

Section 935 - Shade tree disease control

935.01. Policy. The Council has determined that the health of the elm, ash and oak trees within the municipal limits are threatened by fatal diseases known as Dutch elm disease, Emerald Ash Borer (EAB) infestation and oak wilt disease, respectfully. It has further been determined that the loss of elm and oak trees growing upon private and public properties 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 Council to control and prevent the spread of these diseases and this section is enacted for that purpose.

935.02. Tree Inspector. The position of Tree Inspector is hereby created within the City to carry out the provisions of this section and of Minnesota Statutes, Section 18.023 as amended. The City Manager is directed to employ or retain on a continuing basis a suitably qualified person as Tree Inspector, who shall promptly become and remain certified as a Tree Inspector by the Minnesota Commissioner of Agriculture. It shall be the duty of the Tree Inspector 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 and oak wilt disease. He shall recommend to the Council the details of the program for the control of such diseases, and perform the duties incident to such a program adopted by the Council.

935.03. Shade Tree Disease Control Program. It is the intention of the City to conduct a program of shade tree disease control pursuant to the authority granted by Minnesota Statutes, Section 18.023, as amended. This program is directed specifically at the control and elimination of Dutch elm disease, EAB infestation and oak wilt disease and is undertaken on the recommendation of the Minnesota Commissioner of Agriculture. The Tree Inspector shall develop a program plan in compliance with Minnesota Statutes, Section 18.023, as amended, and the Regulations issued pursuant thereto by the Department of Agriculture, for the identification and control of diseased elm, ash and oak trees, and shall be responsible for the making and maintenance of all records and reports related to the program. The Tree Inspector shall act as coordinator between the Minnesota Commissioner of Agriculture and the City in the conduct of this program.

935.04. Nuisances Declared. The following are declared to be public nuisances whenever they may be found within the City:

- a) Any standing or living tree or part thereof infected to any degree with the Dutch elm disease fungus, *Ceratocystis ulmi* (Busiman) Moreau, or which harbors any of the elm bark beetles, *Scolytus multistriatus* (Eichh) or *Hylurgopinus rufipes* (Marsch). And also, any dead elm tree or part thereof with bark intact including logs, branches, stumps, or firewood which has not been disposed of properly.
- b) Any living or standing tree or part thereof in the red oak group (red oak, pin oak) infected to any degree with the oak wilt fungus, *Ceratocystis fagacearum* (Bretz) Hunt.
- c) Also, any living or standing tree in the white oak group (white oak, bur oak) that poses a threat of transmission of the oak wilt fungus to other trees of the same species through interconnected root systems.
- d) Any other shade trees with epidemic diseases, including Emerald Ash Borer infestation.

935.05. Abatement. It is unlawful for any person to permit a public nuisance as defined in 935.04 to remain on any premises owned or controlled by that person within the City. Such nuisances may be abated in the manner prescribed by this section.

935.06. Inspection and Investigation. Subdivision 1. Annual Inspection. The Tree Inspector or his assistants shall inspect all premises and places within the City as often as practicable to determine whether any condition described in 935.04 of this section exists thereon. He shall investigate all reported incidents of infestation by Dutch elm fungus or elm bark beetles, emerald ash borer or oak wilt. He shall also inspect all premises and places within the City by April 1 of each year for elm wood, logs, or stumps that meet any of the conditions described in 935.04 a), and require by April 15, removal or debarking of all wood, logs, and stumps to be retained.

Subd. 2. Entry on Private Premises. The Tree Inspector so designated by the Council may enter upon private premise at any reasonable time for the purpose of carrying out the duties assigned to him/her under this chapter. Before making any inspection on private property within the City, the Tree Inspector shall give notice of the intent of said inspections by publishing a notice annually in a local newspaper.

Subd. 3. Diagnosis. Whenever possible, diagnosis shall be based upon accepted field symptoms. The tree inspector shall, upon finding indications of oak wilt, emerald ash borer or Dutch elm disease, take such steps for diagnosis as may be appropriate, including analysis of twig samples from actively wilting branches by the Department of Agriculture tree disease laboratory, or other laboratories capable of performing such services approved by the Minnesota Commissioner of Agriculture.

935.07. Abatement of Shade Tree Disease Nuisances. In abating or ordering the abatement of the nuisances defined in 935.04, the Tree Inspector shall cause or order the infected tree or wood to be removed, burned, or otherwise effectively treated so as to destroy and prevent as fully as possible the spread of the diseases. Such abatement procedures shall be carried out in accordance with prescribed methods approved by the Minnesota Commissioner of Agriculture. If the Tree Inspector finds that Dutch elm disease or oak wilt threatens to cross property boundaries or disease control area boundaries, the tree inspector may require root graft disruption to prevent the spread of disease in this manner. If plowing or trenching is not possible due to terrain, location, or buried utilities, the tree inspector may require chemical root graft disruption. These barriers will be placed in accordance with current technology and plans as may be designated by the Minnesota Commissioner of Agriculture.

935.08. Procedure for Abatement of Nuisances. Subdivision 1. On Private Property. Whenever the Tree Inspector finds with reasonable certainty that a public nuisance defined in 935.04 exists in any tree or wood located on private property in the City, he shall notify the owner of such property by certified mail of the infestation, and specify therein a time (in any event not less than 5 or more than 20 days from the date of mailing of such notice) in which the infected tree or part thereof shall be removed or otherwise treated by such owner in the manner specified in the notice and to the satisfaction of the Tree Inspector. The notice shall also state that if such nuisance shall not have been abated by the owner within the time provided, it will be immediately abated by the City and the entire cost thereof will be billed to the owner and if not paid shall be assessed against the property owner under Minnesota Statutes, Section 429.101.

Subd. 2. Assessment of Costs. The Tree Inspector shall keep a record of trees removed and the cost of abatements done under 935.08 and shall report monthly to the City Clerk all work done for which assessments are to be made, stating and certifying the description of the land, lots and parcels involved and the amounts chargeable to each. On or before September 1 of each year, the City Clerk shall list the total unpaid charges for each abatement against each separate lot or parcel to which they are attributable under this section. The Council may then spread the charges or any portion thereof against the property involved as a special assessment under Minnesota Statutes, Section 429.101 and other pertinent statutes for certification to the County Auditor and collection in the following year along with current taxes.

935.09. City Assistance. The Council may by appropriate resolution provide for subsidies to certain property owners to assist in the abatement of a public nuisance defined in 935.04 in accordance with the provisions of Minnesota Statutes, Section 18.023, Subd. 4 as amended.

935.10. Transporting Elm Wood and Oak Wood Prohibited. It is unlawful for any person to transport within the City any bark intact elm wood, ash wood or wood from the red oak group that is determined to be hazardous, without having obtained a permit from the Tree Inspector. The Tree Inspector shall grant such permits only in conformity with the State approved removal and wood disposal practices.

935.11. 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 duties imposed by this section.

935.12. Penalty. Any person, firm or corporation who violates 935.10 or 935.11 of this section is guilty a misdemeanor.

(Amended, Ord. No. 89-634; Ord. No. 2012-1057)