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**CITY OF ANOKA,
MINNESOTA
ORDINANCE**

ORD-2021-1739

**AN ORDINANCE AMENDING CHAPTER 74 VEGETATION ARTICLE III
DISEASED TREES SECTIONS 74-52 THRU 74-66 OF THE CODE OF THE
CITY OF ANOKA MINNESOTA**

THE COUNCIL OF THE CITY OF ANOKA ORDAINS:

- Section 1. Pursuant to Minnesota Law, the Anoka City Charter and the Anoka City Code, and upon a review conducted by City staff, Chapter 74 VEGETATION Article III Diseased Trees Sections 74-52 thru 74-66 is hereby adopted, by an affirmative vote of a majority of the Anoka City Councilmembers present, to read with stricken text deleted and underlined, italicized text inserted into existing code

Section 2. This Ordinance shall be in full force and effective upon passage and seven (7)days after publication.

ATTEST:

	Introduced:	05-03-2021
	Adopted:	05-17-2021
	Published:	06-18-2021
<u>Phil Rice, Mayor</u>	Effective:	06-25-2021

		Aye	Nay	Abstain	Absent
<u>Amy Oehlers, City Clerk</u>	Rice	X			
	Barnett	X			
	Skogquist	X			
	Weaver	X			
	Wesp	X			

Chapter 74 - VEGETATION

ARTICLE III. - DISEASED TREES^[2]

Footnotes:

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~~State Law reference—~~ Shade tree disease control, M.S.A. § 89.63.

Definitions.

The following word, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Authorized agent means representative from the Public Services Department, or other party as designated by the City of Anoka.

Tree Inspector means designated person(s) or such other employee(s) of the city within the department of public services to carry out the enforcement of this article. Tree inspectors shall be certified upon completion of a written test and an annual certification workshop conducted by the state commissioner of natural resources for the purpose of determining that the applicant possesses the necessary qualifications to be a tree inspector. Tree inspectors shall possess a valid non-commercial pesticide applicator license to ensure proper protection of trees and the environment.

Shade tree means a woody perennial grown primarily for aesthetic or environmental purposes.

Shade tree pest means any vertebrate or invertebrate animal, plant pathogen or plant that is determined by the Commissioner of the Minnesota Department of Agriculture or the Commissioner of the Minnesota Department of Natural Resources to be harmful, injurious or destructive to shade trees.

Tree Care means the felling, grinding, chipping, cutting, trimming, removal or hauling from the city of trees, limbs, branches, stumps or roots which are two inches or more in diameter at the point of cutting or contact. "Tree care" shall also mean the application of pesticides to a tree.

Infestation means establishment (or "running over") on the surface of a host by a large number of insects or other animal pests.

Hazardous Tree means the tree has defects that may cause a failure resulting in property damage, personal injury, or death.

~~Sec. 74-52. - Declaration of policy~~ Purpose and Intent.

The City Council finds that a healthy, well-managed urban forest provides numerous environmental, economic, and scenic benefits to the public, including reduction of air and noise pollution, energy efficiency from shading and cooling, habitats for wildlife, enhancement of property aesthetics, and contributes to community image, pride, and quality of life. The city eCouncil has hereby determined that the health of the trees elm and oak trees within the city limits is threatened by fatal shade tree pests diseases commonly known as Dutch elm and oak wilt diseases. It has been further determined that the loss of elm and oak trees on growing upon public and private property would substantially depreciates the value of the property within the city and impairs the safety, good order, general welfare and convenience of the public. ~~It is declared to be the expressed goal and objective of the city council to control and prevent the spread of these diseases of shade trees and other epidemic diseases of shade trees, and this article is enacted for that purpose.~~ In addition to and in accordance with Minn. Stats. §§ 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 shade tree diseases and/or pests, and to enhance the health and diversity of the cities shade tree canopy.

(Prior Code, § 70-61)

Sec. 74-53. – Jurisdiction.

The City shall have control of all trees, shrubs, and other plantings now and hereafter in any public right-of-way, boulevard, easement, park, place, or upon other property owned by the City within boundaries of the City of Anoka. The authorized agent shall have the power to plant, care for, maintain, remove, and replace such trees, shrubs, and other plantings therein.

Administration.

