



**PLAINVIEW CITY COUNCIL
WORK SESSION
AGENDA**

Tuesday, June 26, 2018, immediately following the Special Meeting

- 1. CALL TO ORDER**
- 2. APPROVAL OF AGENDA**
- 3. DISCUSSION**
 - A. Shade Tree Pest Control Ordinance
 - B. Cemetery Long Term Planning
- 4. COUNCIL & STAFF UPDATES**
- 5. ADJOURN**



Executive Summary

City Council Work Session: June 26, 2018

AGENDA ITEM: Shade Tree Pest Control Ordinance	AGENDA SECTION: Discussion
PREPARED BY: Michael Burgdorf, Public Works Director / Clarissa Hadler, City Administrator	AGENDA NO. 3.A.
ATTACHMENTS: LMC Model Ordinance, Misc. Info	APPROVED BY: cgh
RECOMMENDED ACTION: Discussion / Staff Direction	

SUMMARY

Mayor Ziebell requested that this item be placed on the Work Session agenda.

Staff welcomes input regarding the drafting of Plainview's Ordinance regarding tree diseases. We have attached the LMC model ordinance as an example.

Staff had originally had this planned for adoption in August and would request that timeline be maintained.

Shade Tree Pest Control, LMC Model Ordinance

League models are thoughtfully developed by our staff for a city's consideration. Models should be customized as appropriate for an individual city's circumstances in consultation with the city's attorney. Helpful background information on this model may be found in the Information Memo ["Maintenance of City Trees."](#)



This icon marks places where the city must customize the model. They offer additional provisions, optional language, or comments for your consideration. The icon, and language you do not wish to include, should be deleted from this model before use. Make other changes, as needed, to customize the model for your city.

ORDINANCE NO. _____

AN ORDINANCE REGULATING SHADE TREE PEST CONTROL

The City Council of _____, Minnesota ordains:

SECTION 1: SHADE TREE PEST CONTROL.

1.1 Declaration of policy. 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.

1.2 Jurisdiction. 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.



Note – this may already be provided in another city ordinance.

1.3 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.



A separate model ordinance declaring a shade tree pest, as required by this section, follows the conclusion of this ordinance regulating shade tree pest control.

1.4 Public nuisances defined. A shade tree pest, as defined by Section 2 occurring within a defined control zone is a public nuisance.

1.5 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.

1.6 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 details 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.

1.7 Abatement of shade tree pest nuisances. In abating a nuisance, defined by ordinance under section 1.3, 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 2.

1.8 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 Section 1.3 shall report the same to the city.

1.9 Registration of tree care firms. Any person, firm, or corporation that provides tree care, tree trimming, or removal of trees, limbs, branches, brush, or shrubs for hire must be registered with the Minnesota commissioner of Agriculture under Minn. Stat. § 18G.07.

1.10 Inspection and application of control measures.

(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 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.

(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 authorized by this section.

1.11 Standard abatement procedure. Except as provided in Sections 1.12 and 1.14, 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 section.

(A) 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. A copy of the notice shall be filed with the city clerk.

(B) 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 city clerk within seven (7) 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 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.

1.12 High-cost abatement. If the tree inspector determines that the cost of abating a nuisance will exceed \$5,000 based on a reasonable, good faith estimate, the written notice referred to in Section 1.11 must provide that if the nuisance is not abated within the reasonable amount of time provided, the matter will be referred to the City Council for a hearing. The date, time, and location of the hearing must be provided in the notice.

1.13 Appeal procedure. If the city clerk receives a written request for a hearing on the question of whether a public nuisance exists, the City Council shall hold a hearing within fourteen (14) calendar days following receipt by the clerk of the written request. At least three (3) days 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 City Council may issue an order requiring abatement of the nuisance, upon a majority vote of the City Council present at the hearing.

1.14 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 Section 1.11 or 1.12. The tree inspector must reasonably attempt to notify the owner of the affected property of the

intended action and the right to appeal the abatement and any cost recovery at the next regularly 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 an imminent and serious hazard to human life or safety.

1.15 Recovery of cost of abatement; liability and assessment.

(A) 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. As soon as the work has been completed and the cost determined, the city clerk or other official shall prepare a bill for the cost and mail it to the owner. Thereupon the amount shall be immediately due and payable at the office of the city clerk.

