

CITY OF DELANO
COUNTY OF WRIGHT
STATE OF MINNESOTA

ORDINANCE NO. O-15-06

AN ORDINANCE AMENDING DELANO CITY CODE SECTION 808.01, REVISING THE DESIGNATIONS OF DISEASED AND DEAD TREES AS PUBLIC NUISANCES.

THE CITY COUNCIL OF THE CITY OF DELANO ORDAINS:

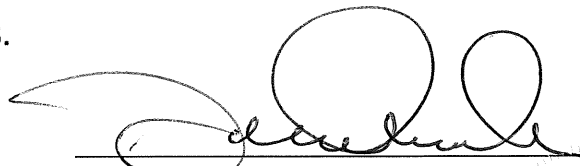
Section 1. Section 808.01 of the Delano City Code is hereby amended by deleting Subd. 2 in its entirety and replacing it with the following:

Subd. 2. Nuisances Declared. The following are declared to be public nuisances whenever they may be found within the City:

- A. 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* (eich.) or *Hylurgopinus rufipes* (March).
- B. Any elm logs, branches, stumps, firewood, or other elm material, which, in the opinion of the Forester, constitutes a hazard, and which has not been stripped of its bark and burned or sprayed with an effective elm bark beetle insecticide.
- C. Any living or standing oak tree or part thereof infected to any degree with the oak wilt disease fungus *Ceratomyces fagacearum*.
- D. Any oak logs, branches, stumps, firewood, or other oak material, which, in the opinion of the Forester, constitutes a hazard and which has not been stripped of its bark and burned or sprayed within an effective fungicide.
- E. Any other shade trees with an epidemic disease.
- F. Any dead tree.

THIS AMENDMENT SHALL BE IN FULL FORCE AND EFFECTIVE IMMEDIATELY FOLLOWING ITS PASSAGE AND PUBLICATION.

Approved by the Delano City Council on August 18, 2015.


Dale Graunke, Mayor


Attest: Brian Bloch, Finance Director

Motion By: Betsy Stolfa
Seconded By: Jack Russek
Graunke: Aye
Stolfa: Aye
Russek: Aye

Franzen: Aye
Schrupp: Aye

SECTION 808.01. TREE DISEASES. The Council has determined that the health of the trees within the municipal boundaries is threatened by fatal tree diseases. It is further determined that the loss of 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 tree diseases and this Section is enacted for that purpose.

Subd. 1. Forester.

A. Position created. The powers and duties of the City's Forester as provided by this Chapter are conferred on the Public Works Director or his/her designee.

B. Duties. It is the duty of the Forester to coordinate, under the direction and control of the Council, all activities of the City relating to the control and prevention of tree diseases. The Forester shall recommend to the Council the details of a program for the control of tree disease, and perform the duties incident to such a program adopted by the Council.

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- B. Any elm logs, branches, stumps, firewood, or other elm material, which, in the opinion of the Forester, constitutes a hazard, and which has not been stripped of its bark and burned or sprayed with an effective elm bark beetle insecticide.
- C. Any living or standing oak tree or part thereof infected to any degree with the oak wilt disease fungus *Ceratoisporium fagacearum*.
- D. Any oak logs, branches, stumps, firewood, or other oak material, which, in the opinion of the Forester, constitutes a hazard and which has not been stripped of its bark and burned or sprayed within an effective fungicide.
- E. Any other shade trees with an epidemic disease.
- F. Any dead tree.

Subd. 3. Abatement. It is unlawful for any person to permit any public nuisance as defined in Subdivision 2 to remain on any premises owned or controlled by said person within the City. Such nuisance may be abated in the manner prescribed in this Section.

Subd. 4. Inspection and Investigation. The Forester shall inspect all premises and places within the City as often as practicable to determine whether any condition described in this Section exists thereon and shall investigate all reported incidents of diseased trees.

Subd. 5. Entry on Private Premises. The Forester or a duly authorized agent of the Forester may enter upon private premises at any reasonable time for the purpose of carrying out any of the duties assigned under this Section.

Subd. 6. Diagnosis. The Forester shall, upon finding conditions indicating disease infestation, immediately send appropriate specimens or samples to the Commissioner of Agriculture or State Health Department for analysis, or take such other steps for diagnosis as may be recommended by the Commissioner of Agriculture or State Health Department.

Subd. 7. Abatement of Tree Disease Nuisances. In abating the nuisances defined in Subdivision 2, 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 tree diseases. Such abatement procedures shall be carried out in accordance with current and technical and expert opinions and plans as may be designed by the Commissioner of Agriculture.

Subd. 8. Procedures for Removal of Infected Trees and Wood.

A. Ordinary Procedure. Whenever the Forester finds with reasonable certainty that the infection defined in Subdivision 2 exists in any tree or wood in any public or private place in the City, the Forester shall proceed as follows: If the Forester finds that the danger of infestation of other trees is not imminent, the Forester shall notify the abutting property owner and/or the owner of the property upon which the tree is located, by certified mail, that the nuisance will be abated within a specified time, not less than five days from the date of mailing of such notice. The Forester shall immediately report such action to the Council, which shall proceed by:

- (1) abating the nuisance as a public improvement under Minnesota Statute § 429.101,
or
- (2) abating the nuisance as provided in subdivision 3.

B. Immediate Action. If the Forester finds with reasonable certainty that immediate action is required to prevent the spread of the disease, the Forester may proceed to abate the nuisance forthwith. The Forester shall report such action immediately to the Council and to the owner of the property where the nuisance is located.

Subd. 9. Council Action. Upon receipt of the Forester's report required by Subdivision 8, 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 property affected, the action proposed, the estimated cost of the abatement, and the proposed bases of assessment, if any, of costs. At the 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 abatement.

Subd. 10. Records. 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 land, lots, parcels involved and the amount chargeable to each.

Subd. 11. Assessments. 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 under this Section. The Council may then spread the charges or any portion thereof against the property involved as a special assessment under Minnesota Statute § 429.101 and other pertinent statutes for certification to the county auditor and collection the following year along with current taxes.

Subd. 12. Treatment. Whenever the Forester determines that any tree or wood within the City is infected with disease, he may spray or otherwise treat all nearby trees, with an effective disease destroying agent. Spraying and other treatment 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 Subdivision 9, apply to spraying and treatment operations conducted under this Chapter.

Subd. 13. Transporting Diseased Wood Prohibited. It is unlawful for any person to transport within the City any diseased wood or any bark-bearing elm or oak wood without having first obtained permission from the Forester. The Forester shall grant such permission only when the purpose of this Section will be served thereby by minimizing the risk of spread of the disease.

Subd. 14. Stockpiling. Any bark-bearing elm wood may be stockpiled within the City limits during the period September 15 through April 1. Any such wood not utilized by April 1 must then be removed and disposed of as provided by law.

Subd. 15. 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.