

## CHAPTER 97: TREES

### Section

#### *Plantings and Landscaping on Boulevards*

- 97.01 Purpose
- 97.02 Definitions
- 97.03 Permitted trees
- 97.04 Size and location of permitted trees
- 97.05 Removal of boulevard trees
- 97.06 Public works and utilities
- 97.07 Time for trimming of trees
- 97.08 Permitted plantings and landscaping
- 97.09 Size and location of permitted plantings and landscaping

#### *Tree Diseases and Shade Tree Pest Control*

- 97.20 Tree Diseases and Shade Tree Pest Control

### ***PLANTINGS AND LANDSCAPING ON BOULEVARDS***

**§ 97.01 PURPOSE.** It is the purpose of this Section to protect and promote the public health, safety and general welfare by allowing property owners to plant and maintain the Boulevard areas adjoining their property in a manner that enhances and improves the aesthetic appearance of City streets, avenues and alleys, as well as prevent and abate hazardous and nuisance conditions within the City.

**§ 97.02 DEFINITIONS.** For purposes of this Section, the terms defined have the following meanings:

(A) "Boulevard" means the public right-of-way lying between the property line and sidewalk, and between the sidewalk and the roadway, or where no sidewalk exists, between the property line and the roadway.

(B) "Landscaped Area" means the area within which Plantings and Landscaping Materials are placed.

(C) "Landscaping Materials" means dirt, rock, pavers, stepping stones, wood or similar materials.

(D) "Noxious weeds" means the annual, biennial and perennial plants that are deemed by the Minnesota Commissioner of Agriculture to be injurious to public health, environment, public roads, crops, livestock and other property.

(E) "Plantings" means trees, flowers, grass and other plants.

### **§ 97.03 PERMITTED TREES**

A list of approved trees that may be planted on the boulevard portion of a public right of way is on file in the office of the Public Works Director.

### **§ 97.04 SIZE AND LOCATION OF PERMITTED TREES**

All trees planted must be at least one inch in diameter at six inches above the ground. Trees must be cultivated nursery stock with straight trunks not less than six feet high. No trees shall be placed so as to cause a traffic hazard. Specific measurement regulations are as follows:

(A) *Spacing*. Required spacing guidelines will be provided by the Public Works Director on the approved list of trees.

(B) *Curb Returns and Intersections*. Trees must not be planted closer than 30 feet from future or existing curb returns at intersections.

(C) *Driveways*. Trees must be planted at least five feet from driveways.

(D) *Boulevards*. Except where special permit is obtained from the Public Works Director, no tree may be planted on any boulevard where the distance between the nearest edge of the sidewalk and curb is less than (3) three feet.

(E) *Sidewalks and Curbs*. Trees must be a maximum of one and a half (1.5) feet from the nearest public street pavement, curb, sidewalk or trail. All trees must be planted equally distant from the nearest edge of the proposed or existing sidewalk and curb, except when the Public Works Director may direct otherwise.

(F) *Assistance*. The Public Works Director will assist in staking out the location of the tree planting.

### **§ 97.05 REMOVAL OF BOULEVARD TREES**

(A) *City Removal*. The City can remove trees that are determined by the Public Works Director to be diseased, dangerous or a public nuisance according to the following rules:

- (1) Removal of trees will not leave the stump above boulevard level.
- (2) Removal of any tree is to be approved by the Public Works Director before removal.

(3) When the City removes trees in connection with public improvements, new trees may be planted if the City determines it is practical.

(B) *Resident Requests.* The owner of property abutting a boulevard may request the removal of a boulevard tree from in front of the owner's property. If deemed necessary by the Public Works Director, the tree will be removed by the City at no cost to the property owner.

#### **§ 97.06 PUBLIC WORKS AND UTILITIES**

Notwithstanding the foregoing, all such Boulevards remain public property and subject to the right of the City to perform necessary work, to plant, trim and otherwise maintain trees, to access, maintain, install and repair utilities and to store excess snow. In the event the City interferes with or damages any Boulevard Plantings or Landscaping Materials in the course of such work, the City is responsible only to restore the Boulevard to the original grassy state by use of black dirt and grass seed. The City shall not be liable for any damage to, disruption of or removal of Plantings or Landscaping Materials, either direct or indirect, as a result of the City, its employees, agents or contractors performing any snow plowing, street sweeping, or installation, maintenance or repairs within the Boulevard. Further, the City has the right to remove or restrict any Plantings or landscaping that are deemed to interfere with the safety of pedestrians or motorists. The property owner shall be liable for and shall indemnify the City for the costs of any damage to City property caused by the Plantings or Landscaping Materials during the course of performing any snow plowing, street sweeping, or installation, maintenance or repairs in the Boulevard, unless such damage was caused by the City's negligence.

#### **§ 97.07 TIME FOR TRIMMING OF TREES**

The normal period for tree trimming will be in late fall through early spring.

#### **§ 97.08 PERMITTED PLANTINGS AND LANDSCAPING**

In addition to planting Boulevard trees as permitted in this Section, property owners are permitted to plant, care for and maintain Plantings and Landscaping on the Boulevards adjacent to their property, subject to the restrictions set forth herein.