(B) 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 Sept. 1 next following abatement of the nuisance, 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 City Council shall 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 City Council may determine in each case.

1.16 Penalty.

(A) Any person, firm, or corporation that violates any provision of this section shall, upon conviction, be guilty of a misdemeanor. The penalty, which may be imposed for any crime that is a misdemeanor under this section, including Minnesota Statutes specifically adopted by reference, shall be a sentence of not more than 90 days, or a fine of not more than \$1,000, or both.

(B) Upon conviction of a misdemeanor, the costs of prosecution may be added. A separate offense shall be deemed committed upon each day during which a violation occurs or continues.

(C) The failure of any officer or employee of the city to perform any official duty imposed by this section shall not subject the officer or employee to the penalty imposed for a violation.

(D) In addition to any penalties provided for in this section, if any person, firm, or corporation fails to comply with any provision of this section, the City Council or any official designated by it may institute appropriate proceedings at law or at equity to restrain, correct, or abate the violation.

1.17 Severability. Should any part or provision of this ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of the ordinance as a whole or any part thereof other than the part held to be invalid.

SECTION 2: DECLARED SHADE TREE PESTS, CONTROL MEASURES, AND CONTROL AREAS

2.1 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) **Control measures** that may be taken to abate oak wilt disease are:

(1) Installation of a root graft barrier.

A root graft barrier can be ordered installed to prevent the underground spread of oak wilt disease. The city will mark the location of the root graft barrier. The barrier disrupts transmission of the fungus within the shared vascular systems of root grafted trees. The barrier is created by excavating or vibratory plowing a line at least forty-two (42) inches deep between any oak tree infected with oak wilt disease and each nearby and apparently healthy oak tree within fifty (50) feet of the infected tree.

(2) Removal and disposal of trees.

(a) On property zoned for residential and commercial use.

On property that is zoned residential and commercial the city may mark for removal trees that have the potential to produce spores of the fungus *Ceratocystis fagacearum*. After, and in no case before, the installation of the root graft barrier and no later than May 1 of the year following infection, all marked trees must be felled. The stump from such felled trees must not extend more than three inches above the ground or, if taller, must be completely debarked.

If, however, after the city prescribes the location for a root graft barrier, the city determines that installation of the barrier is impossible because of the presence of pavement or obstructions such as a septic system or utility line, the city may mark for removal all oak trees whether living or dead, infected or not and located between an infected tree and the marked barrier location. These marked trees must be felled and disposed of no later than May 1 of the year following infection. The stump from such felled trees must not extend more than three inches above the ground or, if taller, must be completely debarked.

(b) On all other property.

On all other property, the city may mark for removal all oak trees whether living or dead, infected or not and located between an infected tree and the marked barrier location. These marked trees must be felled and disposed of no later than

May 1 of the year following infection. The stump from such felled trees must not extend more than three inches above the ground or, if taller, must be completely debarked.

All wood more than three (3) inches in diameter or ten (10) inches in circumference from such felled trees must be disposed of by burying, debarking, chipping, or sawing into wane-free lumber, or by splitting into firewood, stacking the firewood, and immediately covering the woodpile with unbroken four (4)-mill or thicker plastic sheeting that is sealed into the ground until October 1 of the calendar year following the calendar year in which the tree was felled, or by burning before May 1 of the year following infection. Wood chips from infected trees may be stockpiled or immediately used in the landscape.

(C) The **control area** for oak wilt disease is defined as:



Use one of the following definitions:

All lands within the boundaries of the city.

[OR]

All lands within the city identified on the oak wilt control area map dated _____ and incorporated into this ordinance.

[OR]

All lands within the city within sections _____ and _____.

[OR]

All lands within the area of the city bounded by _____ and _____, and _____ and _____ streets.

[OR]

All portions of the city that contain an average of _____ oak trees per acre as determined by an estimated inventory conducted by the city and recorded with the city clerk provided that no such portion shall contain less than one hundred sixty (160) acres.

[OR]

All lands within the city that are zoned for uses other than industrial and agricultural plus a buffer strip extending one-quarter mile beyond such lands into all adjoining lands within the city.

