

**BILL NO. 2016-13**

**AN ORDINANCE REPEALING SECTION 910 OF RICHFIELD CITY  
CODE PERTAINING TO SHADE TREE PEST CONTROL AND  
REPLACING IT WITH A NEW SECTION 910**

**THE CITY OF RICHFIELD DOES ORDAIN:**

**SECTION 1.** Section 910 of the Richfield City Code is hereby deleted in its entirety and replaced as follows:

**SECTION 910. - SHADE TREE PEST CONTROL.**

910.01. - Declaration of policy.

The Council has determined that 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. §§ 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.

910.03. - Jurisdiction.

Except as otherwise provided by a permit issued pursuant to Section 810 or Section 811 of this Code, the city shall have control of all street trees, shrubs, and other plantings now or hereafter in any street, park, public right-of-way or easement, or other public place within the city limits, and shall have the power to plant, care for, maintain, remove, and replace such trees, shrubs, and other plantings.

910.05. - 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. § 89.001, 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.

910.07. - Public nuisances defined.

A shade tree pest, as defined by subsection 910.25, occurring within a defined control zone is a public nuisance.

910.09. - 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.

910.11. - 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 detail 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 or the tree inspector to carry out activities authorized in this section.

910.13. - Abatement of shade tree pest nuisances.

In abating a nuisance, defined under subsection 910.07, 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 section 910.25.

910.15. - 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 subsection 910.07 shall report the same to the Public Works Department.

910.17. - Inspection and application of control measures.

Subdivision 1. 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.

Subd. 2. 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.

Subd. 3. 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.

#### 910.19. - Standard abatement procedure.

Except as provided in subsection 910.21, 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 subsection.

Subdivision 1. 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. The tree inspector shall keep a copy of the notice.

Subd. 2. The notice of abatement shall state that unless the public nuisance is abated by the owner, it will be 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 tree inspector within seven (7) days after service of the notice, or before the date by which abatement must be completed, whichever comes first.

Subd. 3. 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.

#### 910.21. - Abatement procedure in event of imminent danger.

Subdivision 1. 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 subsections 910.19. The tree inspector must reasonably attempt to notify the owner of the affected property of the intended action.

Subd. 2. 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.

#### 910.23. - Recovery of cost of abatement; liability and assessment.

Subdivision 1. 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.

Subd. 2. After notice and hearing, as provided in Minn. Stat. § 429.061 (which may be amended from time to time), the city clerk shall, on or before September 1 next following abatement of the nuisance, list the total unpaid charges 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 or in annual installments as the Council may determine in each case.

910.25. – Declared shade tree pests, control measures, and control areas.

Subdivision 1. Oak wilt.

(a) Oak wilt disease is a shade tree pest and is defined as any living or dead tree, log, firewood, limb, branch, stump, or other portion of a tree from any species of the genus *Quercus* 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 contains to any degree any spore or reproductive structures of the fungus *Ceratocystis fagacearum*.

(b) The control measures taken to abate oak wilt disease shall be in accordance with current technical and expert opinions and plans as designed by the state of Minnesota commissioner of agriculture or commissioner of natural resources.

(c) The control area for oak wilt disease is defined as all lands within the boundaries of the city.

Subd. 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) The control measures taken to abate Dutch elm disease shall be in accordance with current technical and expert opinions and plans as designed by the state of Minnesota commissioner of agriculture or commissioner of natural resources.

(c) The control area for Dutch elm disease is defined as all lands within the boundaries of the city.

Subd. 3. 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) The control measures taken to abate emerald ash borer shall be in accordance with current technical and expert opinions and plans as designed by the state of Minnesota commissioner of agriculture or commissioner of natural resources.

(c) The control area for emerald ash borer is defined as all lands within the boundaries of the city.

**SECTION 2.** This Ordinance will be effective in accordance with Section 3.09 of the City Charter.

Passed by the City Council of the City of Richfield, Minnesota this 28th day of June, 2016.

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Debbie Goettel, Mayor

ATTEST:

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Elizabeth VanHoose, City Clerk