

403. TREE DISEASES

403.010. DECLARATION OF POLICY. The Council has determined that the health of the elm, oak, and ash trees within the municipal limits are threatened by fatal diseases known as Dutch elm disease, oak wilt, and from the emerald ash borer and the two-lined chestnut borer. . It has further been determined that the loss of elm and oak trees growing upon private and public property would substantially depreciate the value of 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 these diseases and these pests, and this article is enacted for that purpose.

403.020. CONTROL AREA DESIGNATED. For the purposes of this ordinance, the control area consists of the entire City of Birchwood Village.

403.030. APPOINTMENT OF A TREE INSPECTOR. The Council shall at least annually designate a tree inspector or tree inspectors, certified by the Minnesota Commissioner of Agriculture, who shall have the responsibilities set forth in this ordinance to administer the Dutch elm disease and oak wilt control programs and to control the infestation of the emerald ash borer and the two-lined chestnut borer within the City.

403.040. NUISANCES DECLARED. The following are declared to be public nuisances whenever and wherever they may be found within the City:

1. Elms. Any standing or living elm tree, (including but not limited to American elm, red elm, rock elm, Siberian elm, and Chinese elm), or part thereof, determined by the City tree inspector to be infected to any degree with the Dutch elm disease fungus, *Ceratocystis ulmi* (Busiman) Moreau.

Any bark intact dead or dying elm tree, or part thereof, or any elm wood including branches (greater than 2" in diameter at the largest end), logs, stumps, or firewood with bark intact that poses a threat, (as determined by the City tree inspector), of harboring or acting as a breeding site for the beetles, *Scolytus multistriatus* (Eichh) or *Hylurgopinus rufipes* (Marsch).

2. Oaks. Any bark intact living or standing tree or part thereof, in the red oak group (including, but not limited to, red oak, pin oak, northern pin oak, scarlet oak and black oak) infected to any degree, (as determined by the City tree inspector), with the oak wilt fungus *Ceratocystis fagacearum* (Bretz) Hunt, and has been determined (by the City tree inspector) to pose a threat of overland transmission of the fungus to other oak trees. This may also include any bark intact dead or dying red oak group oak tree, or part thereof, that has died of oak wilt, (as determined by the City tree inspector), including branches (greater than 2" in diameter at the largest end), logs, stumps, or firewood that is determined by the City tree inspector to pose a threat of overland transmission of the oak wilt fungus to other oak trees.

Any bark intact living or standing tree, or part thereof, in the red oak group described above that is infected to any degree with the two-lined chestnut borer (*Agrilus bilineatus*) that has been determined by the City tree inspector to pose a threat of overland transmission of the borer. This may also include any bark intact dead or dying red oak group oak tree, or part thereof, that has died from invasion of the two-lined chestnut borer as determined by the tree inspector.

3. Ash. The provisions of paragraph 2 and 3 above shall also apply whenever the tree inspector shall find a living or standing ash tree or bark intact or dying ash tree, or part thereof, that has been infested with the emerald ash borer (*Argilus planipennis* or *Agrilus marcopol*).

403.050. ABATEMENT. It is unlawful for any person to permit a public nuisance as defined in 403.040 to remain on any premises owned or controlled by that person within the designated control areas of the City. Such nuisances may be abated in the manner prescribed by this chapter.

403.060. INSPECTION AND INVESTIGATION.

1. Annual Inspection.

a. Dutch Elm disease: The tree inspector shall inspect all premises and places within the designated Dutch elm disease control area of the City at least once during the growing season, by August 1st, to determine whether any condition described in 403.040 (1) exists.

b. Elm wood: The tree inspector shall inspect all premises and places within the designated Dutch elm disease control area of the City by August 1st, of each year for elm wood or logs/stumps that meet any of the conditions described in 403.040 (1) and require by August 1st, removal or debarking of all wood logs, and stumps to be retained.

c. Oaks: The tree inspector shall inspect all premises and places within the designated control area of the City as many times as practical or necessary to determine whether any condition described in 403.040 (2) exists.

d. Ash Trees. The tree inspector shall inspect all premises and places within the City of Birchwood as many times as practical or necessary to determine whether any condition described in 403.040 (3) exists.

2. Entry on Private Premises: The tree inspector so designated by the Council may enter upon private premises at any reasonable time for the purpose of carrying out the duties assigned to him/her under this chapter.

3. Diagnosis: Whenever possible, diagnosis shall be based upon accepted field symptoms. The City tree inspector shall, upon finding indications of oak wilt or Dutch

elm disease or the two-lined chestnut borer or the emerald ash borer, take such steps for diagnosis as may be appropriate. These steps may include analysis of twig and stem samples from elm, oak, and ash trees or parts thereof suspected of being infected. The tree inspector may submit such samples to an approved laboratory upon approval of the Council. Laboratory isolation and confirmation of the presence of the fungi shall be done by the Department of Agriculture's disease laboratory, or other laboratories capable of performing such services approved by the Minnesota Commissioner of Agriculture.