2.2 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) **Control measures** that may be taken to manage and abate emerald ash borer are [those currently advised by the University of Minnesota Extension website at <http://www.extension.umn.edu/garden/insects/find/emerald-ash-borer/#management> and the Emerald Ash Borer Information Network at <http://www.emeraldashborer.info/resources.php>].

(C) **Definition of control areas.** The control area for emerald ash borer is defined as:



Use one of the following definitions:

All lands within the boundaries of the city.

[OR]

All lands within the city identified on the emerald ash borer control area map dated _____ and incorporated into this ordinance.

[OR]

All lands within the city within sections _____ and _____.

[OR]

All lands within the area of the city bounded by _____ and _____, and _____ and _____ streets.

[OR]

All portions of the city that contain an average of _____ ash trees per acre as determined by an estimated inventory conducted by the city and recorded with the city clerk provided that no such portion shall contain less than one-hundred sixty (160) acres.

[OR]

All lands within the city that are zoned for uses other than industrial and agricultural plus a buffer strip extending one-quarter mile beyond such lands into all adjoining lands within the city.

2.3 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) **Control measures** that may be taken to abate Dutch elm disease are:

(1) Use of fungicide.

Fungicides may be effective in preventing Dutch elm disease when injected into living trees that do not already show symptoms of Dutch elm disease. Fungicide injections on private lands are optional and, if performed, are at the landowner's expense.

(2) Removal and disposal of trees.

Prompt removal of diseased trees or branches reduces breeding sites for elm bark beetles and eliminates the source of Dutch elm disease fungus. Trees that wilt before July 15 must be removed within 20 days of detection [alternative: 30 days]. Trees that wilt after July 15 must be removed by April 1 of the following year. Diseased trees not promptly

removed will be removed by the city at the landowner's expense. Wood may be retained for use as firewood or saw logs if it is debarked or covered from April 15 to Oct. 15 with four (4)-mill plastic. The edges of the cover must be buried or sealed to the ground.



Refer to the USDA publication [How to Identify And Manage Dutch Elm Disease](http://www.na.fs.fed.us/spfo/pubs/howtos/ht_ded/ht_ded.htm) (www.na.fs.fed.us/spfo/pubs/howtos/ht_ded/ht_ded.htm) for further details on management recommendations.

(C) **Definition of control areas.** The control area for Dutch elm disease is defined as:



Use one of the following definitions.

All lands within the boundaries of the city.

[OR]

All lands within the city identified on the Dutch elm disease control area map dated _____ and incorporated into this ordinance.

[OR]

All lands within the city within sections _____ and _____.

[OR]

All lands within the area of the city bounded by _____ and _____, and _____ and _____ streets.

[OR]

All portions of the city that contain an average of _____ elm trees per acre as determined by an estimated inventory conducted by the city and recorded with the city clerk provided that no such portion shall contain less than one-hundred sixty (160) acres.

[OR]

All lands within the city that are zoned for uses other than industrial and agricultural plus a buffer strip extending one-quarter mile beyond such lands into all adjoining lands within the city.

Passed by the City Council of _____, Minnesota this _____ day of Month, Year.

Mayor

Attested:

City Clerk

ORDINANCE NO. _____

AN ORDINANCE AMENDING ORDINANCE NO. _____, DECLARING _____ A TREE PEST AND PRESCRIBING CONTROL MEASURES FOR A DEFINED CONTROL AREA

The City Council of the City of _____, Minnesota, ordains:

(A) Declaration of a shade tree pest.



Here a pest is declared and defined.

(B) Prescribed control measures.



Here control measures are described

(C) Definition of control areas..



Here a control area is defined

(D) Effective date. This ordinance shall be effective as of _____



The effective date must be following 30 days publication of the Tree Pest Ordinance, Ordinance No. _____.

This ordinance was introduced and moved for adoption by Councilmember _____. The motion for the adoption of the ordinance was duly seconded by Councilmember _____ and upon vote being taken thereon, the following voted in favor:

And the following voted against the same:

Passed by the City Council of _____, Minnesota this _____ day of Month, Year.

Mayor

Attested:

City Clerk



INFORMATION MEMO

Maintenance of City Trees

Learn the value of regular inspection and maintenance of city trees, including prevention and abatement of diseases like Dutch Elm, Oak Wilt and Emerald Ash Borer infestation. Understand the types of liability claims commonly made about trees in city rights-of-way, parks and other public places. Links to a model tree ordinance.

