

Blue Text is new language  
Green text is existing language  
Red text is deleted language

### Shade Tree Diseases and Pests

Purpose/Intent. The City Council has determined that the health of the community forest, including both public and private trees, faces threats from certain lethal diseases and pests, including but not limited to, Oak Wilt, Dutch Elm Disease, and Emerald Ash Borer. Without proper preventative and control measures in place, the loss of trees from these epidemics would result in substantial depreciation of property values, could significantly reduce wildlife habitat and the beneficial wildlife corridor linkages, and detract from the city's rural character. In addition to, and in accordance with, Minn. Stats. 18G and Minn. Stats. 89.54-89.64, the provisions of this chapter are adopted as an effort to control and prevent the spread of these shade tree diseases and pests.

#### Definitions

Shade tree means a woody perennial grown primarily for aesthetic or environmental purposes.

Diseased tree means any diseased or insect infested tree that poses a threat to other trees in the city.

### **Tree Contractors**

Any person, firm, or corporation that provides tree care, tree trimming, or removal of trees, limbs, branches, brush, or shrubs for hire must be registered with the Minnesota commissioner of Agriculture under Minn. Stat. § 18G.07.

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 trees, shrubs or vines in the city without having secured a license from the city to conduct such business.

Application for a license under this chapter shall be made on a form approved by the city and shall include, among other things, the name and address of the applicant, the number of and names of employees of the applicant, and a description of vehicles and equipment used for the business, including license plate numbers if applicable. It shall also include proof compliance with Minn. Stat. § 18G.07.

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 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 the licensee fails to replace the same with another policy conforming to the provisions of this chapter, said license shall be automatically suspended until such insurance has been replaced.

License Fee. The annual license fee shall be determined by the city's annual Fee Schedule.

*Nuisances Declared.* The following are considered public nuisances as their conditions represent a threat to the health of the community forest. The city may submit a wood sample to a laboratory, such as the University of Minnesota's Plant Disease Clinic, to confirm the presence of the disease or pest.

- (a) Any elm tree or part thereof infected to any degree with Dutch Elm Disease fungi (either *Ophiostoma ulmi* or *Ophiostoma novo-ulmi*), or which harbors any elm bark beetle

**Commented [CA1]:** This would be new. Do you think it should be included? Or, if adding, should it be placed in Chapter 26 (Licenses, Permits,...)

Blue Text is new language  
Green text is existing language  
Red text is deleted language

(*Hylurgopinus rufipes*), European elm bark beetle (*Scolytus multistriatus*), or banded elm bark beetle (*Scolytus schevyrewi*), collectively referred to as elm bark beetles.

- (b) Any dead elm tree or part thereof, including logs, branches, stumps, firewood or other elm material not properly covered and sealed or from which the bark has not been removed or sprayed with an effective insecticide for elm bark beetles; except that the stockpiling of uncovered bark bearing elm wood shall be permitted during the months of October through March.
- (c) Any tree, or part thereof, within the Red Oak family (northern red oak, northern pin oak, pin oak, and black oak), infected to any degree with the oak wilt fungus (*Bretziella fagacearum*). This includes any diseased material that is potentially spore producing (PSP).
- (d) Any tree, or part thereof, within the White Oak family (white oak, bur oak, swamp white oak, and chinkapin oak) that poses a threat of transmission of the oak wilt fungus to other trees of the same species through grafted roots.
- (e) Any ash tree (*Fraxinus* spp.) or part thereof, infected to any degree with Emerald Ash Borer (EAB), *Agrilus planipennis*.

