

## AMENDMENT TO ORDINANCE NO. 650.06

### AN ORDINANCE DEALING WITH THE PREVENTION AND CONTROL OF SHADE TREE DISEASES THE CITY OF WHEATON

#### Findings.

1. The City of Wheaton has an existing Ordinance regulating the prevention and control of shade tree diseases in the City of Wheaton and how to abate violations of said Ordinance;
2. The Wheaton City Council believes that the Ordinance needs to be updated, particularly to include trees infected by the emerald ash borer; and
3. The Wheaton City Council believes that it is in the best interests of the residents of the City of Wheaton to amend its Ordinance covering the prevention and control of shade tree diseases in order to better protect shade trees with the City of Wheaton.

#### **THE CITY COUNCIL OF THE CITY OF WHEATON ORDAINS:**

1. That Wheaton City Ordinance Section 650.06 is hereby amended to read as follows:

“Subdivision 1. Nuisance Declared. To protect, preserve and conserve the value of public and private lands, and to promote the general welfare of the public and this community, it is necessary to protect, control and abate trees that create a public hazard. Trees that create a public hazard include dead trees, trees that are affected by Dutch elm disease and oak wilt fungus, and trees infected by other tree diseases and infestations regulated by the State Department of Agriculture pursuant to statute, rule, or commissioner's declaration. Therefore, the following conditions are hereby found and declared to be a public nuisance in the city:

- A. Any living or dead elm tree or part thereof infected to any degree with the Dutch elm disease fungus which currently includes: *Ceratocystis ulmi*, *Ophiostoma ulmi* or *Ophiostoma novo-ulmi* or which harbors any of the elm bark beetles, *Scolytus multistriatus*, *Hylurgopinus rufipes*, *Scolytus schevyrewi*, or emerald ash borer. It is appropriate to mitigate diseased elms throughout the year.
- B. Any dead elm tree or part thereof, including logs, branches, stumps, firewood or other elm material from which the bark has not been removed or burned.
- C. Any living or dead oak tree or part thereof infected to any degree with the oak wilt fungus (*Bretziella fagacearum*). Oak trees infected by oak wilt are generally to be mitigated during dormancy (November to March) when the fungus cannot be transmitted.
- D. Any tree creating a current public danger whether the tree is on public or private property, and without regard for the cause of damage to the tree. A tree constitutes a current public danger when it may fall into a public right-of-way, utility facility, public trail corridor, park, or other public land.
- E. Any standing dead trees or dead brush.

Subdivision 2. Prohibition. No person shall permit any public nuisance, as defined in Subdivision 1, to remain on any premises owned or controlled by such person within the City. Such nuisance may be abated in the manner prescribed by this chapter.

Subdivision 3. Tree Inspector Responsibility. The City's Tree Inspector and its authorized agents is authorized, empowered, and directed to take all actions and perform all duties prescribed by this Section. The Tree Inspector and its authorized agents are authorized and empowered to enter upon private premises with reasonable cause and at reasonable times and reasonable hours for the purpose of taking necessary action and performing the duties assigned to the Tree Inspector by this Section.

Subdivision 4. Inspections. All premises and places within the City shall be inspected as often as practical to determine whether any condition declared in Subdivision 2 to be a public nuisance exists thereon. All hazardous trees or dead standing trees creating a current public danger, and trees infected by Dutch elm fungus, the presence of elm bark beetles, or infected by the oak wilt fungus shall be promptly investigated.

Subdivision 5. General Abatement.

- A. *Diagnosis.* No action to remove, destroy and dispose or require the removal, destruction and disposal of elm trees, wood infected with Dutch elm disease, or oak trees infected by oak wilt fungus shall be taken until a reasonably certain diagnosis of the disease or infestation has been made. When such reasonably certain diagnosis has been made, the infected or infested tree or wood shall be removed, destroyed and disposed of in a manner which will effectively destroy and prevent as fully as possible the spread of the Dutch elm or oak wilt disease.
- B. *Presence of elm bark beetles or emerald ash borer.* When the presence of elm bark beetles has been discovered in or upon any living elm tree but the presence of Dutch elm disease fungus is not then or thereafter diagnosed, the tree shall be mitigated in a manner which will effectively destroy and prevent as full as possible the spread of the elm bark beetle. When the presence of emerald ash borer has been discovered in or upon an ash tree that constitutes a current public danger, the tree shall be mitigated in a manner which will effectively destroy and prevent as full as possible the spread of the emerald ash borer. If such mitigation is not or, because of the extent of infestation, cannot be effective, the tree shall be removed, destroyed and disposed of.
- C. *Dead elm, oak, or Fraxinus spp. (ash) trees, logs, stumps, etc.* Standing dead elm trees, elm logs, branches, stumps, firewood or other raw material from which the bark has not been removed and which are not infected with Dutch elm disease fungus shall have the bark removed, destroyed and disposed of or shall be treated in a manner which will effectively destroy and prevent as fully as possible the spread of the elm bark beetle, Dutch elm disease, oak wilt, or the emerald ash borer. If such mitigation is not effective or, because of the extent of infestation, cannot be effective, the trees, logs, branches, stumps, firewood or other raw elm material shall be removed, destroyed and disposed of.
- D. *Specifications and procedures.* The City Council shall establish specifications and procedures for the removal, destruction and disposal of trees and wood infected with Dutch elm disease fungus, oak wilt fungus or emerald ash borer for treating live elm or Fraxinus (ash) trees infested with elm bark beetles or emerald ash borer, and for removing, destroying and disposing of elm or Fraxinus (ash) bark and treating dead elm or Fraxinus (ash) trees, logs, branches, stumps, firewood and other raw elm material.