- (a) ~~Administrator.~~ A qualified person within the parks and recreation department shall be designated as the administrator by the city council. The administrator shall exercise the powers and duties necessary to enforce the provisions of this article. The administrator shall be a certified pesticide applicator and tree inspector under the state law. The powers and duties of the administrator may be assigned to other qualified persons in the parks and recreation department in his absence.
- (b) ~~Duties of administrator.~~ It is the duty of the administrator to coordinate under the direction and control of the city council all activities of the city relating to the control and prevention of Dutch elm disease, oak wilt disease and other epidemic diseases of shade trees. By January 15 of each year, he shall recommend to the designated tree board and city council the details of a program for the control of such diseases and shall perform the duties incident to such a program adopted by the city council.
- (c) ~~Tree inspector.~~ There shall be designated persons or employees within the department of park and recreation as tree inspectors to carry out the enforcement of this article. The inspectors shall be certified upon the passing of an examination prescribed by the state commissioner of agriculture for the purpose of determining that the applicant possesses the necessary qualifications to enforce the rules set forth in this article.
- (d) ~~Duties of tree inspectors.~~ It is the duty of the tree inspectors, under the direction and control of the administrator, to know the appropriate state laws and rules relative to oak wilt, Dutch elm and other epidemic diseases of shade trees and to know the approved control methods of these diseases. The tree inspectors must know the proper method of collecting samples of diseased specimen trees. The tree inspector must plan, direct, and supervise all requirements for controlling shade tree disease within the geographical limits of his control area.

(Prior Code, § 70-62)

Sec. 74-54. - Epidemic Disease Program.

It is the ~~objective intention~~ of the tree commission and the ~~city~~ eCouncil to conduct a program of ~~plant pest control shade tree disease control~~ pursuant to M.S.A. § 89.63 the authority granted by Minn. Stats. §18G.03. This program is directed specifically at the control and elimination ~~of the Dutch elm disease fungus, elm bark beetles, oak wilt fungus, and other injurious insects or diseases of shade trees and it of any diseases, infestations, invasive species, or pests deemed to be causing economic or environmental harm to shade trees within the city of Anoka.~~ it The program is undertaken at the recommendation of ~~the state commissioner of agriculture the Commissioner of the Department of Agriculture or the Commissioner of the Department of Natural Resources, of the State of Minnesota.~~ The administrator shall The city forester provided for in this article shall act as coordinator between the state commissioner of the Department of Agriculture and the Minnesota Department of Natural Resources, the tree commission, and the city council in the conduct of this program.

(Prior Code, § 70-63)

Sec. 74-55. - Nuisances declared.

- (a) ~~Public nuisances.~~ The following things are public nuisances whenever they may be found within the ~~eCity~~ of Anoka:
 - (1) A Any living or standing elm tree or part of it including logs, branches, stumps, or firewood, which has not been stripped of its bark and burned, or sprayed/injected with an effective fungicide, as determined by the tree inspector, thereof infected to any degree with

- 1.) The Dutch elm disease fungus, *Ophiostoma novo-ulmi* or *Ophiostoma ulmi* *Ceratocystis ulmi* (Buisman) Moreau, or; which harbors any of the elm bark beetles *Scolytus multistriatus* (Eichh), or *Hylurgopinus rufipes* (NEBB) March), or;
 - 2.) The oak wilt fungus, *Ceratocystis fovearum*, including any diseased material of the red oak group with the potential of producing spores, or any white oak (*Quercus rubra*), bur oak (*Quercus macrocarpa*), and swamp white oak (*Quercus bicolor*) that poses a threat of transmission of disease through interconnected root systems, or;
 - 3.) *Emerald ash borer, Agrilus planipennis* in any life stage.
 - 4.) *Pine bark beetles, Ips spp.*
- (2) ~~Any dead elm tree or part thereof, including, but not limited to logs, branches, stumps, roots, firewood or other elm material, which has not been stripped of its bark or burned chipped or buried.~~
 - (3) ~~Any living or standing oak tree or part thereof infected to any extent with oak wilt disease such as; the presence of degree with mycelium mats or pads.~~
 - (4) ~~Any dead oak tree or part thereof, which in the opinion of the tree inspector 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 cut into lengths not greater than 24 inches and split into quarters, or into smaller pieces if originally greater than 16 inches in diameter (for the period of July 1 through March 1 of the following year). Any of this wood left unburned after March 1 And must remain contained in plastic throughout the period of March 1 through July 1. Any wood not utilized by April 1 will be removed by the city and the cost assessed to the private property owner.~~
 - (B) The hazardous spring period for overland or long range spread of oak wilt fungus is hereby defined as April 1 through July 1. Any tree that is wilted from oak wilt in July or August of one year may be declared as a nuisance for the spring of the following year, as determined by the tree inspector.
 - (5) ~~Other shade trees with injurious insects or diseases, or showing extensive decline, that pose a hazard as determined by the tree inspectors~~
 - (C) Any living, dying or standing tree, wood or plant part infected with any vertebrate or invertebrate animal, plant pathogen, parasitic plant or allied organism in the community threatening to cause significant damage to other trees on an epidemic level as defined by Minn. Stats §89.001;
 - (6) ~~Elm firewood. It is unlawful for any person to store bark-bearing elm firewood during the period April 1 through September 15.~~
 - a. ~~Elm firewood cannot be brought in from outside of the city or control area for use as firewood (Plant Quarantine No. 78-1 Elm Wood).~~
 - b. ~~Bark-bearing elm logs from trees cut within the boundaries of a city or control area can be kept from September 15 through April 1 of the following year.~~
 - c. ~~During the period September 15 through April 1 of the following year, bark-bearing elm firewood may be stored on homesteaded property so as to be in plain view and accessible for inspection by the tree inspectors.~~
 - d. ~~Such woodpiles are subject to inspection by the city tree inspector prior to April 1. Such inspections shall be conducted after written notice to each property owner or occupier is provided.~~
 - e. ~~Any elm wood not utilized by April 1 will be removed and disposed of by the city, or by authorized representatives of the city, and the cost assessed to the private property owner.~~
 - f. ~~This subsection (6) does not include elm firewood that has been rendered pest-risk free by debarking.~~

