

ORDINANCE 2019-02

AN ORDINANCE PROTECTING SHADE TREES AND PROVIDING FOR PEST CONTROL THEREOF

The City Council of the City of Trimont, Minnesota hereby ordains:

Section 6.19 – SHADE TREE PEST CONTROL

Subd. 1. **Declaration of Policy.**

The health of the trees in the City is threatened by shade tree pests, and the loss or ill health of trees growing upon public and private property substantially depreciates the value of property within the City and impairs the safety, good order, general welfare and convenience of the public. In addition to and in accordance with Minn. Stat. Section 89.001, 89.01, and 89.51-64, the provisions of this section are adopted as an effort to control and prevent the spread of these shade tree pests.

Subd. 2. **Declaration of a Shade Tree Pest.**

The Council may by ordinance declare any vertebrate or invertebrate animal, plant pathogen, or plant in the community threatening to cause significant damage to a shade tree or community forest, as defined by Minn Stat Section 489.001 to be a shade tree pest and prescribe control measures to effectively eradicate, control, or manage the shade tree pest, including necessary timelines for action.

Subd. 3. **Public Nuisances Defined.**

A shade tree pest, as defined by Subd. 2, occurring within a defined control zone is a public nuisance.

Subd 4. **Shade Tree Pest Nuisances are Unlawful.**

It is unlawful for any person to permit any public nuisance as defined in this section to remain on any premises the person owns or controls within the city. The nuisance may be abated as provided in this section.

Subd. 5. **Tree Inspector.**

The Council may appoint a tree inspector to coordinate the activities of the City relating to the control and prevention of damage by shade tree pests. The tree inspector will recommend to the Council the details of any program for the declaration, control, and prevention of shade tree pests. The tree inspector is authorized to enforce or cause to be enforced the tasks incident to such a program adopted by the Council. The term “tree inspector” includes any person designated by Council as the tree Inspector to carry out activities authorized in this section.

Subd. 6. Abatement of Shade Tree Pest Nuisances.

In abating a nuisance, defined by ordinance under Subd. 3, the organism, condition, plant, tree, wood, or material identified as injurious to the health of shade trees, shall be removed or effectively treated so as to destroy and prevent as fully as possible the spread of the shade tree pest. Such abatement procedures shall be carried out in accordance with the control measures and areas prescribed by Subd. 2.

Subd. 7. Reporting Discovery of Shade Tree Pest.

Any owner or occupier of land or any person engaged in tree trimming or removal who becomes aware of the existence of a public nuisance caused by a shade tree pest as defined under Subd. 3 shall report the same to the city.

Subd. 8. Inspection and Application of Control Measures.

(A) The tree inspector is authorized to inspect premises and places within the city to determine whether shade tree pests exist thereon and to investigate all reported incidents of shade tree pests. The tree inspector is authorized to take all reasonable measures to prevent the maintenance of public nuisances and may enforce the provisions relating to abatement in this section. Diagnosis of shade tree pests may be by the presence of commonly recognized symptoms; by tests as may be recommended by the commissioner of the Minnesota Department of Agriculture or the commissioner of the Minnesota Department of Natural Resources; or other reliable means.

(B) Except in situations of imminent danger to human life and safety, the tree inspector shall not enter private property for the purpose of inspecting or preventing maintenance of public nuisances without the permission of the owner, resident, or other person in control of the property, unless the tree inspector has obtained a warrant or order from a court of competent jurisdiction authorizing the entry.

(C) No person, firm, or corporation shall interfere with the tree inspector or with anyone acting under the tree inspector's authority while engaged in activities authorized by this section.

Subd. 9. Standard Abatement Procedure.

Except as provided in Subd. 12 and 14, whenever a tree inspector determines with reasonable certainty that a public nuisance, as described by this ordinance is being maintained or exists on premises in the city, the tree inspector is authorized to abate a public nuisance according to the procedures in this section.

(A) The tree inspector will notify in writing the owner of record of the premises that a public nuisance exists and order that the nuisance be terminated or abated. The notice may be given in person or by mail. Failure of any party to receive the mail does not invalidate the service

of the notice. A copy of the notice shall be filed with the city clerk.

(B) The notice of abatement shall state that unless the public nuisance is abated by the city at the expense of the owner. The notice shall specify the control measures to be taken to abate the nuisance, and provide a reasonable amount of time to abate the nuisance. The notice will also state that the owner has the right to appeal the determination that a public nuisance exists by submitting a request in writing to the city clerk within seven (7) days after service of the notice, or before the date by which abatement must be completed whichever comes first.

(C) If no timely appeal is submitted, and the control measures prescribed in the notice of abatement are not complied with within the time provided by the notice or any additional time granted, the tree inspector or designated person shall have the authority to obtain permission or an administrative search warrant, enter the property, and carry out abatement in accordance with the notice of abatement.

Subd. 10. High-Cost Abatement.

If the tree inspector determines that the cost of abating a nuisance will exceed \$5,000 based on a reasonable, good faith estimate, the written notice referred to in Subd. 11 must provide that if the nuisance is not abated within the reasonable amount of time provided, the matter will be referred to the City Council for a hearing. The date, time and location of the hearing must be provided in the notice.

Subd. 11. Appeal Procedure.