#### **§ 97.09 SIZE AND LOCATION OF PERMITTED PLANTINGS AND LANDSCAPING**

(A) Plantings and Landscaping Materials in the Boulevard may not exceed 36 inches in height. However, Plantings and Landscaping Materials in the Boulevard may not exceed 18 inches in height when located:

- (1) Within 30 feet of any intersection as measured from the property line; or
- (2) Within 5 feet of any alley or driveway; or
- (3) Within 5 feet of any public utility fixture.

(B) Where no sidewalks exist, the Landscaped Area must provide for the passage of pedestrian traffic.

(C) Plantings and Landscaping Materials must be maintained in such a way that there is no overhang or encroachment onto the sidewalk, curb, street, or alley. They must be contained within the Landscaped Area.

(D) No Noxious Weeds may be planted, maintained or allowed to proliferate within the Landscaped Area.

(E) No fences, berms, or retaining walls may be constructed within the Landscaped Area.

(F) Property owners may not alter the grade of the Boulevards within the Landscaped Area.

(G) The Landscaped Area must not be maintained as dirt exclusively. At a minimum, the Landscaped Area must be seeded for and maintained as grass.

### ***TREE DISEASES AND SHADE TREE PEST CONTROL***

#### **§ 97.20 TREE DISEASES AND SHADE TREE PEST CONTROL.**

(A) *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 M.S. §§ 89.001, 89.01 and 89.51 through 89.64, as those sections may be amended from time to time, the provisions of this section are adopted to attempt to control and prevent the spread of these shade tree pests.

(B) *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.

(C) *Declaration of a shade tree pest.* The City may declare any vertebrate or invertebrate animal, plant pathogen, or plant threatening to cause significant damage to a shade tree or community forest in the community, 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.

(D) *Public nuisances declared.* A shade tree pest occurring within a declared control zone is

a public nuisance.

(E) *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 § 95.15.

(F) *Definition of control areas.* Upon declaring a shade tree pest, the City may define one or more locations within the geographic boundaries of the city to be within a shade tree pest control area, provided the locations are characterized by biologic, composition, environmental and size factors favorable to successful application of the control measures prescribed by the City.

(G) *Tree Inspector.* The City may appoint a Tree Inspector. 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 duties incident to such a program adopted by the Council.

(H) *Abatement of shade tree pest nuisances.*

(1) In abating a nuisance declared by ordinance under divisions (B) and (C) above, the organism, condition or plant and any 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. The abatement procedures shall be carried out in accordance with the control measures and areas prescribed by ordinance according to divisions (C) above and (K) and (O) below.

(I) *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 public nuisance caused by a shade tree pest as defined under division (C) above shall report the same to the city.

(J) *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 State Commissioner of Agriculture under M.S. § 18G.07, as it may be amended from time to time.

(K) *Inspection and application of control measures.*

(1) The Tree Inspector is authorized to cause premises and places within the city to be inspected to determine whether shade tree pests exist thereon and to investigate all reported incidents of shade tree pests. The Tree Inspector shall have the power to take all reasonable precautions 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 or by tests as may be recommended by the Commissioner of the State Department of Agriculture or the Commissioner of the State Department of Natural Resources.

(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.

(3) No person, firm or corporation shall interfere with the Tree Inspector acting under his authority while engaged in activities authorized by this section.

(L) *Declared shade tree pests, control measures and control areas.*

(1) *Oak wilt.* **OAK WILT** is declared 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 inches in diameter or ten inches in circumference and contains to any degree any spore or reproductive structures of the fungus *Ceratocystis fagacaarum*. Control measures prescribed for abating Oak Wilt Disease are:

(a) *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 42 inches deep between any oak tree infected with Oak Wilt Disease and each nearby and apparently healthy oak tree within 50 feet of the infected tree;

(b) *Removal and disposal of trees 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;

(c) *Removal and disposal of trees 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;

(d) *Wood disposal.* All wood more than three inches in diameter or ten inches in circumference from such felled trees must be disposed of by burying or debarking or chipping or sawing into wane-free lumber or by splitting into firewood, stacking the firewood and immediately covering the woodpile with unbroken 4-mil 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; and

(e) *Control area.* The **CONTROL AREA** for Oak Wilt Disease is defined as all lands within the boundaries of the city.

(2) *Emerald Ash Borer.* **EMERALD ASH BORER** is declared 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.

(a) Control measures prescribed for abating Emerald Ash Borer are those provided in the document, *Minnesota Emerald Ash Borer Science Advisory Group Recommendations on Preparing for Emerald Ash Borer in Minnesota.*

(b) *Definition of control areas.* The **CONTROL AREA** for Emerald Ash Borer is defined as all lands within the boundaries of the city.

(3) *Dutch elm disease.* **DUTCH ELM DISEASE** is declared 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 inches in diameter or ten inches in circumference and could contain bark beetles or any spore or reproductive structures of the fungus *Ophiostoma ulmi* or *Ophiostoma novo-ulmi*.

(a) Control measures prescribed for abating 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 sawlogs if it is de-barked or covered from April 15 to October 15 with 4mm plastic. The edges of the cover must be buried or sealed to the ground.

(b) The *CONTROL AREA* for Dutch elm disease is defined as all lands within the boundaries of the city.

Penalty, see § 10.99