RELEVANT LINKS:

I. Benefits of Trees

Urban trees are a key to the environmental health of a community because they provide social, community, and environmental benefits. Trees are part of the natural life support system that supports native species, maintains natural ecological processes, sustains air and water resources, and contributes to health and quality of life. Trees bring natural elements and wildlife habitats into urban surroundings that increase the quality of life for residents of the community.

Trees also have substantial direct and indirect economic value. Air-conditioning costs are lower in a tree-shaded home. Heating costs are reduced when a home has a windbreak. Trees increase in value from the time they are planted until they mature. Also, landscaped homes are more valuable than non-landscaped homes. The savings in energy costs and the increase in property value directly benefit each home owner.

Some cities are so protective of their trees that councils adopt tree preservation ordinances that protect larger trees on private property from unnecessary or wholesale cutting. With all the benefits trees bring, perhaps the potential costs associated with their damage aren't surprising.

II. Tree-related claims

Every year cities throughout Minnesota are subject to a wide variety of claims involving trees located within street rights-of-way, parks, and public places. Claims also arise from trees located on private property, which affect city rights-of-way, or that city workers allegedly damage. Falling tree trunks and limbs regularly damage houses, garages, and automobiles.

Conflicts between trees and street signs, sidewalks, and utilities can lead to damage and injury. Tree boughs and branches block stop signs and other street signs, and consequently can be a factor in traffic accidents. Tree roots can cause sidewalks and curbs to heave and crack, and damage underground utilities.

This material is provided as general information and is not a substitute for legal advice. Consult your attorney for advice concerning specific situations.

RELEVANT LINKS:

[Tree Trust.](#)

[Minnesota Shade Tree Advisory Committee.](#)

Pederson v. City of Rushford,
146 Minn. 133, 177 NW 943
(1920).

Zacharias v. Nesbitt, 150
Minn. 368, 185 NW 295
(1921).

[Minn. Stat. § 18G.13.](#)

See [Shade Tree Pest Control, LMC Model Ordinance.](#)

Trees that conflict with power lines need special attention and preventive pruning. Some issues arise from trees growing into lines, but more often the conflicts are weather related. Branches or limbs can fall during a storm, damaging power lines. Sometimes a power line during winter or spring will have enough ice build-up that it sags onto a tree. Short circuits can occur, and may result in losses of service or fires.

Improper inspection and removal of trees can lead to costly claims against a city. The city has a duty to maintain trees in their rights-of-way. Trees on private property damaged by negligence of city staff can lead to costly claims.

III. Legal issues

The starting point in limiting claims is to adopt a tree care ordinance. Tree ordinances are of different types, address different issues, and provide for differing programs. Some ordinances address:

- Care of city trees found on city property and provide for tree variety, spacing, trimming, and rights-of-way issues.
- Disease control, including provisions for inspection, investigation, diagnosis, and abatement.
- Other issues, such as tree boards, planting and replanting programs, boulevard trees, and tree preservation.

A number of resources are available for tree ordinance development from the Tree Trust and the Minnesota Shade Tree Advisory Council.

A. Rights-of-way

The control and care for trees in the public rights-of-way involves common law right-of-way principals. Landowners generally own all of the land up to the center of the street in front of their house, including trees, soil, minerals, etc., unless acquired by the city. However, the city has easement rights in the public street, and with it comes a “duty of care.” For the city, this translates to, among other things, an obligation to maintain the trees in the right-of-way. Although the landowner may own the trees, the landowner does not have a legal obligation to take care of easement trees.

B. Disease and pests

State law provides a city may, by ordinance, adopt and enforce regulations to control and prevent the spread of plant pests and diseases, and even pass a specific levy to fund such a program. The ordinance may authorize inspection and removal of diseased trees on private property.

[Minn. Stat. § 561.04.](#)

C. Permission, waivers and private property

When working with or around trees on private property, cities can face claims of negligence in inspection, maintenance, and removal. An important step is for the city to seek permission or a waiver from a landowner before doing any work that might affect their trees or shrubs. In the absence of permission, a city may obtain an administrative warrant from a court that gives the city permission to enter the property for the limited purpose of tree care. Questions often arise as to property boundaries and tree ownership. Getting the facts correct before the work is done is essential because once the trees are trimmed or removed, the damage is done.