If the City Clerk receives a written request for a hearing on the question of whether a public nuisance exist, the City Council shall hold a hearing within fourteen (14) calendar days following receipt by the clerk of the written request. At least three (3) days notice of the hearing shall be given to the individual who made the written request for the hearing. The Council may modify the abatement notice or extend the time by which abatement must be completed. Each owner, agent of the owner, occupant, and lienholder of the subject property or properties in attendance, if any, shall be given the opportunity to present evidence at the hearing. After holding the hearing, the City Council may issue an order requiring abatement of the nuisance, upon a majority vote of the City Council present at the hearing.

Subd. 12. Abatement Procedure in Event of Imminent Danger.

(A) If the tree inspector determines that the danger of infestation to other shade trees is imminent, and delay in control measures may put public health, safety, or welfare in immediate danger, the tree inspector may provide for abatement without following Subd. 11 or 12. The tree inspector must reasonably attempt to notify the owner of the affected property of the intended action and the right to appeal the abatement and any cost recovery at the next regularly scheduled City Council meeting.

(B) Nothing in this section shall prevent the city, without notice or

other process, from immediately abating any condition that poses an imminent and serious hazard to human life or safety.

Subd. 13. Recovery of Cost of Abatement; Liability and Assessment

(A) The owner of premises on which a nuisance has been abated by the City shall be personally liable for the cost to the City of the abatement, including administrative costs. As soon as the work has been completed, and the cost determined, the City Clerk or other official shall prepare a bill for the cost and mail it to the owner. Thereupon the amount shall be immediately due and payable at the office of the City Clerk.

(B) After notice and hearing, as provided in Minn. Stat. Section 429.061 (which may be amended from time to time), the City Clerk shall, on or before Sept. 1 next following abatement of the nuisance, list the total unpaid charges as well as other charges for current services to be assessed under Minn. Statutes Section 429.101, against each separate lot or parcel to which the charges are attributable. The City Council shall then certify the charges against the property to the county auditor for collection along with the current taxes the following year or in annual installments as the City Council may determine in each case.

Subd. 14. Penalty.

(A) Any person, firm, or corporation that violates any provision of this Section shall, upon conviction, be guilty of a misdemeanor. The penalty, which may be imposed for any crime that is a misdemeanor under this section, including Minnesota Statutes, specifically adopted by reference, shall be a sentence or not more than 90 days, or a fine of not more than \$1,000 or both.

(B) Upon conviction of a misdemeanor, the costs of prosecution may be added. A separate offense shall be deemed committed upon each day during which a violation occurs or continues.

(C) The failure of any officer or employee of the City to perform any official duty imposed by this section shall not be subject the officer or employee to the penalty imposed for a violation.

(D) In addition to any penalties provided for in this section, if any person, firm or corporation fails to comply with any provision of this section, the City Council or any official designated by it may institute appropriate proceedings at law or at equity to restrain, correct, or abate the violation.

Subd. 15. Severability.

Should any part or provision of this ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of the ordinance as a whole or any part thereof other than the part held to be invalid.

Section 6.20 **DECLARED SHADE TREE PESTS, CONTROL MEASURES AND CONTROL AREAS.**

Subd. 1. **Emerald Ash Borer.**

(A) **Emerald Ash Borer** is a shade tree pest and is defined as an insect that attacks and kills ash trees. The adults are small, iridescent green beetles that live outside of trees during the summer months. The larvae are grub-or-worm like and live underneath the bark of ash trees.

(B) **Control Measures** that may be taken to manage and/or abate emerald ash borers are found in the **City's EAB Management Plan adopted on (to be determined)**.

(C) **Definition of Control Areas.** The control area for emerald ash borers is defined as:

All lands within the boundaries of the city.

Sud. 2. **Dutch Elm Disease.**

(A) **Dutch Elm Disease** is a shade tree pest and is defined as a disease of elm trees caused by the fungus *Ophiostoma ulmi* or *Ophiostoma novo-ulmi*, and includes any living or dead tree, log, firewood, limb, branch, stump, or other portion of a tree from any species of the genus *Ulmus* existing within the control area defined that has bark attached and that exceeds three (3) inches in diameter or ten (10) inches in circumference and could contain bark beetles or any spore or reproductive structures of the fungus *Ophiostoma ulmi* or *Ophiostoma novo-ulmi*.

(B) **Control Measures** that may be taken to abate Dutch elm disease are:

(1) **Use of Fungicide.**

Fungicides may be effective in preventing Dutch elm disease when injected into living trees that do not already show symptoms of Dutch elm disease. Fungicide injections on private lands are optional and, if performed, are at the landowner's expense.

(2) **Removal and Disposal of Trees**

Prompt removal of diseased trees or branches reduces breeding sites for elm bark beetles and eliminates the source of Dutch elm disease fungus. Trees that wilt before July 15, must be removed within 20 days of detection [alternative: 30 days]. Trees that wilt after July 15 must be removed by April 1 of the following year. Diseased trees not promptly removed will be removed by the City at the landowner's expense. Wood may be retained or used as firewood or saw logs if it is debarked or covered from April 15 to October 15 with four (4) mill plastic. The edges of the cover must be

buried or sealed to the ground.

(C) The control area for Dutch elm disease is defined as :

All lands within the boundaries of the City.

by _____
Mayor Thomas Eckman

ATTEST:

Melissa Sirovy – City Clerk

Introduced: April 15, 2019.

Adopted: May 20, 2019.

Published: May 29, 2019.