

CHAPTER 93 TREES

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§ 93.01 DECLARATION OF POLICY

(A) The City Council has determined that the health of the elm trees within the city limits is threatened by a fatal disease known as Dutch elm disease. It has further determined that the loss of elm trees growing upon public and private property would substantially depreciate the value of property within the city and impair the safety, good order, general welfare and convenience of the public.

(B) It is declared to be the intention of the Council to control and prevent the spread of this disease, and this chapter is enacted for that purpose.

§ 93.02 FORESTER

(A) *Position created.* The powers and duties of the City Forester as set forth in this chapter are conferred upon the Public Works Director.

(B) *Duties of Forester.* It is the duty of the Forester 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. He or she shall recommend to the Council the details of a program for the control of Dutch elm disease and perform the duties incident to such a program adopted by the Council.

§ 93.03 NUISANCES DECLARED

(A) *Nuisances.* The following things are public nuisances whenever they may be 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 *Hylogopinus Rufipes* (Marsh).

(2) Any dead elm tree or such other disease as prohibited by the Commission of Agriculture, State of Minnesota, or part thereof, including legs, 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.

(B) *Abatement.* It is unlawful for any person to permit any public nuisance as defined in Division (A) of this section to remain on any premises owned or controlled by him or her within the city. The nuisances may be abated in the manner described by this chapter.

§ 93.04 INSPECTION AND INVESTIGATION

(A) *Annual inspection.* The Forester shall inspect all premises and places within the city as often as practicable to determine whether any condition described in § 93.03 exists thereon. He or she shall investigate all reported incidents of infestation by Dutch elm fungus, elm bark beetles or other disease.

(B) *Entry on private premises.* The Forester or his or 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 or her under this chapter.

(C) *Diagnosis.* The Forester shall, upon finding conditions indicating Dutch elm infestation, take the necessary steps to remove infected trees or wood as provided in § 93.06. Should the landowner request that appropriate specimens or samples be submitted to the Commissioner of Agriculture of the State of Minnesota, or such other appropriate laboratory for analysis, or take such other steps for diagnosis as may be recommended by the Commissioner, except as provided in § 93.06, no action to remove infected trees or wood shall be taken until positive diagnosis of the disease has been made.

§ 93.05 ABATEMENT OF DUTCH ELM DISEASE NUISANCES

In abating the nuisances defined in § 93.03, the Forester 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 Dutch elm disease fungus and elm bark beetles. 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. (Ord. 189, passed 8-15-83)

§ 93.06 PROCEDURE FOR REMOVAL OF INFECTED TREES AND WOOD

(A) Whenever the Forester finds with reasonable certainty that the infestation defined in § 93.03 exists in any tree or wood in any public or private place in the city, he or she shall proceed as follows.

(1) If the Forester finds that the danger of infestation of other elm trees is not imminent because of elm dormancy, he or she shall make a written report of his or her findings to the Council which shall proceed by abating the nuisance as a public improvement under M.S. Chapter 429, as it may be amended from time to time, or abating the nuisance as provided in division (B) of this section.

(2) If the Forester finds that danger of infestation of other elm trees is imminent, he or she shall notify the property owner by certified mail that the nuisance will be abated within a specified time, not less than five days from the date of mailing of the notice. The Forester shall immediately report such action to the Council, and after the expiration of the time limited by the notice, he or she may abate the nuisance.

(B) Upon receipt of the Forester's report required by division (A) of this section, the Council shall by resolution order the nuisance abated. 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 the meeting. The notice shall state the time and place of the meeting, the streets affected, action proposed, the estimated cost of the abatement and the proposed bases of assessment, if any, of costs. Any cost sharing formulas shall apply only to the city limits as designated for the year 1983. At such 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 with such modifications as it considers desirable and provide for the doing of the work by day labor or by contract.

(C) The Forester shall keep a record of the costs of abatements done under this section and shall report monthly to the City Clerk-Administrator 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) On or before September 1 of each year the Clerk-Administrator shall list the total unpaid charges for each abatement against each separate lot or parcel to which they are attributable under this chapter. The Council may then spread the charges or any portion thereof against the property involved as a special assessment under M.S. § 429.101, as it may be amended from time to time, and other pertinent statutes for certification to the County Auditor and collection the following year along with current taxes.

§ 93.07 SPRAYING ELM TREES

(A) Whenever the Forester determines that any elm tree or elm wood within the city is infected with Dutch elm fungus, he or she may spray all nearby high value elm trees with an effective elm bark beetle destroying concentrate. Spraying activities authorized by this section shall be conducted in accordance with technical and expert opinion and plans of the Commissioner of Agriculture and under the supervision of the Commissioner and his or her agents whenever possible.

(B) The notice provisions of § 93.06 apply to spraying operations conducted under this section.

§ 93.08 TRANSPORTING ELM WOOD PROHIBITED

It is unlawful for any person to transport within the city any bark-bearing elm wood without having obtained a permit from the Forester. The Forester shall grant such permits only when the purposes of this chapter will be served thereby.

§ 93.09 STORAGE/CONSUMPTION PROHIBITED

It is unlawful for any person to store, retain or possess any cut diseased elm tree wood or portions thereof, unless written approval is obtained from the City Forester to show compliance with the Commissioner of Agriculture and Minnesota Pollution Control Agency standards and regulations regarding storage and consumption of diseased elm trees.

§ 93.10 INTERFERENCE PROHIBITED

It is unlawful for any person to prevent, delay or interfere with the Forester or his or her agents while they are engaged in the performance of duties imposed by this chapter.