Ordinance No. 2018-07

An Ordinance relating to diseased and hazard trees; amending sections 840 and 545.010 of the Minnetonka city code

The City of Minnetonka Ordains:

Section 1. Section 840 of the Minnetonka City Code is amended to read as follows:

SECTION 840. PLANT PEST CONTROL OF DUTCH ELM AND OAK WILT DISEASE.

840.005. Declaration of Policy.

The city council of the city of Minnetonka finds and determines that the health of the oak and elm trees within the municipal limits is threatened by fatal diseases known as oak wilt disease and Dutch elm disease. It has further found and determined that the city council finds that trees and plant species provide numerous environmental, economic and scenic benefits to the public. The council also finds that certain plant pests are likely to cause economic or environmental harm or harm to human health through their impact on trees and plants. The loss of oak and elm trees, tree and plant species growing upon public or private property due to plant pests would substantially depreciate the value of property within the city and impair the safety, good order and general welfare of the public. It is the intention of the council to manage, control and prevent the impacts caused by harmful plant pests spread of these diseases by the adoption of the following regulations.

840.010. City Forester.

The city forester will coordinate all of the city's activities relating to the management, control and prevention of plant pests that are likely to cause economic or environmental harm or harm to human health oak wilt and Dutch elm diseases. The forester will recommend to the council the details of a program for the control of plant pests in the city oak wilt and Dutch elm diseases and perform the duties incident to a control program adopted by the city council.

840.015. Plant Pest Oak Wilt and Dutch Elm Disease Program.

1. It is the intention of the city council to conduct a program of plant pest control pursuant to the authority granted by Minn. Stat. § 18.023, as amended. This program is directed specifically at the prevention, control and elimination or management of oak wilt disease, and Dutch elm diseases, the emerald ash borer beetle, and other plant pests that may be identified in the future as likely to cause economic or environmental harm or harm to human health and is undertaken at the recommendation of the commissioner of agriculture.

2. After a public hearing, the city council may adopt a resolution to establish or amend

The stricken language is deleted; the underlined language is inserted.
a written program for plant pest control, management and prevention. The program must include the following elements:

1. identification of plant pests that the council finds may cause significant damage or harm to the city's economy, environment, or to human health;

2. a description of the methods for controlling, preventing, or managing each identified plant pest, and the circumstances under which a given method is appropriate based on the particular plant pest, time of the year, the prevalence of the plant pest within the city, or other factors. Methods to be utilized may include injection, installation of a root graft barrier, quarantine of the plant product, or destruction and proper sanitation of the plant or plant product;

3. the circumstances under which the city will perform the prescribed method of control, prevention or management at the city's cost; and

4. the circumstances under which a private property owner must either (i) perform a prescribed method of control, prevention or management at the property owner's cost or (ii) reimburse the city for the cost of control, prevention or management work performed by the city.

3. The council may amend the plant pest program from time to time as appropriate based upon then-current technical and expert opinions as may be designated by the commissioner of agriculture, and as approved by other appropriate state agencies.

4. The city forester will act as coordinator between the commissioner of agriculture and the council in the conduct of this program.

840.020. Nuisances Declared.

1. The following things are public nuisances, whether located on public or private property:

   a. any plant, conveyance or article that is infected or infested with plant pests identified in the adopted plant pest program;

   b. any living or dead standing red oak tree, or part of it, including logs, branches, stumps, or firewood, infected to any degree with oak wilt disease fungus *Ceratocystis fagacearum*;

   b. any living or dead standing elm tree, or part of it, including logs, branches, stumps, or firewood, infected to any degree with the Dutch elm disease fungus *Ceratocystis Ophiostoma novo-ulmi* or any tree or elm wood which harbors any of the

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elm bark beetles *Scolytus multistriatus*, *Scolytus schevyrewi* or *Hylurgopinus rufipes*; and

any dead elm tree or part of one, including logs, branches, stumps, firewood or other elm material that has tight bark. any living or dead ash tree, or part of it, including logs, branches, stumps or firewood found to harbor the emerald ash borer beetle, *Agrilus planipennis Fairmaire*.

2. A person must not permit any public nuisance as defined in subdivision paragraph 1 above to remain on premises owned or controlled by the person within the city. The nuisance may be abated in the manner prescribed by this chapter.

3. Notwithstanding the provisions of paragraph 2 above, residents may apply for an individual permit from the city forester to allow the storage of elm firewood during the period of October 15 to April 1 of the following year, if the tree from which the wood originated was cut down during that same period. Firewood from elm trees cut down after April 1 but before October 14 of any year may not be stored within the city.