**Nuisance trees** ~~Disease or pest infested trees~~. Any tree located within the city, which is determined by a certified arborist to be a nuisance tree, as defined above, ~~afflicted with any dangerous or infectious insect infestation or plant disease,~~ may be declared a public nuisance. ~~This shall include trees and shrubs harboring injurious insects or pathogens that may cause significant potential danger to the community forest.~~

- (a) The city or its designate may remove or cause or order to be removed, any nuisance tree or part thereof. ~~which is in an unsafe condition or which by reason of its nature is injurious to sewers, electric power lines, gas lines, water lines, or other public improvements, or is infected with Oak Wilt or Dutch Elm Disease~~
- (b) An evaluation of "imminent danger" means that the hazard to the public is immediate. If the property owner cannot be contacted or refuses to remove the hazard, the city will initiate action immediately.
- (c) An evaluation of "potentially dangerous" means that a hazard to the public will exist in the near future. The property owner will be notified and should remove the future hazard as soon as possible.

The city shall have the right to cause the removal of any ~~dead or diseased~~ nuisance tree(s), as defined above, on private property. ~~within the city, when such trees constitute a hazard to life or property, or harbor insects or disease which constitute a potential threat to other trees within the city.~~ In the event of failure of the property owner(s) to comply with such provisions, the city shall have the authority to remove such nuisance trees and charge the cost of removal to the property owner.

- (1a) ~~Notice to take action.~~ An order for a "Notice to Take Action" will be issued upon determination by the city, or its designee, ~~that maintenance work requiring the pruning, preservation, or removal of trees or plants upon private property when such action is necessary to ensure public safety and/or in accordance with the following provisions,~~ to prevent the spread of disease or insects to public trees and the community forest at large ~~places~~.

**Commented [CA2]:** Is this language still acceptable? Is clarification needed in regards to "public"? Could this include a neighboring home/property? The property owner could be consider part of the public...

Blue Text is new language  
Green text is existing language  
Red text is deleted language

Issuance of a notice to take action shall be based on one (or more) of the following:

- (1) For Oak Wilt, laboratory confirmation of the presence of the Oak Wilt fungi or, within the Red Oak family, visual confirmation of an Oak Wilt fungal spore pad.
- (2) For Dutch Elm Disease, laboratory confirmation of the presence of the Dutch Elm Disease fungi or visual confirmation of elm bark beetle galleries.
- (3) For Emerald Ash Borer, confirmation of EAB galleries underneath the bark.

The notice to take action shall include the following information:

- (1) ~~Such notice shall describe~~ Specify the kind of tree, shrub, or other plant or plant part which has been declared to be a public nuisance; its location on the property; and the reason for declaring it a nuisance.
- (2) Proper disposal procedures of wood, bark and debris from said nuisance shall be detailed in said notice. These disposal procedures shall be followed within the time provided in the notice.
- (3) The notice ~~of violation shall state the specific violation and indicate whether immediate enforcement will be sought or if 30 days will be allowed~~ the timeline to correct and remove the ~~violation~~ nuisance tree(s).
- (4) If the owner of the property to whom an order has been issued fails or refuses to take remedial action in accordance with and within the time specified in an order, the city or its designate shall cause the remedial action so ordered to be performed at the expense of the owner. Appeals shall be in accordance with [section 117-55](#).

*Preventative measures.* When managing nuisance trees, as defined in [XXXX](#) above, preventative measures are generally more cost effective for property owners than control measures. Hence, the following measures, either individually or in conjunction, shall be implemented:

- (a) If pruning or removal of oak trees must be conducted during the 'High Risk' timeframe (April through July), the cut surface shall be immediately treated with a water-based paint, wound sealer, or shellac to minimize the potential introduction of Oak Wilt.
- (b) If a property owner desires to retain Oak Wilt infected wood from the Red Oak family, DED infested elm wood, or EAB infested ash wood on site, the following measures shall be implemented:
  - (1) Cut the wood into firewood sized pieces and stack neatly to allow for drying.
  - (2) Cover the stacked wood with 4-6 mil thick clear plastic tarp and completely bury edges of tarp into the ground to trap any elm bark beetles or emerald ash borers under the covering and to prevent sap feeding beetles from accessing the diseased oak wood.
  - (3) Plastic tarp can be removed after the growing season following the year of removal.