Minnesota statutes allow aggrieved landowners to recover treble damages, an award of three times the cost of repair and replacement. The statute says that whoever removes a tree, timber or shrubs on private land is liable for treble damages to the owner of the land.

IV. Tree maintenance

To minimize claims and improve tree health, cities should implement a regular inspection and maintenance program. Regular inspection and maintenance activities, and all complaints and follow-up, should be fully documented with forms and photos. Regular inspection and maintenance will improve tree health, reduce future disease, and minimize potential conflicts.

A tree inventory is the first step for cities to learn and document what tree species and issues exist in the city's urban forest. Qualified professionals can identify structural faults or defects and associated target areas and determining risk level. Structural defects include:

- Large cracks.
- Decayed areas.
- Cavities.
- Leans.
- Root damage.

An inventory should be targeted at gathering data in areas where people and property could be damaged by a tree. Determination of risk level is a professional judgment that should be carefully documented.

RELEVANT LINKS:

[National Arborist Association – tree pruning.](#)

American National Standards Institute: [Tree, Shrub, and Other Woody Plant Maintenance Standard Practices.](#)

See [Shade Tree Pest Control, LMC Model Ordinance.](#)

Tree maintenance often involves a replanting program, particularly after disease or storm. Tree selection depends on why the tree is being planted, the size and location of planting site, site and soil conditions, and expected maintenance. Trees with less destructive root systems should be used for boulevard plantings. Trees with shallow roots should be avoided near sidewalks. Smaller trees should be used under power lines. Some trees are more tolerant of root pruning than others. Trees must be suitable for the region, soil conditions, and pest resistant.

Regular maintenance ensures a tree's value will grow. Pruning is used to remove dead, diseased or infected branches, improve tree structure, or maintain safety. Types of pruning include crown cleaning, thinning, raising, reduction, and restoration. A trimming policy can set forth ideal trimming cycles but should also take into account budget constraints, availability of city staff or contractors, and backlog of requests. Tree trimming guidelines include American National Standard for Tree Care Operations: Tree Shrub and Other Woody Plant Maintenance Standard Practices, and National Arborist Association's "Standards for Pruning of Shade Trees."

Topping trees is a harmful tree pruning practice. Topping (also referred to as heading, stubbing, rounding, or dehorning) is the removal or cutting back of large branches in mature trees with little regard for location of the pruning cut. Topping stresses trees and makes them more susceptible to disease, causes decay, and creates hazards.

V. Disease prevention and abatement

Tree diseases are either infections or disorders. Disorders can be caused by such factors as nutrient deficiencies, temperature extremes, vandalism, pollutants, and fluctuations in moisture. Fungus infections and pest infestations affect trees, including the following:

- Oak Wilt is a fungus that travels through trees beneath the bark preventing water from reaching the top of tree and causing leaves to wilt, and the tree dies within weeks. To prevent spread of oak wilt, do not wound or prune Oaks during the months of April, May and June.
- Dutch Elm is a fungus that grows in Elm trees and that prevents water from reaching the leaves. The leaves wilt, and the tree dies. Communities need disease control programs to battle Dutch Elm, including inspections, removal, and disposal of infected trees.

RELEVANT LINKS:

[Tree City USA Program.](#)

[The National Arbor Day Foundation.](#) [MN DNR Division of Forestry.](#) [MN DNR Forestry Grants.](#) [Minnesota Forest Resource Council.](#) [International Society of Arboriculture.](#)

- The Emerald Ash Borer (EAB) first appeared in Minnesota in 2009. The EAB larvae cut S-shaped patterns through the fibrous vessels under the bark, disrupting the flow of water, minerals and nutrients, thereby denying nourishment to the rest of the tree. Without removing the bark, the EAB larvae typically go unnoticed, the only visible indicators are one-eighth-inch D-shaped exit holes on the bark and increased woodpecker activity. The tree is then starved to death, typically over two to four years. Since there appear to be no resistant strains of ash, and Minnesota has around 950 million ash trees, the potential economic and environmental costs from EAB alone are astounding.

