

AN ORDINANCE RELATING TO THE CONTROL AND PREVENTION PROGRAM OF SHADE TREE DISEASES AND SHADE TREE PESTS WITHIN THE CITY OF OAK PARK HEIGHTS.

THE CITY COUNCIL OF THE CITY OF OAK PARK HEIGHTS, WASHINGTON COUNTY, MINNESOTA, DOES ORDAIN:

1302.01 Shade Tree Disease and Shade Tree Pest Control and Prevention Program.

It is the intention of the Council of the City of Oak Park Heights to conduct a program of plant disease and pest control pursuant to the authority granted by Minnesota Statutes 1961, Section 18.G, as amended. This program is directed specifically at the control and elimination of shade tree diseases and shade tree pests and is undertaken at the recommendation of the Commissioner of Agriculture. The City Arborist shall act as coordinator between the Commissioner of Agriculture and the Council in the conduct of this program.

1302.02 Definitions.

The following terms, used throughout Ordinance 1302, shall have the meanings stated:

A. "Shade tree disease" means a disease affecting an over story deciduous tree such as Dutch elm disease or oak wilt.

B. "Shade tree pest" means any vertebrate or invertebrate animal, plant pathogen, or plant in the community threatening to cause significant damage to a shade tree or community forest such as the emerald ash borer (EAB) insect (*Agrilus planipennix*).

C. "Nuisance" means (1) any living or standing tree infected to any degree with a shade tree disease or shade tree pest; or, (2) any logs, branches, stumps or other parts of any dead or dying tree, so infected, unless such parts have been fully removed, treated or burned under the direction of the City Arborist.

D. "Arborist" means an individual trained in the art and science of planting, caring for and maintaining individual trees. Arborists are knowledgeable about the needs of trees and are trained and equipped to provide proper care.

1302.03 Position of the City Arborist Created.

The position of City Arborist is hereby created and the powers and duties of such are set forth in this ordinance are hereby conferred upon the Director of Public Works in charge of Public Works of the City of Oak Park Heights.

1302.04 Duties of City Arborist.

It is the duty of the City Arborist to coordinate, under the direction and control of the Public Works Director, all activities of the municipality relating to the control and prevention of shade tree diseases and shade tree pests. He/She shall recommend to the Council the details of a program for the control of shade tree disease and shade tree pest control and perform the duties incident to such a program adopted by the Council.

1302.05 Nuisances Declared.

A. The prevention, control and abatement of live trees which may create a public hazard, dead trees, or brush trees which may be affected by Dutch elm disease, Oak Wilt disease, and Emerald Ash Borer and other tree diseases and infestations regulated by the Minnesota Department of Agriculture pursuant to statute, rule, or commissioner's declaration which is necessary for the protection, preservation and conservation of public and private lands and the investment and benefit therein, and to protect and promote the general welfare of the public and this community. Therefore, the following conditions are hereby found and declared to be a public nuisance wherever they exist within the City of Oak Park Heights:

1. Any living or standing elm (*Ulmus*) 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 rufipes* (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 or burned.
3. Any living or dead oak (*Quercus*) tree or part thereof infected to any degree with the oak wilt fungus *Ceratocystis fagacearum*.
4. Any living or dead ash (*Fraxinus spp.*) tree or part thereof infected to any degree with the insect Emerald Ash Borer (*Agrilus planipennis*).
5. Any tree creating a public hazard whether the tree is on public or private property, and without regard for any damage to the tree.
6. Any standing dead trees or dead brush located outside of a natural treed area within a developed lot.

B. Abatement Generalized.

It is unlawful for any person to permit any public nuisance as defined in Section 1302.05A to remain on any premises owned or controlled by him/her within the City of Oak Park Heights. Such nuisances may be abated in the manner prescribed by this Ordinance.

1302.06 Inspection and Investigation.

A. Annual Inspection.

The City Arborist shall inspect all premises and places within the City as often as practicable to determine whether any condition described in Section 1302.05 to be a public nuisance, exists thereon. All reported incidents of infection by Dutch elm fungus, the presence of elm bark beetles, infection by the oak wilt fungus or the presence of emerald ash borer shall be promptly investigated.

B. Entry on Private Premises.

The City Arborist or his/her 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 Ordinance.

C. Diagnosis.

The City Arborist may, upon finding conditions indicating a shade tree disease infestation or a shade tree pest infestation, immediately send appropriate specimens or samples according to current recommendations to the Commissioner of Agriculture for analysis, or take such other steps for diagnosis as currently recommended by the Commissioner.

