

**TITLE IX: GENERAL REGULATIONS**

**Chapter**

**93. TREES**

## CHAPTER 93: TREES

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### **§ 93.01 POLICY AND PROCEDURE.**

The City has determined that the health of oak and elm trees is threatened by fatal diseases known as oak wilt and Dutch elm disease. It has further determined that the loss of oak and elm trees located on public and private property would substantially depreciate the value of property 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 provide for the removal of dead or diseased trees as nuisances.

### **§ 93.02 DEFINITIONS.**

For the purpose of this Chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

(A) **CITY FORESTER.** The person appointed by the Council, or such other employee of the City as the Council may designate, and who shall thereafter qualify, together with duly designated assistants.

(B) **NUISANCE.** This term means:

(1) Any living or standing tree infected to any degree with a shade tree disease; or,

(2) Any logs, branches, stumps or other parts of any dead or dying tree, so infected, unless the parts have been fully burned or treated under the direction of the City Forester.

(C) **SHADE TREE DISEASE.** Dutch elm disease or oak wilt disease.

(D) **TREE INSPECTOR.** The person designated as City Forester.

### § 93.03 SCOPE AND ADOPTION BY REFERENCE.

M.S. §§ 18.023 through 18.024, inclusive, are adopted by reference, together with the Rules and Regulations of the Minnesota Commissioner of Agriculture relating to shade tree diseases; provided, that this Section shall supercede such statutes, rules, and regulations only to the extent of inconsistencies.

### § 93.04 UNLAWFUL ACT.

It is a petty misdemeanor for any person to keep, maintain, or permit upon premises owned by the person or upon public property where the person has the duty of tree maintenance any nuisances as herein defined.

### § 93.05 INSPECTION AND DIAGNOSIS.

It is the power and duty of the City Forester to enter upon public and private property, at any reasonable time, for the purpose of inspection for and diagnosing shade tree disease. In cases of suspected shade tree disease, and in performance of the City Forester's duties, the City Forester may remove such specimens, samples, and biopsies as may be necessary or desirable for diagnosis.

### § 93.06 ABATEMENT OF NUISANCE.

Abatement of a nuisance shall be by spraying, removing, burning, or otherwise effectively treating the infected tree or wood to prevent spread of shade tree diseases. The abatement procedures shall be carried out in accordance with the current technical and expert methods and plans as may be designed by the Commissioner of Agriculture of the State of Minnesota. The City shall establish specifications for tree removal and disposal methods consistent therewith.

**§ 93.07 PROCEDURE FOR REMOVAL OF INFECTED TREES AND WOOD.**

(A) Whenever the City Forester finds with reasonable certainty that the infection, or danger of infection, exists in any tree or wood on any public or private property, the City Forester shall proceed as follows:

(1) If the City Forester finds that the danger of infection of other trees is not imminent because of dormancy of shade tree disease, the City Forester shall make a written report of the finding to the Council which shall proceed by:

- (a) Abating the nuisance as a public improvement under M.S. Chapter 429, or
- (b) Abating the nuisance as provided in Division (B) of this Section.

(2) If the City Forester finds that danger of infection of other trees is imminent, the City Forester shall notify the owner of the property, or the abutting property, as the case may be, by first class mail that the nuisance shall be abated within 15 days from the date of mailing of the notice. If the nuisance is not abated within that time, the City Forester shall notify the owner by certified mail that the nuisance shall be abated within five days from the date of mailing of the notice. The City Forester shall immediately report the action to the Council, and after the expiration of the time limited by the notice, the City Forester may abate the nuisance.

(3) If the City Forester finds with reasonable certainty that immediate action is required to prevent the spread of shade tree disease, the City Forester may proceed to abate the nuisance forthwith. The City Forester shall report the action immediately to the Council and to the abutting property owner or to the owner of the property where the nuisance is located.

(B) Upon receipt of the City Forester's report required by Subsection (A)(1), the Council shall by resolution order the nuisance abated. Before action is taken on the resolution, the City 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 the meeting. The notice shall state the time and place of the meeting, the streets affected, actions proposed, the estimated cost of the abatement, and the proposed basis of assessment, if any, of costs. At the hearing or adjournment thereof, the Council shall hear property owners with reference to the scope and desirability of the proposed project. 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) The City Forester shall keep a record of the costs of abatements done under this Section and shall report monthly to the City all work done for which assessments are to be made stating and certifying the description of the land, lots, or parcels involved and the amount chargeable to each.

(D) On or before September 1 of each year, the City 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 M.S. § 429.101 and other pertinent statutes for certification to the County Auditor and collection the following year along with current taxes.

(E) No damage shall be awarded the owner for destruction of any tree, wood, or part thereof pursuant to this Section.

#### **§ 93.08 SPRAYING TREES.**

(A) Whenever the City Forester determines that any tree or wood is infected or threatened with infection, the City Forester may spray or treat all nearby high value trees with an effective concentrate, fungicide, or both. 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 the Commissioner's agents whenever possible.

(B) The notice and assessment provisions of § 93.07 apply to spraying and treatment operations conducted under this Section.

#### **§ 93.09 TRANSPORTING WOOD PROHIBITED.**

It is a petty misdemeanor for any person to transport any elm wood, or, in the months of April, May, or June, to transport any oak wood, without having obtained a permit from the City Forester. The City Forester shall grant the permits only when the purposes of this Section will be served thereby.

#### **§ 93.10 INTERFERENCE PROHIBITED.**

It is a petty misdemeanor for any person to prevent, delay, or interfere with the City Forester while the City Forester is engaged in the performance of duties imposed by this Section.

#### **§ 93.11 DISEASED TREES IN STREETS.**

The rights, duties, and responsibilities of property owners set forth in this Section shall be equally applicable to and binding upon abutting property owners with tree maintenance responsibilities under Ch. 91.

#### **§ 93.12 ADDITIONAL DUTIES OF CITY FORESTER.**

It is the additional duty of the City Forester to coordinate, under the direction and control of the Council and the Parks and Recreation Director, all activities of the City relating to the control and prevention of shade tree disease. The City Forester shall recommend to the Council the details of a

program for the control of the diseases and perform the duties incident to such a program adopted by the Council.

#### **§ 93.13 SUBSIDIES.**

The duty of any property owner to bear the cost of removing or maintaining trees, whether by private contract or assessment, shall be subject to a subsidy policy, if any, established by the City for the treatment or removal of trees affected with shade tree disease.

#### **§ 93.14 CITY TO CONTROL TREE PLANTING.**

The City shall have control and supervision of planting shrubs and trees upon or overhanging all streets or other public property. The City may establish and enforce uniform standards relating to the species and types of trees to be planted, placement and the maintenance and removal thereof. The standards shall be kept on file in the office of the Parks and Recreation Director and may be revised from time to time by action of the Council upon the recommendation of the City Forester.

#### **§ 93.15 PERMIT TO PLANT OR REMOVE TREES.**

No person shall plant or remove any shrub or tree upon or overhanging streets or other public property without first procuring from the City Forester a permit in writing to do so.

#### **§ 93.16 CITY MAY ORDER WORK DONE.**

If any such owner, occupant or agent fails to comply with this Chapter and after written notice given by the City has not within seven days of the notice complied, the City shall cause the work to be done by its forces or with contracted forces and the expenses thus incurred shall be a lien upon the real estate. The City shall certify to the County Auditor of Pennington County a statement of the amount of the cost incurred by the City. The amount, together with interest, shall be entered as a special assessment against the lot or parcel of land and be collected in the same manner as real estate taxes.