- (D) Any tree considered in the opinion of the tree inspector to pose eminent danger to life or property to adjoining properties.
- (E) Any standing dead trees or dead brush
- (F) Bark bearing diseased and/or infested firewood stored during the period April 1 through September 30th. Accordingly any stump not removed during this time, must have all above-ground portions debarked.
- (F) Any piece of tree, with the threat of overland transmission of disease that is left unburned after April 1st shall be loosely covered and sealed with a heavy plastic tarp or sheeting no less than four mil thick and large enough to completely cover the pile, a trench of at least four (4) inches deep must be dug completely around the wood, the tarp shall extend beyond the trench, the trench must be filled back in with dirt to completely seal the wood pile. If dirt cannot be used or a trench cannot be dug, the tarp shall be weighted down completely on all edges. And the pile must remain contained in plastic throughout the period of April 15 through July 1.

~~(b) — Abatement. It is unlawful for any person to permit any public nuisance, as defined in 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.~~

- ~~(c) — Violations. Any owner of real estate in the city who is notified of the existence of a diseased tree on his property must, within 20 days from the mailing of such notice, cut down such diseased tree, either by himself, licensed private contractor, or city contractor. All remaining stumps on private and public property must be completely debarked to the ground line or chipped down to six inches below ground level. All parts, branches and brush shall be removed by the property owner, licensed private contractor, or contractor contracted by the city, to a designated disposal site, designated from time to time by the state commissioner of agriculture, county or city, if it is possible to obtain use of such place, and there such diseased material will be burned, buried, or chipped. The city shall be responsible for the proper removal and disposal of all diseased trees on property legally designated as public rights-of-way or boulevards and private property when authorized by the tree inspectors for performance of both. The city shall not be responsible for the disposal of diseased trees and tree parts from private property if the property owner cuts down such trees either by himself or by licensed contractor.~~

Sec. 74-56. — Nuisances prohibited

It is unlawful for any person to permit any public nuisance as defined in §74.55. to remain on any premises owned or controlled by that person within the city. Such nuisance may be abated in the manner prescribed in this article.

Sec. 74-57. — 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 within this article shall report the same to the City.

Sec. 74.58. — Licensure of tree service firms, insurance, and bond.

Any person, firm, or corporation that provides tree care, including the cutting, trimming, pruning, removal, spraying or otherwise treating trees in the city must secure a license from the city as defined in §22.42.

(Prior Code, § 70-64)

Sec. 74-56. 59 – Inspection and investigation application of control measures.

