

Chapter 44 VEGETATION*

***Cross reference(s)**--Buildings and building regulations, ch. 10; environment, ch. 22; planning, ch. 30; streets, sidewalks and other public places, ch. 36; subdivisions, ch. 38; zoning, ch. 46.

State law reference(s)--Pesticide control, M.S.A. § 18B.01 et seq.; Minnesota Noxious Weed Law, M.S.A. § 18.75 et seq.

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ARTICLE I. IN GENERAL

Secs. 44-1--44-30. Reserved.

ARTICLE II. TREES

Sec. 44-31. Declaration of policy.

The city council has determined that the health of the trees within the municipal limits is threatened by fatal diseases known as Dutch elm and oak wilt diseases, and may be threatened by other epidemic diseases of shade trees. It further determines that the loss of 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. It is declared to be the intention of the council to control and prevent the spread of those diseases, and this article is enacted for that purpose.

(Code 1987, § 802.01)

Sec. 44-32. Forester.

- (a) *Position created.* The position of forester is created within the public works department of the city.
- (b) *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 Dutch elm disease and oak wilt disease and other epidemic diseases of shade trees. He shall recommend to the council the details of a program for the control of such disease and perform the duties incident to such a program adopted by the council.

(Code 1987, § 802.02)

Cross reference(s)--Officers and employees, § 2-101 et seq.

Sec. 44-33. Epidemic disease program.

- (a) It is the intention of the council to conduct a program of plant pest control pursuant to all the powers of this city, including the authority granted by M.S.A. § 18.022.
- (b) This program is concentrated on but not limited to the control and elimination of Dutch elm disease fungus, elm bark beetles and the oak wilt fungus 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.

(Code 1987, § 802.03)

Sec. 44-34. Nuisances declared.

- (a) *Trees constituting nuisances.* The following are public nuisances whenever they may be found within the city:
 - (1) Any living or standing elm tree 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 *Hylurgopinus rufipes* (Marsh).
 - (2) Any dead elm tree, 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.
 - (3) Any living or standing oak tree infected to any degree with the oak wilt fungus *Ceratocystis fagacearum*.

- (4) Any dead oak tree which in the opinion of the forester constitutes a hazard, including but not limited to logs, branches, stumps, roots, firewood or other oak material, which has not been stripped of its bark and burned or sprayed with an effective fungicide.
- (5) Any other shade trees with an epidemic disease.
- (b) *Abatement.* It is unlawful for any person to permit any public nuisance as defined in subsection (a) of this section to remain on any premises owned or controlled by him within the city. Such nuisances may be abated in the manner prescribed by this article.

(Code 1987, § 802.04)

Sec. 44-35. Inspection and investigation.

- (a) *Annual inspection.* As often as practicable, the forester shall inspect all public and private premises within the city which might harbor any plant pest as defined in M.S.A. § 18.46, subd. 13 to determine whether any condition described in section 44-34 exists on the premises. He shall investigate all reported incidents of infestation by Dutch elm fungus, elm bark beetles, oak wilt fungus, or any other epidemic disease of shade trees.
- (b) *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 article.
- (c) *Diagnosis.* The forester shall, upon finding conditions including Dutch elm, oak wilt or other 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. Except as provided in section 44-37, no action to remove infected trees or wood shall be taken until positive diagnosis of the disease has been made.

(Code 1987, § 802.05)

Sec. 44-36. Abatement of Dutch elm disease nuisance.

In abating a nuisance defined in section 44-34, 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 epidemic diseases, including Dutch elm disease and oak wilt disease. He shall also take such steps as are necessary to prevent root graft transmission of the 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.

(Code 1987, § 802.06)

Cross reference(s)--Nuisance generally, § 22-31 et seq.

Sec. 44-37. Procedure for removal of infected trees and wood.

- (a) *Action by forester.* Whenever the forester finds with reasonable certainty that the infestation defined in section 44-34 exists in any tree or wood in any public or private place in the city, he shall proceed as follows:
- (1) If the forester finds that the danger of infestation of other elm, oak or other trees is not imminent because of the dormancy of the infected trees, he shall make a written report of his finding to the council, which shall proceed by abating the nuisance as a public improvement under M.S.A. § 429.011 et seq. or abating the nuisance as provided in subsection (a)(2) of this section.
 - (2) If the forester finds that danger of infestation of other elm, oak or other trees is imminent, he shall notify the abutting 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 such notice. The forester shall immediately report such action to the council; and after the expiration of the time limit in the notice, he may abate the nuisance.
- (b) *Action by council.* Upon receipt of the forester's report required by subsection (a)(2) 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 such meeting. The notice shall state the time and place of the meeting, the streets or property affected, action proposed, the estimated cost of the abatement, and the proposed basis of assessment, if any, of costs. At such hearing or adjournment of the hearing, 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 by day labor or by contract.
- (c) *Record.* The forester shall keep a record of the costs of abatements done under this section and shall report monthly to the administrative clerk-treasurer (or other appropriate officer) 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) *Assessment.* On or before September 1 of each year, the administrative clerk-treasurer shall list the total unpaid charges for each abatement against each separate lot or parcel to which they are attributable under this article. The council may then spread the charges or any portion of the charges against the property involved as a special assessment under M.S.A. § 429.101 and other pertinent statutes for certification to the county auditor and collection the following year along with current taxes.

(Code 1987, § 802.07)

Sec. 44-38. Spraying elm trees.

- (a) *When to spray.* Whenever the forester determines that any elm tree or elm wood within the city is infected with Dutch elm fungus, he may spray or treat all nearby high-value elm trees with an effective elm bark beetle destroying concentrate or fungicide or both. 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.
- (b) *Notice.* The notice provisions of section 44-37 apply to spraying and treatment operations conducted under this section.

(Code 1987, § 802.08)

Sec. 44-39. Transporting elm wood prohibited.

It is unlawful for any person to transport within the city any bark-bearing elm or oak wood without having obtained a permit from the forester. The forester shall grant such permits only when the purpose of this article will be served.

(Code 1987, § 802.09)

Sec. 44-40. 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 this article.

(Code 1987, § 802.10)