840.025. Inspection and Investigation.

1. The forester or authorized representatives may inspect all premises and places within the city as often as appropriate to determine if any condition described in section 840.020(1) exists. The forester will investigate all reported incidence of infestation by oak wilt fungus, Dutch elm fungus, elm bark beetles, *emerald ash borer beetles*, or other plant pests identified in the adopted plant pest program.

2. The forester or authorized representatives may enter upon private premises at any reasonable time for the purpose of carrying out any of the duties assigned to them under this ordinance.

3. The forester or authorized representatives must identify diseased or infested trees by generally accepted field symptoms such as wilting, yellowing of leaves, D-shaped exit holes or staining of wood in accordance with Minnesota Rules chapter 1505. Laboratory confirmation by the Minnesota department of agriculture or University of Minnesota will be used only when it is necessary.

840.030. Abatement of Plant Pest Oak-Wilt and Dutch-Elm-Disease Nuisances.

1. Whenever the forester or authorized representative determines that a nuisance exists on public or private property in abating the nuisances described above, the forester will cause the nuisance to be abated in the manner prescribed by the adopted plant pest program 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 oak wilt or Dutch elm diseases. These abatement procedures must be carried out in accordance with Minnesota Rules chapter 1505.
with current technical and expert opinions as may be designated by the commissioner of agriculture, and as approved by other appropriate state agencies.

2. For abating a nuisance on private property, the forester must follow the procedures specified in section 845.045 of this code. The written notification to the property owner must provide reference to the adopted plant pest program.

3. The city’s costs in abating a nuisance on private property shall be a lien on the property and may be collected in the manner provided in section 845.045 of this code.


1. Whenever the forester or authorized representatives finds with reasonable certainty that the nuisance or infestation described above exists in any tree or wood, they will cause the nuisance or infestation to be abated in accordance with current city council policy, sections 840.030 and 845.045 of this code, state law, and Minnesota department of agriculture rules.

2. The forester must keep a record of the costs of abatements done under this chapter.

840.040. Spraying Diseased Trees.

1. Whenever the forester determines that any oak tree, elm tree or elm wood is infected with oak wilt or Dutch elm fungus, or Dutch elm beetles, the forester may spray or inject all nearby trees likely to be infected, with an effective concentrate. Spraying or injecting activities authorized by this section will 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/her agents whenever possible.

2. The notice provisions of section 840.035 apply to spraying operations conducted under this section.

840.045. Transporting Diseased Wood.

The transportation of diseased trees or wood must comply with the standards set forth in the plant pest program as defined under this chapter will be confined to state highways. Loads must be properly secured so that twigs, branches and other debris is not lost while in route.

840.050. Interference Prohibited.

A person must not prevent, delay or interfere with the forester or representatives while they are engaged in the performance of the duties imposed by this chapter.

The stricken language is deleted; the underlined language is inserted.
840.055. Penalty.

A person who violates a provision of this chapter is guilty of a petty misdemeanor, punishable in accordance with state law.

Section 2. Section 845.010 of the Minnetonka City Code, declaring specified conditions to be public nuisances affecting peace, safety and general welfare, is amended by amending subdivisions 19 and 20 and adding a new subdivision 21, to read as follows:

19. gravel driveways maintained in such a manner that the gravel erodes into, or is placed in, a public street or a water resource such as a wetland, creek, pond or lake; and

20. encroachments onto publicly-owned property or tax-forfeited property under public control without a legal right or permission from the public owner, such as the placement of buildings or other objects, the dumping of organic materials, the storing of privately-owned items, and the undertaking of activities affecting the physical nature of the property such as mowing, vegetation removal, or the application of fertilizer, pesticides, or herbicides; or

21. a tree located on private property that the city forester has determined: (a) has defects in its structure, roots or branches that are likely to cause the tree or part of the tree to fail, and (b) is likely to damage public property or improvements when the tree or part of the tree fails.

Section 3. A violation of this ordinance is subject to the penalties and provisions of Chapter XIII of the city code.

Section 4. This ordinance is effective 30 days after publication.

Adopted by the city council of the City of Minnetonka, Minnesota, on June 18, 2018.

Brad Wiersum; Mayor

Attest:

David E. Maeda, City Clerk

The stricken language is deleted; the underlined language is inserted.
Action on this Ordinance:

Date of introduction: May 14, 2018
Date of adoption: June 18, 2018
Motion for adoption: Acomb
Seconded by: Happe
Voted in favor of: Ellingson-Acomb-Happe-Calvert-Bergstedt-Wagner-Wiersum
Voted against: None
Abstained: None
Absent: None
Ordinance adopted.

Date of publication: June 28, 2018

I certify that the foregoing is a true and correct copy of an ordinance adopted by the city council of the City of Minnetonka, Minnesota, at a meeting held on June 18, 2018.

David E. Maeda, City Clerk