- (a) ~~Annual inspection.~~ The tree inspector shall inspect all public and private places within the city, which might harbor plant pests, as defined in M.S.A. § 18G.02, subd. 24 as often as practicable to determine whether any condition described in section 74-55 exists thereon. The tree inspector shall investigate all reported incidents of infection or infestation by the Dutch elm fungus, elm bark beetles, oak wilt fungus or any other epidemic diseases of shade trees. The term "private place" means every place except the private home.
- (b) ~~Entry on public and private places.~~ The tree inspector may enter upon all public and private places at any reasonable time for the purposes of carrying out any of the duties assigned him under this article.
- (c) ~~Diagnosis.~~ The tree inspector shall, upon finding symptoms indicating Dutch elm or oak wilt infestation, or other epidemic diseases of shade trees, immediately report such findings to the administrator who will notify the owner or occupier of the property of the existence of a diseased tree on his property and inform him of his responsibility to effectively remove such diseased material from the property in accordance with section 74-55(c). ~~Diagnosis shall be made by field examination, as specified by the state commissioner of agriculture, unless a state agriculture pest lab is requested by the property owner at the property owner's expense. Except as provided in section 74-58, no action to remove infected trees or wood shall be taken until positive diagnosis is made.~~
- (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 agent 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 the presence of commonly recognized symptoms; by laboratory tests as may be recommended by the Commissioner of the Minnesota Department of Agriculture, the Minnesota Department of Natural Resources, or the UMN Extension. Except as provided within §74.62 of this chapter, no action to remove infected trees or wood shall be taken until a positive diagnosis of a disease or pest has been made.
- (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 by this section.

(Prior Code, § 70-65)

Sec. 74-57. – Abatement of epidemic tree disease nuisances.

In abating the nuisances defined in section 74-55, the administrator shall cause the infected tree or wood to be removed, burned, buried or chipped, or otherwise effectively treated so as to destroy and prevent as fully as possible the spread of epidemic diseases of shade trees, including, but not limited to, the Dutch elm disease and the associated elm bark beetles, and oak wilt disease. To prevent root graft transmission of the diseases, a barrier should be created between diseased and healthy trees, with vapam or other effective and recognized root graft barrier chemicals, or by digging a trench 30 inches deep in the soil surrounding the diseased trees. Such abatement procedure shall be carried out in accordance with current technical and expert opinions and plans as may be designated by the state commissioner of agriculture.

Sec. 74.60. - Standard abatement procedure.

Except as provided in §74.61 and §74.62, whenever a tree inspector determines with reasonable certainty that a public nuisance, as described in this chapter, is being maintained or exists on premises in the city, the tree inspector is authorized to abate a public nuisance according to the procedures outlined in this chapter.

- (A) The tree inspector, or authorized agent will notify in writing the owner of record or occupant of the premises that a public nuisance exists and order that the nuisance be terminated and abated. The notice may be provided by mail to the last known address of the owner as available from the property tax records. Failure of any party to receive the mail does not invalidate the service of the notice. A copy of the notice shall be kept on file with the City.
- (B) The notice of abatement shall state that unless the public nuisance is abated by the owner or occupant, it will be abated by the city at the expense of the owner or occupant. 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, no more than 45 days. The notice will also state that the owner or occupant has the right to appeal the determination that a public nuisance exists by submitting a request in writing to the City Clerk within seven 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 authorized agent 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.
- (D) Such abatement procedures shall be carried out in accordance with current technical and expert opinions and plans as may be designated by the Minnesota Department of Agriculture, Department of Natural Resources, or the University of Minnesota. Abatement procedures include:
1. Root graft barrier installation (vibratory plowing or trenching) at least forty eight inches (48") deep in the soil to isolate the diseased trees;
 2. Removal of trees;
 3. Stump grinding;
 4. Burning, chipping, debarking or properly covering and sealing the potentially hazardous wood and/or stumps;
 5. Fungicide injections into healthy and/or infected oaks, ash or elms with the appropriate chemical to avoid or minimize the effects of oak wilt, emerald ash borer, or Dutch elm disease;
 6. Spraying the infected trees and/or all nearby high value trees with an effective pest controlling concentrate.
- (E) The owner of the premises on which a nuisance has been abated by the City shall be personally liable for the cost to the City for the abatement, including any administrative costs. As soon as the work has been completed and the cost determined, the city assessor or other official shall prepare a bill for the cost and mail it to the owners address listed in the property tax records. Thereupon the amount shall be due and payable to the City of Anoka. Failure to pay the costs or attempt to agree on installment payments associated with abatement will result in such costs being assessed back to the property in the manner indicated in **§74.59.60**
- (F) As provided in Minn. Stat. §429.061, on or before November 30th following the abatement of nuisance, the city assessor or other official shall list the total unpaid charges as well as other charges for current services to be assessed under Minn. Stat. §429.101 against each separate lot or parcel to which the charges are attributable. The council may then certify the charges against the property to the County Auditor for collection along with current taxes the following year.

Sec. 74.61. - High-cost abatement.