Cities may consider becoming a member of the Tree City USA program. Tree City USA was developed by the National Arbor Day Foundation in conjunction with the United States Forest Service and the National Association of State Foresters. The purpose is to improve community forestry programs by providing local community groups with financial incentives, local government program development including tree inventories, insect and disease control plans, ordinance development and staffing.

Cities must meet four criteria in order to join the Tree City USA program. The city must have

- A tree board or department.
- A tree care ordinance.
- A community forestry program with \$2 annual per capita; and
- An Arbor Day observance and proclamation.

Belonging to Tree City USA is often an advantage in qualifying for financial assistance for tree programs. For instance, the Minnesota Department of Natural Resources administers urban and community forestry challenge grants to local units of government that have met Tree City USA standards.

City trees are a capital asset requiring regular inspection and maintenance to protect and sustain value. Healthy trees mean happy citizens and fewer claims.

VI. Further assistance

In addition to the organizations already mentioned, other tree-related resources may be of assistance to you. You may also contact your loss control consultant at the League.

308.3 Civil Suit for Cost of Removal. The Clerk shall, upon direction of the Council, bring suit in any Court of competent jurisdiction to recover from the person owning or occupying land adjacent to which alleys or streets were cleared the cost of said clearing and the cost of suit in a civil action.

309 SHADE AND ORNAMENTAL TREES

309.1 Boulevard Trees and Public Works Director Authority To Control Trees. The Public Works Director shall have, under the direction of the City Council, control and supervision over all trees bordering or overhanging all public streets, alleys and highways, and all grass plots bordering public streets, alleys and highways. The word "tree" as used herein shall be deemed to include shrubs.

309.2 Public Works Director To Order Work Done. Whenever the Public Works Director shall find that any tree as described in 309.1 needs trimming, removal, treatment or other care in order to preserve the tree in good condition or to protect the public from damage or injury, the Public Works Director shall see that the necessary work is done and shall keep an account of the cost of such work and submit to the City Clerk.

309.3 Permit to Plant Trees in Public Ground. The Public Works Director shall keep a list of trees that are approved to be planted on public ground. Any person desiring to plant any tree or trees in any public ground shall submit an application to the Public Works Director. If the Public Works Director, approves the location, number, and type of trees, he/she shall issue the permit. If he/she does not approve such application, the applicant may appeal his/her disapproval to the Council, whose action shall be final. Public ground shall mean all streets, avenues, and alleys and their respective right-of-ways, as well as property owned by the City, such as parks, lots, and parking areas.

309.4 Trees and Vegetation Menacing Public Safety to be Reported. Every property owner whose property abuts on a public street shall notify the Public Works Director at once when the condition of any tree thereon or in the grass plot adjacent thereto is in such condition as to be a menace to public safety. Any tree shall not overhang closer than thirteen (13) feet above the surface of any street, or overhang closer than eight (8) feet above a public sidewalk; all such trees are hereby declared to be a menace to public safety. Any tree, hedge, shrub, or similar vegetation that impedes the ability of pedestrians to use a public sidewalk is hereby declared to be a menace to public safety. If a tree or other vegetation becomes a menace to public safety the Council shall notify the owner to remove or trim the same. If said owner fails to do so within thirty (30) days the Council shall order the required work done. The cost of such removal or trimming shall be assessed against the abutting property.

309.5 Tree Topping. It is unlawful for any person or organization to top any tree on any public right of way or public property. Topping is defined as "the cutting of an older branch or stem back to a stub or lateral branch not sufficiently large enough to assume the terminal role within the tree's crown, to such a degree so as to remove the normal canopy and disfigure the tree".

310 DUTCH ELM DISEASE. The City 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 the intention of the Council to control and prevent the spread of this disease and this Section is enacted for that purpose.

310.1 Certified Tree Inspector Position Created. The powers and duties of the City Certified Tree Inspector as set forth in this Section are hereby conferred upon the Public Works Director. The

Public Works Director is required to be a certified tree inspector. In addition, one (1) Public Works Assistant is to be a certified tree inspector.

310.2 Duties of Certified Tree Inspector. It is the duty of the Certified Tree Inspector 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. The Certified Tree Inspector shall recommend to the Council the details of a program for the control of Dutch Elm Disease, and perform the duties incidental to such a program adopted by the Council.

