread of disease. Such abatement procedures shall be carried out in accordance with current technical and expert opinions and procedures as established by the Commissioner of Agriculture. (Ord. 51, 10-15-1974)

4-3-8: PROCEDURE FOR REMOVAL OF INFECTED TREES AND WOOD:

A. Action By Tree Inspector: Whenever the Tree Inspector finds with reasonable certainty that the infestation defined in Section 4-3-5 exists in any tree or wood within a public or private place in the City, he shall proceed as follows:

1. Dormant Danger: If the Tree Inspector finds that the danger of infestation of other trees is not imminent because of dormancy, he shall make a written report of his findings to the Council which shall proceed by:

a. Abating the nuisance as a public improvement under Minnesota Statutes, chapter 429; or

b. Abating the nuisance as provided in subsection B of this Section.

2. Imminent Danger:

a. Notice To Abate: If the Tree Inspector finds that the danger of infestation of other trees is imminent, he shall notify the abutting property owner if the nuisance is on public street right of way, or the owner if it is on private property, by certified mail, that the nuisance must be abated within a specified time, not less than five (5) days from the date of mailing such notice.

b. Report To Council; Abatement By City: The Tree Inspector shall immediately report such action to the Council, and after the expiration of the time limited by the notice, he may abate the nuisance.

B. Action By Council:

1. Passage Of Resolution: On receipt of the Tree Inspector's report required by subsection A1 of this Section, the Council shall by resolution order the nuisance abated.

2. Notice Of Hearing: Before action is taken on such resolution, the Council shall publish notice of its intention to meet to consider taking action to abate the nuisance. This notice shall be mailed to affected property owners and published once no less than one week prior to such meeting. The notice shall state the time and place of the meeting, the streets or properties affected, the actions proposed, the estimated cost of the abatement, and the proposed basis of assessment, if any, of costs.

3. Hearing: At such hearing or adjournment thereof the Council shall hear property owners with reference to the scope and desirability of the proposed project.

4. Action On Resolution: The Council shall thereafter adopt a resolution confirming the original resolution, with such modifications as it considers desirable, and provide for the doing of the work by day labor or by contract.

C. Costs Of Abatement; Monthly Report: The Tree Inspector shall keep a record of the costs of abatements done under this subsection and shall report monthly to the Council all work done for which assessments are to be made, stating and certifying the description of the land, lots, parcels involved and the amount chargeable to each.

D. Assessment: On or before September 1 of each year, the City Administrator shall list the total unpaid charges for each abatement against each separate lot or parcel to which they are attributed under this Chapter. The Council may then spread the charges or any portion thereof against the property involved as a special assessment for certification to the County Auditor and collection the following year along with current taxes. (Ord. 51,

10-15-1974; 1996 Code)

4-3-9: SPRAYING OF TREES:

A. Whenever the Tree Inspector determines that any tree or wood within the City is infected with shade tree disease, he may spray all nearby high-valued trees with an effective pest destroying concentrate. Spraying activities authorized by this Section shall be conducted in accordance with technical and expert opinions and plans of the Commissioner of Agriculture and under the supervision of the Commissioner and his agents whenever possible.

B. The notice and assessment provisions of Section 4-3-8 apply to spraying operations conducted under this Section. (Ord. 51, 10-15-1974)

4-3-10: TRANSPORTING CERTAIN WOOD PROHIBITED; PERMIT REQUIRED:

It is unlawful for any person to transport within the City any bark-bearing elm wood without having obtained a permit from the Tree Inspector. The Tree Inspector shall grant such permits only when the purposes of this Chapter will be served thereby. (Ord. 51, 10-15-1974)

4-3-11: INTERFERENCE PROHIBITED:

It is unlawful for any person to prevent, delay or interfere with the Tree Inspector or his agents while they are engaged in the performance of the duties imposed by this Chapter. (Ord. 51, 10-15-1974)

4-3-12: PENALTY:

Any person who violates any provision of this Chapter is guilty of a misdemeanor. (Ord. 51, 10-15-1974)