If the cost of abating a nuisance from a shade tree pest is burdensome on the property owner, based on a reasonable, good faith estimate from a licensed tree service firm as defined in §§22.42, the owner may request the city to assist the homeowner by financing the cost of the removal of the tree(s), with the current financing rate set by the city council. The total amount of the removal(s), will

be assessed to the property taxes, and must be paid back within the established financing term, or before the property is sold. The request for financing must be submitted to authorized agent within five (5) business days from the receipt of the estimate for removal. The invoice for the cost of abatement must be submitted to the City. This is applicable to trees determined hazardous to the safety of the public by the tree inspector. This is not applicable to discretionary tree removals.

Sec. 74.62. – 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 the procedures provided under §§74.60 or 74.61 of this article. The tree inspector or authorized agent must reasonably attempt to notify the owner or occupant of the affected property of the intended action and the right to appeal the abatement and any costs recovery at the next 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 and imminent and/or serious hazard to human life or safety.

Sec. 74.63. – Appeal procedure.

- (A) Except in cases where disease is diagnosed by laboratory testing, a property owner, occupant, or lienholder may appeal the Council the determination of the tree inspector that a public nuisance exists.
- (B) If the tree inspector or city clerk receives a written request for a hearing on the question of whether a public nuisance exists, the Council shall hold a hearing ~~within seven (7) calendar days following receipt of the written request.~~ At **at the next regularly scheduled Council Meeting.** provided, at least a three (3) day 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 Council may issue an order requiring abatement of the nuisance.

(Prior Code, § 70-66)

~~Sec. 74-58. – Procedure for removal of infected trees and wood.~~

- ~~(a) Whenever the administrator is notified with reasonable certainty that the infestation defined in section 74-55 exists in any tree or wood in any public or private place in the city, he shall proceed as follows:~~
 - ~~(1) If the administrator finds that the danger of infestation of other elm or oak trees is not imminent because of the dormancy of the infected trees, he shall declare such trees as being in noncompliance with this article as of April 1 of the following year and then shall proceed as follows:~~
 - ~~a. Abating the nuisance as a public improvement under M.S.A. ch. 429; or~~
 - ~~b. Abating the nuisance as provided in section 74-55(b).~~
 - ~~(2) If the administrator finds that danger of infestation of other elm or oak trees is imminent, he shall notify the property owner by certified mail that the nuisance must be abated within a specified time, not more than 20 days from the date of mailing of such notice. After the expiration of the time limited by the notice, the administrator may abate the nuisance.~~

- (b) ~~The administrator shall keep a record of the costs, and costs of abatements done under this article and shall report all work done to the city clerk or other appropriate officer for which assessments or billings are made, stating and certifying the description of the land, lots, and parcels involved and the amount assessable to each.~~
- (c) ~~On or before September 1 of each year, the clerk shall list the total unpaid charges for each abatement against each separate lot or parcel to which they are attributable. The city council may then spread the charges or any portion thereof 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 unless provided for otherwise by consent and action of the city council. Such assessment shall be payable in a single installment, pursuant to M.S.A. § 429.101, subd. 2.~~

(Prior Code, § 70-67)

Sec. 74-59 ~~64~~. - Transporting elm diseased wood prohibited.

It is unlawful for any person to transport within the city any bark-bearing elm or known diseased tree without having obtained a permit from the administrator. The administrator shall grant such permits only when the purposes of this article will be served thereof.

Sec. 74.65. – Pruning or Trimming.

Pruning disease susceptible trees including but not limited to Oak (Red, Northern Pin, White, Swamp white, and Bur), Ash (Green, White, and Black), and Elm shall be limited to November 1st – April 1st. Exceptions can be made by the Tree Inspector, permission shall be granted upon determination of good cause and shall prescribe appropriate procedures to be followed. Developers, contractors, builders, and utility companies shall not be required to obtain such permission but shall perform any tree trimming operations in accordance with accepted industry standards to reduce the spread of diseases.

Sec. 74.66. – 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 be guilty of a petty misdemeanor or misdemeanor as defined in §74.1. Additionally, the city may exercise any civil remedy available under Minnesota law for the enforcement of this code including civil action, mandamus, injunctive relief, declaratory action, or the levying of assessments.

(Prior Code, § 70-68)

Sec. 74-60 ~~67~~. - Interference prohibited.

It is unlawful for any person to prevent, ~~delay~~ or interfere with the tree inspector city forester or authorized agents ~~administrator or his agents while they are engaged in the performance of~~ any duties set forth in this article.

(Prior Code, § 70-69)

Secs. 74-61 ~~68~~—74-79. - Reserved.