310.3 Dutch Elm Disease Program. It is the intention of the City to conduct a program of plant pest control pursuant to the authority granted by Minnesota Statutes 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 Minnesota Commissioner of Agriculture. The City Certified Tree Inspector shall act as coordinator between the Commissioner of Agriculture and the Council in the conduct of this program.

310.4 Elm Disease Nuisance Declared. The following things are public nuisances whenever they may be found within the City: (1) Any living or standing elm tree or part thereof infected to any degree with Dutch Elm Disease fungus *Ceratoeystis Ulmi* (Buisman) Moreau or which harbors any of the elm bark beetles *Scolytus Multistriatus* (Eichh.) or *Hyluigopinus Rufipes* (Marsh), and (2) Any dead elm tree or part thereof, including limbs, branches, stumps, firewood or elm material from which the bark has not been removed and burned or sprayed with an effective elm bark beetle insecticide

310.5 Abatement. It is unlawful for any person to permit any public nuisance as to remain on any premises owned or controlled by him within the City. Such nuisances may be abated in the manner prescribed by this Section.

310.6 Inspection and Investigation, Annual Inspection. The Certified Tree Inspector shall inspect all premises and places within the City as often as practicable to determine whether any condition described in 310.4 exists thereon. He/she shall investigate all reported incidents of infestation by Dutch Elm Fungus or Elm Bark Beetles.

310.7 Entry on Private Premises. The Certified Tree Inspector or his/her 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.

310.8 Abatement of Dutch Elm Disease Nuisance. In abating the nuisance defined in this Section, the Certified Tree Inspector shall have the infected tree or wood 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 designed by the Commissioner of Agriculture.

310.9 Procedure for Removal of Infected Trees and Wood, Warnings. Whenever the Certified Tree Inspector finds, with reasonable certainty that the infestation defined in Section 310.4 exists in any tree or wood in any public or private place in the City, he/she shall proceed as follows:

310.9.1 Elm Dormancy. If the Certified Tree Inspector finds that the danger of infestation of other elm trees is not imminent because of elm dormancy, he/she shall make a written report of his findings 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 Subsection 2 of this Subdivision.

310.9.2 Imminent Danger. If the Certified Tree Inspector finds that danger of infestation of other elm trees is imminent, he/she 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 Certified Tree Inspector shall immediately report such action to the Council, and after the expiration of the time limited by the notice, he may abate the nuisance.

310.9.3 Notice Hearing. Upon receipt of the Certified Tree Inspector's report required by Subsection 1, 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. The notice shall be mailed to affected property owners and published once no less than a 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 basis 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 with such modifications as it considers desirable and provide for the doing of the work by day labor or by contract.

310.9.4 Records. The Certified Tree Inspector shall keep a record of costs of abatements ordered under this Subsection and shall report monthly to the City 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.

310.9.5 Assessment. On or before September 1st 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 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.