403.070. INTERFERENCE PROHIBITED. It is unlawful for any person to prevent, delay or interfere with the City tree inspector or his/her agents while they are engaged in the performance of duties imposed by this ordinance.

403.080. PROCEDURE FOR ABATEMENT AND REMOVAL.

1. Notice to Landowner. Whenever it is found with reasonable certainty that a tree has oak wilt or Dutch elm disease, or is infected with the two-lined chestnut borer or the emerald ash borer, the tree inspector shall proceed as follows:

(a) If the tree inspector finds that there is potential for infection of other oak or elm trees, the owner of the property on which the nuisance is found, shall be notified by certified mail, addressed to said owner at his/her last known address. The tree inspector will specify on the notice a reasonable date before which the nuisance must be abated. The tree inspector shall identify in the notice the abatement action to be taken.

(b) The tree inspector shall immediately report said action to the Council and, after the expiration of the time limited by said notice, the tree inspector may proceed to abate the nuisance as herein provided.

(c) The cost of such abatement, plus a \$50 administrative fee, shall be assessed against the owner of the property involved, or against the property itself.

403.081. ABATEMENT ACTIONS.

1. High Risk Elm Trees: High risk elm trees shall be those trees that are dead, barren, or have extensive wilt (30 percent or more of the tree is wilted). Such trees shall be identified and marked prior to July 1st. These high risk trees shall be removed within 20 days of notification of the property owner.

2. Oak Wilt: All oak trees within the designated oak wilt control area of the City diagnosed as having oak wilt should be isolated from neighboring healthy oak trees of the same species by chemical or mechanical disruption of common root systems to prevent root graft transmission of the oak wilt fungus.

To control the overland spread of oak wilt, the pruning of oaks shall be avoided during the most susceptible period of infection, from April 15 until July 1. If wounding is

unavoidable during this period, as in the aftermath of a storm or when the tree interferes with utility lines, a tree wound dressing shall be applied immediately.

a. Red Oaks. To prevent the oak wilt fungus from producing spores and to prevent the overland spread of this fungus, any bark intact diseased material resulting from any tree of the red oak group, that wilted from oak wilt in July and August of one year shall be declared hazardous for the spring of the following year. This hazardous spring period shall be defined as April 15 to July 1 and diseased material shall be determined such by the City tree inspector.

Any hazardous oak wood to be used as fuel wood or to be salvaged or other purposes must be debarked, dried, or else completely covered by heavy plastic (4 mil or greater) from April 15 until July 1 of the year following the appearance of oak wilt. After this time there is no danger of spore production and the wood does not need to be covered.

Any branch greater than 2" in diameter of the red oak group determined to be hazardous and not to be salvaged shall be disposed of by burning, chipping, or removal to an authorized dump site prior to April 15 of the year following the appearance of symptoms. Dead standing red oaks that have advanced beyond the potential for spore production need not be removed except where they constitute a hazard to life and/or property. The City tree inspector will advise accordingly.

Stumps of trees of the red oak group removed due to oak wilt shall be completely covered with at least 2" of compacted soil, removed, or debarked to the ground line to eliminate all possibilities of spore formation and overland disease spread.

Any hazardous material not dealt with in the above described manner must be removed within 20 days of notification.

b. White Oaks: Trees of the white oak group (i.e. white oak, bur oak, bicolor oak) diagnosed as having oak wilt should be isolated by root graft disruption as previously stated. Diseased material originating from such trees will rarely ever support spore formation, and salvaged material therefore will not require special treatment to prevent overland spread. Standing trees of this group showing early symptoms of oak wilt may sometimes be saved by removing affected branches. The City tree inspector will advise accordingly.

3. Two-lined Chestnut Borer. The tree inspector shall identify such actions as the inspector deems necessary to prevent the spread of the two-lined chestnut borer whenever the two-lined chestnut borer is discovered in Birchwood.

4. Emerald Ash Borer. The tree inspector shall identify such actions as the inspector deems necessary to prevent the spread of the emerald ash borer whenever the emerald ash borer is discovered in Birchwood.

403.090. ROOT GRAFT DISRUPTION (BARRIERS) AT PROPERTY BOUNDARIES. Because oak wilt is a community problem and because oak wilt control may benefit an entire neighborhood, the tree inspector shall recommend and encourage neighborhood participation and cooperation, including cost sharing, in root graft disruption and other control efforts, especially where oak wilt is in danger of spreading across property boundaries.

403.100. TRANSPORTING ELM AND OAK WOOD PROHIBITED. It is unlawful for any person to transport within the City any bark intact elm wood, or wood from the red oak group that is determined to be hazardous, or any oak infected with the chestnut borer, or any ash wood infected with the emerald ash borer without having first obtained a permit from the City tree inspector to do so. The City tree inspector shall grant such permits only when such permission does not interfere with the provisions of this ordinance.

403.110 PENALTY. Any person, firm or corporation who violates the conditions of this ordinance is guilty of a misdemeanor.

“AMENDED BY ORDINANCE 2011-02; MAY 10, 2011”