1302.07 Abatement of Shade Tree Disease and Shade Tree Pest Nuisances.

In abating the nuisances defined in Section 1302.05 the City Arborist shall direct the infected tree or wood to be sprayed, removed, burned or otherwise effectively treated by the property owner so as to destroy and prevent as fully as possible the spread of shade tree disease fungus, elm bark beetles, oak wilt disease, and emerald ash borer. Such abatement procedures shall be carried out in accordance with current technical and expert opinions and plans as may be designated by the Commissioner of Agriculture.

A. Presence of Elm Bark Beetles or Emerald Ash Borer. When the presence of elm bark beetles has been discovered in or upon any living elm tree but the presence of Dutch elm disease fungus is not then or thereafter diagnosed, the tree shall be treated in a manner which will effectively destroy and prevent as full as possible the spread of the elm bark beetle. When the presence of emerald ash borer has been discovered in or upon a living *Fraxinus* (ash) tree,

the tree shall be inspected in a manner carried out in accordance with current specifications and procedures approved by the Commissioner of Agriculture.

- B. Dead Elm or Fraxinus (ash) Trees, Logs, Stumps, etc. Standing dead elm trees, elm logs, branches, stumps, firewood or other raw material from which the bark has not been removed and which are not infected with Dutch elm disease fungus, shall have the bark removed, destroyed and disposed of or shall be treated in a manner which will effectively destroy and prevent as fully as possible the spread of the elm bark beetle or the emerald ash borer. If such treatment is not effective, or, because of the extent of infestation, cannot be effective, the trees, logs, branches, stumps, firewood or other raw elm material shall be removed, destroyed and disposed of.

1302.08 Procedure for Removal of Infected Trees and Wood.

Whenever the City Arborist finds with reasonable certainty that the infestation defined in Section 1302.05 exists in any tree or wood in any public or private place in the City, he/she shall proceed as follows:

- A. Specifications and Procedures. The City Arborist or appointed individual(s) shall establish specifications and procedures for the removal, destruction and disposal of trees and wood infected with Dutch elm disease, Oak wilt fungus or emerald ash borer. Including trees, logs, branches, stumps, firewood and other raw material.
- B. Such specifications and procedures shall be consistent with current specifications and procedures designated or approved by the Commissioner of Agriculture.

1302.09 Abatement on Private or Government Property.

Whenever a nuisance as declared in 1302.05 is found to exist on private property outside any public way in the city, or upon property owned and controlled by a governmental unit other than the city, the owner of such property shall be notified in writing by mail or by personal delivery, that such condition exists. The notice shall also state that if such nuisance is not abated by the owner or person in control of such property within 30 days after receipt of such notice, in the manner prescribed by the city and through City Code 1100 may enter upon the premises and abate the nuisance.

If the owner or person in control of any private premises upon which such a nuisance exists does not abate or eliminate the same within 30 days after receipt of notification, the City of Oak Park Heights, its officers, employees and agents shall proceed to have such nuisance properly abated or eliminated.

- 1302.10 Abatement on City Property.
Nuisances as defined in 1302.05 which exist upon property owned or controlled by the city, including public street right-of-way, shall be abated or eliminated by the forthwith in accordance with established specifications and procedures.
- 1302.11 Cost of Abatement.
If, pursuant to Section 1302.07 and 1302.09, the City Arborist orders the removal or abatement of such nuisance, the City Arborist shall report the cost of the removal or abatement to the Council and the expense thereof plus an amount determined by the City Council to reimburse the City for its costs of inspection and eradication shall be assessed by the Council upon the lot or lots on which the nuisance was located. The assessment procedure shall be as prescribed by Minnesota Statutes, section 429.101 and said assessment shall be a lien on the lot or lots and shall be returned with and collected in the same manner as other city taxes.
- 1302.12 Transportation of Wood.
No person shall transport any diseased wood (bark bearing elm, oak, or any ash (*Fraxinus* spp.)) within the City of Oak Park Heights unless it is carried out in accordance with the current specifications and procedures designated or approved by the Commissioner of Agriculture.
- 1302.13 Interference Prohibited.
It is unlawful for any person to prevent, delay, or interfere with the City or his/her agents while they are engaged in the performance of the duties imposed by this chapter.
- 1302.14 Penalty.
Any person, firm, partnership, or corporation who shall violate any portion of this Ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined a sum not to exceed One Thousand Dollars (\$1000.00) or imprisoned for a period not to exceed ninety (90) days, or both.

Amended by the City Council on December 8, 2015.