

Section 1135 – Dutch Elm Disease

Section 1135:00: Declaration of Policy. The council has determined that the health of the elm trees within the municipal limits is threatened by a fatal disease known as Dutch elm disease. It has further determined that the loss of elm trees growing upon public and private property would substantially depreciate the value of property within the city and impair the safety, good order, general welfare and convenience of the public. It is declared to be the intention of the council to control and prevent the spread of this disease and this section is enacted for that purpose.

Section 1135:02. Forester.

Subd. 1. Position created. The powers and duties of the city forester as set forester in this section are hereby conferred upon the street commissioner.

Subd. 2. 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 Dutch elm disease and such tree planting program as may be adopted by the council. He shall recommend to the council the details of a program for the control of Dutch elm disease, and reforestation programs, and perform the duties incident to such a program adopted by the council.

Section 1135:04. Dutch Elm Disease Program. It is the intention of the council to conduct a program of plant pest control pursuant to all the powers of this municipal corporation including the authority granted by Minnesota Statutes 1961, Section 18.022, as amended.

This program is directed specifically at the control and elimination of Dutch elm disease fungus and elm bark beetles and is undertaken at the recommendation of the Commissioner of Agriculture and the council in the conduct of this program.

Section 1135:06. Nuisances Declared, Abatement.

Subd. 1. Nuisances Declared. The following things are public nuisances whenever they may be found in the city:

- (a) Any living or standing elm trees 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* (Eich.) or *Hylungopinus Rufipes* (Marsh).
- (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 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 corporate limits of this municipality. Such nuisances may be abated in the manner prescribed by this section.

Section 1135:08. Inspection and Investigation.

Subd. 1. Annual Inspection. The forester shall inspect all premises and places within the city as often as practicable to determine whether any condition described in Section 1135:06 exists thereon. He shall investigate all reported incidents of infestation by Dutch elm fungus or elm bark beetles.

Subd. 2. Entry on Private Premises. The forester or his duly authorized agents may enter upon private premises at any reasonable time for the purpose of carrying out any of the duties assigned him under this section.

Subd. 3. Diagnosis. The forester shall, upon finding conditions indicating Dutch elm infestation, immediately send appropriate specimens or samples to the Commission of Agriculture for analysis, or take such other steps for diagnosis as may be recommended by the Commissioner. Except as provided in Section 1135:12 no action to remove infected trees or wood shall be taken until positive diagnosis of the disease has been made.

Section 1135:10. Abatement of Dutch Elm Disease Nuisances. In abating the nuisances defined in Section 1135:06, 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 Dutch elm disease fungus and elm bark beetles. Such abatement procedures shall be carried out in accordance with current technical and expert opinions and plans as may be designated by the Commission of Agriculture.

Section 1135:12. Procedure for Removal of Infected Trees and Wood.

Subd. 1. Findings and Procedure. Whenever the forester finds with reasonable certainty that the infestation defined in Section 1135:06 exists in any tree or wood in any public or private place in the city, he shall proceed as follows:

- (a) If the forester finds that the danger of infestation of other elm trees is not imminent because of elm dormancy, he shall make a written report of his finding to the council which shall proceed by (1) abating the nuisance as a public improvement under Minnesota Statutes Chapter 429 or (2) abating the nuisance as provided in Subd. 2 of this section.
- (b) If the forester finds that danger of infestation of other elm trees is imminent, he shall notify the abutting property owner by certified mail that the nuisance will be abated within a specified time, not less than five (5) days from the date of 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.

- (c) If the forester finds with reasonable certainty that immediate action is required to prevent the spread of the disease, he may proceed to abate the nuisance forthwith. He shall report such action immediately to the council and to the abutting property owner (or to the owner of the property where the nuisance is located).

Subd. 2. Notice and Hearing. Upon receipt of the forester's report required by Subd. 1(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 no less than one week prior to such meeting. The notice shall state the time and place of the meeting, the streets affected, action proposed, the estimated cost of the abatement, and the proposed bases of assessment, if any, of 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. Record of Costs. The forester shall keep a record of the costs of abatements done under this section and shall report monthly to the clerk 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. Assessment. On or before September 1 of each year the clerk shall list the total unpaid charges for each abatement under this section. The council may then spread the charges or any portion thereof attributable under this section. The council may then spread the charges or any portion thereof against the property involved as a special assessment under Minnesota Statutes Section 429.101 and other pertinent statutes for certification to the county auditor and collection the following year along with current taxes.

Section 1135:14. Spraying Elm Trees.

Subd. 1. Spraying. Whenever the forester determines that any elm tree or elm wood within the city is infected with Dutch elm fungus, he may spray or treat all nearby high value elm trees with an effective elm bark beetle destroying concentrate or fungicide or both. Activities authorized by this section shall be conducted in accordance with technical and expert opinions and plans of the Commission of Agriculture and under the supervision of the Commission and his agents whenever possible.

Subd. 2. Procedure. The notice provisions of Section 1135:12 apply to spraying and treatment operations conducted under this section.

Section 1135:16. Transporting Elm Wood Prohibited. It is unlawful for any person to transport within the city any bark-bearing elm wood without having obtained a permit from the forester. The forester shall grant such permits only when the purposes of this section will be served thereby.

Section 1135:18.     Interference Prohibited.     It is unlawful for any person to prevent, delay or interfere with the forester or his agents while they are engaged in the performance of duties imposed by this section.

Section 1135:19.     Storage of Elm Wood.     It is unlawful for a person to store bark-bearing elm wood, within the city limits of the City of Foley, during the period from September 1, to April 1, of any year.

Section 1135 of the 1974 Code of Ordinances was amended by adding Section 1135:19 in its entirety by Ordinance Number 163, effective December 18, 1979.