

47. TREE MANAGEMENT – NUISANCE, DISEASE AND INSECT CONTROL

47.01. Nuisance Declared. Subdivision 1. To protect, preserve and conserve the value of public and private lands, and to promote the general welfare of the public and this community, it is necessary to protect, control and abate trees that create a public hazard, dead trees and other trees that are affected by Dutch elm disease, oak wilt fungus, emerald ash borer insect, and other tree diseases and infestations regulated by the Minnesota Department of Agriculture pursuant to statute, rule, or commissioner's declaration. Therefore, the following conditions are hereby found and declared to be a public nuisance in the city.

Subd. 2. Any living or dead elm tree or part thereof infected to any degree with the Dutch elm disease fungus which currently includes: *Ophiostoma ulmi* or *Ophiostoma novo-ulmi* or which harbors any of the elm bark beetles, *scolytus multistriatus*, *hylurgopinus rufipes*, or *S. schevyrewi*. It is appropriate to mitigate diseased elms throughout the year.

Subd. 3. 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.

Subd. 4. Any living or dead oak tree or part thereof infected to any degree with the oak wilt fungus (*ceratocytis fagacearum*). Oak trees infected by oak wilt are generally to be mitigated during dormancy (November to March) when the fungus cannot be transmitted.

Subd. 5. Any living or dead *Fraxinus* spp tree or part thereof infected to any degree with the insect emerald ash borer (*Agrilus Planipennis*). Ash trees affected by emerald ash borer that are not allowed by the Director of Parks and Recreation, or designee, to be chemically treated are generally to be mitigated during emerald ash borer non-flight season (September to May)

Subd. 6. Any tree creating a public hazard whether the tree is on public or private property, and without regard for any damage to the tree.

Subd. 7. Any standing dead trees or dead brush.  
(4115, 6/3/13; 4275, 12/19/16)

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47.02. Prohibition. No person shall permit any public nuisance as defined in 47.01 to remain on any premises owned or controlled by such person within the city. Such nuisance may be abated in the manner prescribed by this chapter.

47.03. Park Board Responsibility. The Board of Park Commissioners shall administer this chapter and said Board and the officers and employees of the Parks and Recreation Department are authorized, empowered, and directed to take all action and perform all duties prescribed by this chapter. The Board of Park Commissioners and the officers and employees of the Parks and Recreation Department are authorized and empowered to enter upon private premises at reasonable times and reasonable hours for the purpose of taking necessary action and performing the duties assigned to the Board by this chapter. (4275, 12/19/16)

47.04. Inspections. All premises and places within the city shall be inspected as often as practical to determine whether any condition declared in 47.01 to be a public nuisance, exists thereon. All reported incidents of hazardous trees or dead standing trees meeting the ordinance thresholds, infection by Dutch elm fungus, the presence of elm bark beetles, infection by the oak wilt fungus or the presence of emerald ash borer insects shall be promptly investigated. (4275, 12/19/16)

47.05. Abatement Generally. Subdivision 1. No action to remove, destroy and dispose or require the removal, destruction and disposal of elm trees, wood infected with Dutch elm disease, oak trees infected by oak wilt fungus or Fraxinus spp. (ash) trees or Fraxinus spp. (ash) wood harboring emerald ash borer shall be taken until a reasonably certain diagnosis of the disease or infestation has been made. When such reasonably certain diagnosis has been made, the infected or infested tree or wood shall be removed, destroyed and disposed of in a manner which will effectively destroy and prevent as fully as possible the spread of the Dutch elm or oak wilt disease, or the spread of emerald ash borer populations.

Subd. 2. 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 mitigated 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 mitigated in a manner which will effectively destroy and prevent as full as possible the spread of the emerald ash borer. If such

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mitigation is not or, because of the extent of infestation, cannot be effective, the tree shall be removed, destroyed and disposed of.

Subd. 3. Dead Elm, Oak, 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, Dutch elm disease, oak wilt, or the emerald ash borer. If such mitigation 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.

Subd. 4. Specifications and Procedures. The board of park commissioners shall establish specifications and procedures for the removal, destruction and disposal of trees and wood infected with Dutch elm disease fungus, oak wilt fungus or emerald ash borer for treating live elm or Fraxinus (ash) trees infested with elm bark beetles or emerald ash borer, and for removing, destroying and disposing of elm or Fraxinus (ash) bark and treating dead elm or Fraxinus (ash) trees, logs, branches, stumps, firewood and other raw elm material. Such specifications and procedures shall be consistent with current specifications and procedures designated or approved by the commissioner of agriculture and shall be provided at time of notification as defined in section 46.07. (4275, 12/19/16)

47.06. Abatement on Private or Government Property. Subdivision 1. Whenever a nuisance as defined in section 47.01 is found to exist within any developed portions or utilized portions of any parcel or within 100 feet of such developed/utilized areas of any property that may lie within non-maintained naturally wooded areas on private property, the owner or person in control of such property shall be notified in writing or by mail or 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 the timeline specifically outlined in the written notice based on time of year and type of tree to be removed in the manner prescribed by the Board of Park Commissioners, the City by and through its Parks and Recreation Department may enter upon the premises and abate the nuisance.

Subd. 2. 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 the timeline specifically outlined in the written notice based on time of year and type of tree to be removed, the board of park commissioners, its officers,

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employees and agents shall proceed to have such nuisance properly abated or eliminated. (4275, 12/19/16)

47.07. Abatement on City Property. Nuisances defined in section 47.01 and found within areas as defined in section 47.06 which exist upon property owned or controlled by the City, including public street right-of-way, shall be abated or eliminated by the Park Department forthwith in accordance with established specifications and procedures. (4275, 12/19/16)

47.08. Cost of Abatement. If, pursuant to section 47.06, the Parks and Recreation Department, acting under the direction of the Board of Park Commissioners orders the removal or abatement of such nuisance, the Department shall report the cost of the removal or abatement to the Council and the expense thereof plus an amount determined by the Common Council to reimburse the City for its costs of inspection and eradication shall be assessed by the Council upon the parcels on which the nuisance was located, notice being first given by publication in the official paper of the time and place such assessment will be made. The assessment procedure shall be as prescribed by Minnesota Statutes, section 429.101, and said assessment shall be a lien on the parcels and shall be returned with and collected in the same manner as other city taxes. (4275, 12/19/16)

47.09. Transporting of Nuisance Wood To Any Location Except Approved Disposal Sites. No person shall transport within the city any bark bearing elm wood or bark bearing, EAB infested Fraxinus (Ash) wood, or bark bearing oak wood from oak wilt infected trees without having obtained a permit from the Board of Park Commissioners. The Board shall grant such permits only when the purposes of this chapter shall not be impaired or adversely affected. (4275, 12/19/16)

47.10. Interference. No person shall prevent, delay or interfere with the board of park commissioners or the officers and employees of the Park and Recreation Department of the city while they are engaged in the performance of duties imposed by this chapter.

47.11. Violation. Failure of any owner or person in control of private property to abate or eliminate on such property a nuisance as defined in this chapter shall not constitute a violation of this chapter.

(1396, 12/10/67; 1652, 4/18/72; 2585, 4/5/88; 3849, 1/7/08; 4115, 6/3/13; 4275, 12/19/16))