

## SECTION 720

### SHADE TREE DISEASE CONTROL

#### **720.01        DECLARATION OF PURPOSE**

The City Council of the city of Tonka Bay finds and determines that the health of the oak and elm trees within the municipal limits is threatened by fatal diseases known as oak wilt disease and Dutch elm disease. It has further found and determined that the loss of oak and elm trees growing upon public or private property would substantially depreciate the value of property within the city and impair the safety, good order and general welfare of the public. It is declared to be the intention of the council to control and prevent the spread of these diseases and this ordinance enacted for that purpose.

#### **720.02        FORESTER**

Subd. 1        Position created. The position of forester is hereby created.

#### **720.03        DUTIES OF FORESTER**

It is the duty of the forester to coordinate, under the direction and control of the council all activities of the municipality relating to the control and prevention of oak wilt and Dutch elm disease. He shall recommend to the council the details of a program for the control of oak wilt and Dutch elm disease and perform the duties incident to such a program as adopted by the City Council.

#### **720.04        REGULATIONS ADOPTED BY REFERENCE**

Sections 1.0109 through 1.0111 of 3 Minnesota Code of Agency Rules Department of Agriculture Shade Tree Program (1981 Edition) together with amendments thereof to date, are hereby adopted by reference and made a part of this ordinance as is set out herein in full, except as hereinafter provided. A copy of said Agency rules which are herewith incorporated is on file in the city clerk's office.

#### **720.05        NUISANCES DECLARED**

Subd. 1        The following things are public nuisances wherever and whenever they may be found within the City of Tonka Bay.

- a.        Any living or standing oak tree or part thereof infected to any degree with the oak wilt disease fungus *Ceratocystis Ulmi* Fagacearum.
- b.        Any living or standing elm tree or part thereof, 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).
- c.        Any dead elm tree, or part thereof, 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.

Subd. 2 Abatement

It is unlawful for any person to permit any public nuisance as defined in subd. 1 to remain on any premises owned or controlled by him within the city of Tonka Bay. Such nuisance may be abated in the manner prescribed by this ordinance.

**720.06 INSPECTION AND INVESTIGATION**

Subd. 1 Inspections

The forester shall inspect all premises and places within the city as often as deemed appropriate to determine whether any condition described in Section 720.05 subd. 1 of this code exists within the city. He shall investigate all reported incidence of infestation by oak wilt fungus, Dutch elm fungus or elm bark beetles.

Subd. 2 Entry on private premises

The forester or his duly authorized representatives may enter upon private premises at any reasonable time for the purpose of carrying out any of the duties assigned to him under this ordinance.

Subd. 3 Diagnosis

The forester shall, upon finding conditions indicating oak wilt or Dutch elm 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 hereinafter no action to remove infected trees or wood shall be taken until positive diagnosis of the disease has been made.

**720.07 ABATEMENT OF OAK WILT AND DUTCH ELM DISEASE NUISANCES**

Subd. 1 In abating the nuisances herein before described 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 oak wilt or Dutch elm disease. Such abatement procedures shall be carried out in accordance with current technical and expert opinions and as may be designated by the Commissioner of Agriculture and as approved by other appropriate state agencies.

**720.08 PROCEDURE FOR REMOVAL OF INFECTED TREES AND WOOD**

Subd. 1 Whenever the forester finds with reasonable certainty that the infestation hereinbefore defined exists in any tree or wood in any public or private place in the city, and the property owner where said infestation exists refuses or neglects to abate such nuisance, then he shall proceed as follows:

- a. If the forester finds that the danger of infestation of other trees is not imminent because of dormancy, he shall make a written report of his findings to the council which shall proceed by (1) abating the nuisance as a special service pursuant to the provisions of Section 429.101, Minnesota Statutes or (2) by abating the nuisance as provided in Subd. 2 of this section.
- b. If the forester finds that danger of infestation of other trees is imminent, he shall notify the property owner by certified mail that

the nuisance will be abated within a specified time, allowing the property owner at least five (5) days to comply, from the mailing of such notice. The forester shall immediately report such action to the council and after the expiration of the time limited by the notice he may abate the nuisance.

Subd. 2 Upon receipt of the forester's report required by subd. 1, Part (a), 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 not less than one week prior to such meeting. The notice shall state the time and place of the meeting, with location of the nuisance, the action proposed, the estimated cost of the abatement, and the proposed basis of assessment, if any, or costs. At such hearing, or adjournment thereof, 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.

Subd. 3 The forester shall keep a record of the costs of abatements done under this section and shall report monthly to the city finance director of 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.

Subd. 4 On or before September 1 or each year the clerk shall list the total unpaid charges for each abatement against each separate lot or parcel to which they are attributable under this ordinance. The council may then spread the charges, or any portion thereof, against the property involved as a special assessment pursuant to the provisions of Minnesota Statutes, Section 429.101, and other pertinent statutes for certificate to the county auditor and collection the following year along with current taxes.

#### **720.09 SPRAYING DISEASED TREES**

Subd. 1 Whenever the forester determines that any oak tree, elm tree, or elm wood within the city is infected with oak wilt or Dutch elm fungus, or Dutch elm beetles, he may spray all nearby trees likely to be infected with an effective concentrate. Spraying 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.

Subd. 2 The notice provisions of Section 7 apply to spraying operations conducted under this section.

#### **720.10 TRANSPORTING DISEASED WOOD PROHIBITED**

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

**720.11      INTERFERENCE PROHIBITED**

It is unlawful for any person to prevent, delay or interfere with the forester or his representatives while they are engaged in the performance of the duties imposed by this ordinance.

**720.12      RESOLUTION OF CONFLICTS**

Subd. 1      Where provisions of this section conflict or are inconsistent with any other section of this code the provisions of this section shall supersede except in instances where one regulation is more restrictive than the other, in which case, the more restrictive shall apply and control.

Subd. 2      Pursuant 3 MCAR 1.0111 where provisions of this section of the code are inconsistent with state rules or regulations the more stringent or restrictive shall apply and control.

**720.13      PENALTY**

Any person, firm or corporation who violates any of the provisions of this ordinance is guilty of a misdemeanor.