

902. Tree Disease

902.01 Purpose. The Council has determined that the health of the trees within the municipal limits is threatened by fatal tree diseases. It is further determined that the loss of trees growing upon public and private property would substantially depreciate the value of the property within the city 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 tree disease and this chapter is enacted for that purpose.

902.02 Forester.

Subd. 1. **Position Created.** The powers and duties of the city forester as provided by this chapter are conferred on the street commissioner.

Subd. 2. **Duties.** 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 tree diseases. The forester shall recommend to the council the details of a program for the control of tree disease, and perform the duties incident to such a program adopted by the council.

902.03 Program. It is the intention of the council to conduct a program of plant pest control pursuant to the authority granted by Minnesota Statutes 18.022. This program is directed specifically at the control and elimination of tree diseases, and is undertaken at the recommendation of the Commissioner of Agriculture. The forester shall act as coordinator between the Commissioner of Agriculture and the council in the conduct of this program.

902.04 Nuisance Declared. The following are declared to be public nuisances whenever they may be found within the city:

Subd. 1. Any living or standing elm tree or part thereof infected to any degree with Dutch Elm Disease fungus, *ceratocystis ulmi* (Buism.) C. Moreau, or which harbors any of the elm bark beetles, *scolytus multistriatus* (eich.) or *hylurgopinus rufipes* (march).

Subd. 2. Any elm tree or part thereof, including logs, 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.

Subd. 3. Any living or standing oak tree or part thereof infected to any degree with the oak wilt disease fungus *ceraloiystis fogacearum*.

Subd. 4. Any dead oak trees or part thereof which in the opinion of the forester constitutes a hazard, including, but not limited to, logs, branches, stumps, firewood, or other oak material, which has not been stripped of its bark and burned or sprayed with an effective fungicide.

Subd. 5. Any other shade trees with an epidemic disease.

902.05 Abatement. It is unlawful for any person to permit any public nuisance as defined in 902.04 to remain on any premises owned or controlled by him within the city. Such nuisance may be abated in the manner prescribed by 902.09 - 902.13.

902.06 Inspection and Investigation. The forester shall inspect all premises and places within the city as often as practicable to determine whether any condition described in 902.04 and 902.05 of this chapter exists thereon. He shall investigate all reported incidents of diseased trees.

902.07 Entry on Private Premises. The forester or his 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 chapter.

902.08 Diagnosis. The forester shall, upon finding conditions indicating disease infestation, immediately send appropriate specimens or samples to the Commissioner of Agriculture for analysis, or take such other steps for diagnosis as may be recommended by the Commissioner of Agriculture. Except as provided in 902.10 through 902.12 no action to remove infected trees or wood shall be taken until positive diagnosis of the disease has been made.

902.09 Abatement of Tree Disease Nuisances. In abating the nuisances defined in 902.04 and 902.05, 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 tree diseases. 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.

902.10 Procedures for Removal of Infected Trees and Wood.

Subd. 1. **Ordinary Procedure.** Whenever the forester finds with reasonable certainty that the infestation defined in 902.04 and 902.05 exists in any tree or wood in any public or private place in the city, he shall proceed as follows:

- A. If the forester finds that the danger of infestation of other trees is not imminent because of dormancy, he shall notify the abutting property owner and/or the owner of the property upon which the tree is located, by certified mail that the nuisance will be abated within a specified time, not less than five (5) days from the date of mailing of such notice.
- B. The forester shall immediately report such action to the council, and after the expiration of the time limited by the notice, he may abate the nuisance by:

- 1) Abating the nuisance as a public improvement under Minnesota Statutes, Chapter 429.101; or
- 2) Abating the nuisance as provided in 902.11.

Subd. 2. **Immediate Action.** If the forester finds with reasonable certainty that immediate action is required to prevent the spread of the disease, he may proceed to abate the nuisance forthwith. He shall report such action immediately to the council and to the owner of the property where the nuisance is located.

902.11 Council Action. Upon receipt of the forester's report required by 902.10, Subd. 1., 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 such meeting. The notice shall state the time and place of the meeting, the property affected, action proposed, the estimated cost of the abatement, and the proposed bases 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 of day labor or by contract.

902.12 Records. The forester shall keep a record of the costs of abatements done under this section and shall report monthly to the city administrator all work done for which assessments are to be made stating and certifying the description of land, lots, parcels involved and the amount chargeable to each.

902.13 Assessments. On or before September 1 of each year the city 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 Minnesota Statutes 429.101 and other pertinent statutes for certification to the county auditor and collection the following year along with current taxes.

902.14 Treatment. Whenever the forester determines that any tree or wood within the city is infected with disease, he may spray or otherwise treat all nearby high value trees, with an effective disease destroying agent. Spraying and other treatment 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 his agents whenever possible. The notice provisions of 902.11 apply to spraying and treatment operations conducted under this section.

902.15 Transporting Wood Prohibited. It is unlawful for any person to transport within the city any diseased wood or any bark-bearing elm or oak wood without first obtaining permission from the forester. The forester shall grant such permission

only when the purpose of this chapter will be served thereby minimizing the risk of spread of the disease.

902.16 Interference Prohibited. It is unlawful for any person to prevent, delay or interfere with the forester or his agents while they are engaged in the performance of duties imposed by 902.01-902.15.