Such specifications and procedures shall be consistent with current specifications and procedures designated or approved by the Commissioner of Agriculture and shall be provided at time of notification as defined in Subdivision 6.

Subdivision 6. Abatement on Private Property.

- A. Whenever a nuisance, as defined in Subdivision 2, is found to exist on any private property within the City, the owner, lessee, occupant, or person in control of the property inspected shall be sent a written notice, by certified or registered mail, of the existence of these conditions and the tree or wood affected.
1. Such notice shall advise owner, lessee, occupant or person in control of the property inspected that the City will proceed with abatement of the nuisance immediately or within ten (10) days after receipt of the notice unless objection is made by said owner, lessee, occupant, or person in control of the property in question within such period. Said objection may only be made to challenge the finding that the tree in question is diseased.
  2. If objection is so made, or if the Tree Inspector determines that it is otherwise warranted, a sample of the trees or wood in question shall be taken and sent to the Commissioner of Agriculture (Bureau of Plant Industry), State of Minnesota, for analysis, or take such other steps for diagnosis as may be recommended by the Commissioner of Agriculture.
  3. Within five (5) days of receipt of such diagnosis, the owner, lessee, occupant, or person in control of the property inspected shall be notified by registered or certified mail of the results of the diagnosis, and that abatement of the nuisance will proceed immediately or within ten (10) days after receipt of such results according to the provisions of the initial notice after the inspection.
- B. If the owner, lessee, occupant or person in control of the property upon which such a nuisance exists does not abate or eliminate the same within the timeline specifically outlined in the written notice, the City shall proceed to have such nuisance properly abated or eliminated.

Subdivision 7. Abatement of Tree Nuisance. In abating the nuisances defined in Subdivision 2, the Tree Inspector, city employees, or a contractor hired by the City, shall cause the infected tree or wood to be removed and burned or otherwise effectively treated so as to destroy and prevent as fully as possible the spread of Dutch Elm disease fungus, elm bark beetles, emerald ash borer, and oak wilt fungus. Such abatement procedures shall be carried out in accordance with the current technical and expert methods and plans as may be designed by the Commissioner of Agriculture of the State of Minnesota.

Subdivision 8. Cost of Abatement. If, pursuant to Subdivision 6, the Tree Inspector, City Council, or an entity acting under the direction of the City Council, orders the removal or abatement of such nuisance, the City Administrator shall report the cost of the removal or abatement to the Council and the expense thereof, including reimbursement to the City for its costs of inspection and eradication.

- A. That a bill for said costs shall be issued by the City Administrator within thirty (30) days of the work performed by the Tree Inspector, city employees, or a contractor hired by the City.
- B. If the bill is not paid by October 1 of each year, the City Administrator shall cause said amount to be assessed against the lot or land as provided by Minn. Stats. § 429.101, and said assessment shall be a lien on the parcels and shall be returned with and collected in the same manner as other city taxes.

Subdivision 9. Transporting of Nuisance Wood to Any Location Except Approved Disposal Sites. No person shall transport within the city any bark bearing elm wood, EAB infested Fraxinus (ash) wood, or oak wood from oak wilt infected trees without having obtained a permit from the City Council. The City Council shall grant such permits only when the purposes of this chapter shall not be impaired or adversely affected.

Subdivision 10. Interference. No person shall prevent, delay or interfere with the Tree Inspector, city employees, or a contractor hired by the City, while they are engaged in the performance of duties imposed by this chapter.

Subdivision 11. Tree Inspector. The City Council may designate one or more persons who are certified by the Commissioner of Agriculture of the State of Minnesota as Certified Tree Inspector for the City.

Subdivision 12. Violation. Failure of any owner or person in control of private property to abate or eliminate on such property a nuisance, as defined in this chapter, shall not constitute a violation of this chapter.

PASSED AND ADOPTED this 22nd day of June, 2026.

WHEATON CITY COUNCIL

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Steven Lundquist, Mayor

ATTEST:

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Jody Olson, Administrative Assistant