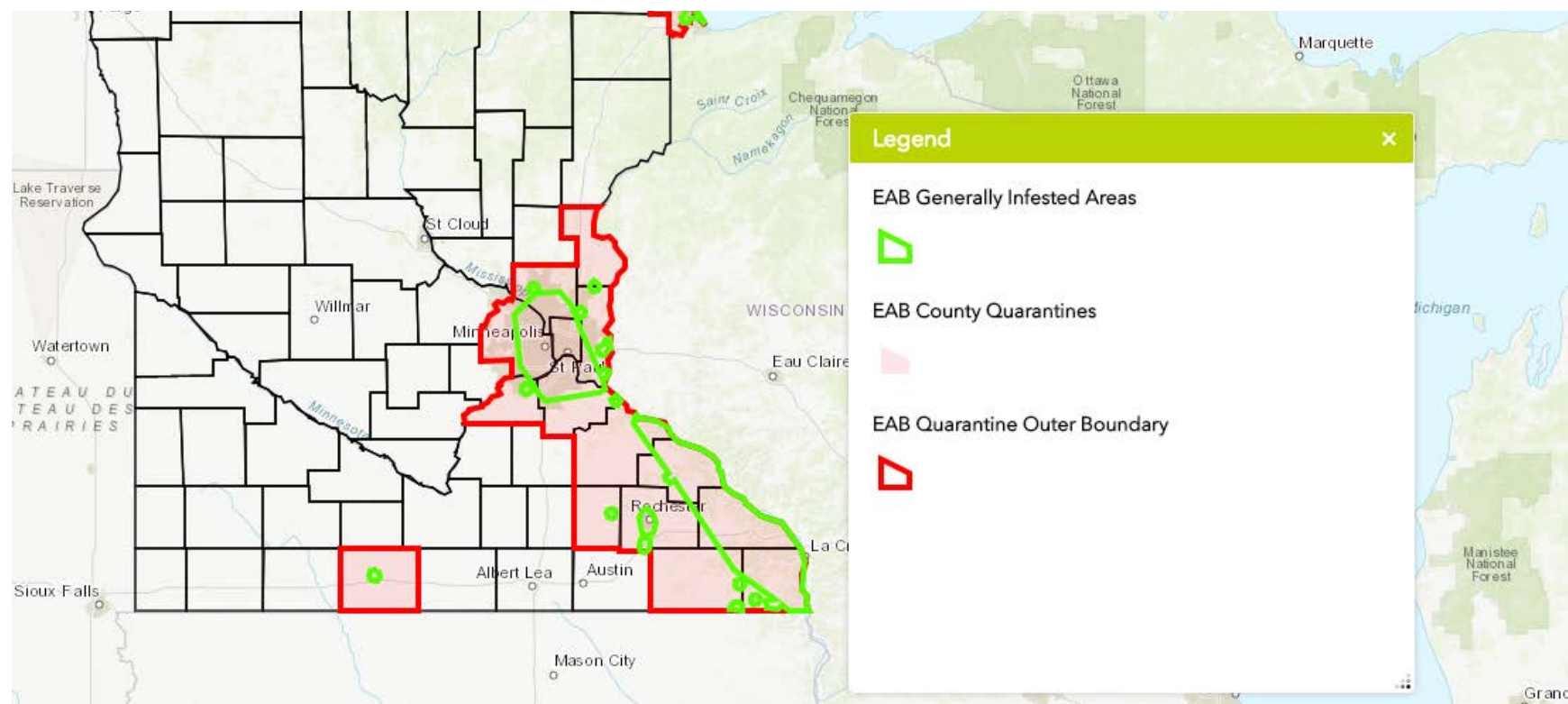
310.10 Spraying Elm Trees, Duties of Certified Tree Inspector. Whenever the Certified Tree Inspector determines that any elm tree or elm wood within the City is infected with Dutch Elm fungus, he may treat all nearby elm trees with an effective elm bark beetle destroying concentrate. Spraying activities 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. The notice provisions of Section 310.10.3 shall apply to spraying operations conducted under this Section.

310.11 Transporting Elm Wood Prohibited. It is unlawful for any person to transport within the City any bark-bearing elm wood.

310.12 Interference Prohibited. It is unlawful for any person to prevent, delay or interfere with the Certified Tree Inspector or his agents while they are engaged in the performance of duties imposed by this Section.

311 WEEDS AND GRASS. The following are declared to be a nuisance affecting public health.

311.1 Definition of Terms. The word "weeds" as used in this Ordinance shall be construed to mean and include not only such noxious weeds as are described in Chapter 21.72 of the General Statutes of the State of Minnesota for the year 2005, but also such useless and troublesome plants as are commonly known as weeds to the general public. The word "weeds" shall also be construed to mean all rank vegetable growth which exhales unpleasant or noxious odors, and also high and rank vegetable growth that may conceal filthy deposits. The word "weed inspector" means the Mayor, as required by State Statute. The word "assistant weed inspector" means the Public Works Director or his/her designee.





Executive Summary

City Council Work Session: June 26, 2018

AGENDA ITEM: Cemetery Planning	AGENDA SECTION: Discussion
PREPARED BY: Clarissa Hadler, City Administrator	AGENDA NO. 3.B.
ATTACHMENTS:	APPROVED BY: cgh
RECOMMENDED ACTION: Discussion / Staff Direction	

SUMMARY

Mayor Ziebell requested that this item be placed on the Work Session agenda.

Staff welcomes input regarding planning and maintenance at the cemetery. Given the upcoming capital budget discussions, some items may best be discussed within that context. However, if there is something that Council would like staff to research as part of a long-term planning and budget process, we would be happy to do so.