

ORDINANCE NO. 53, EIGHTH SERIES

**AN ORDINANCE OF THE CITY OF FERGUS
FALLS, MINNESOTA, DELETING CITY CODE
CHAPTER 151.002 ENTITLED TREES IN STREETS
AND AMENDING CITY CODE CHAPTER 96
ENTITLED TREES.**

THE CITY OF FERGUS FALLS DOES ORDAIN:

Section 1. City Code Chapter 151.002, Trees in Streets, is hereby deleted in its entirety.

Section 2. City Code Chapter 96 is hereby amended to read as follows:

CHAPTER 96: TREES

Section

Tree Management

- 96.01 Declaration of policy
- 96.02 Designated enforcement officer
- 96.03 Trees constituting nuisance
- 96.04 Inspection and investigation
- 96.05 Entry on private premises
- 96.06 Abatement of nuisance
- 96.07 Removal of infected trees and wood
- 96.08 Trees in right of ways
- 96.09 Interference prohibited

TREE DISEASES

§96.01 DECLARATION OF POLICY.

The City Council determines that the health of the elm, oak and ash trees within the city is threatened by fatal disease known as Dutch Elm, Oak Wilt and Emerald Ash bore diseases, and other trees may be threatened by other epidemic diseases of shade trees. The City Council further determines that the loss of elm, oak and other 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 City Council to control and prevent the spread of those diseases and this subchapter is enacted for that purpose.

§96.02 DESIGNATED ENFORCEMENT OFFICER.

It shall be the duty of the officer designated by the City Council to coordinate, under the direction and control of the City Council, all activities of the city relating to the control and prevention of Dutch Elm disease, Oak Wilt disease, Emerald Ash bore and other epidemic diseases of shade trees. The officer shall recommend to the City Council the details of a program for the control of diseases, and perform the duties incident to a program adopted by the City Council.

§96.03 TREES CONSTITUTING NUISANCE.

The following are 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* (Eichh.) or *Hylungopinus Rufipes* (Marsh);

(B) Any dead elm tree or part thereof, including 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;

(C) Any living or standing oak tree or part thereof infected to any degree with the Oak Wilt fungus *Ceratocystis fagacearum*;

(D) Any living or standing ash tree or part thereof infected to any degree with Emerald Ash bore, *Agrilus planipennis*, must be disposed of in accordance with Department of Natural Resources' procedures;

(E) Any dead oak tree or part thereof which, in the opinion of the designated officer, constitutes a hazard, including, but not limited to, logs, branches, stumps, roots, firewood or other oak material which has not been stripped of its bark and burned or sprayed with an effective fungicide; and,

(F) Any other shade tree with an epidemic disease.

§96.04 INSPECTION AND INVESTIGATION.

(A) As often as practical, the designated officer shall inspect all public and private premises within the city which might harbor any plant pest, as defined in state statutes as they may be amended from time to time, to determine whether any condition described in 96.03 of this Chapter exists thereon.

(B) The designated officer shall investigate all reported incidents of infestation of Dutch Elm fungus, Emerald Ash bore, elm bark beetles, Oak Wilt fungus or any other epidemic disease of shade trees.

§96.05 ENTRY ON PRIVATE PREMISES.

The designated officer or his or her duly authorized agents may enter upon private premises at any reasonable time for the purpose of carrying out any of the duties assigned under this subchapter.

§96.06 ABATEMENT OF NUISANCE.

It is unlawful for any person to permit any public nuisance, as defined in 96.03 of this chapter, to remain on any premises the person owns or controls within the city. The nuisances may be abated in the manner prescribed by this subchapter. In abating a nuisance defined in 96.03 of this chapter, the designated officer 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 epidemic diseases such as Dutch Elm disease, Emerald Ash bore and Oak Wilt disease. The designated officer shall also take other steps as are necessary to prevent root graft transmission of the diseases. The abatement procedures shall be carried out in accordance with current technical and expert opinions and plans as may be designated by the state's Department of Natural Resources.

§96.07 REMOVAL OF INFECTED TREES AND WOOD.

(A) *Action by the designated officer.* Whenever the designated officer finds, with reasonable certainty, that the infestation defined in 96.03 of this chapter exists in any trees or wood in any public or private place in the city, the designated officer shall, in writing, notify the owner of the existence of a nuisance, which notice shall state the owner has 60 days to abate the nuisance and avoid city action. However, the owner must respond to the notice within 14 days of receipt of the notice to what will be the disposition of the nuisance. If, within the 60 day period, the property owner has not abated the nuisance, the designated officer shall take action to remove and dispose of the nuisance at the owner's expense. (See division (C) below.)

(B) *Record.* The designated officer shall keep a record of the costs of abatement done under this chapter and shall report to the appropriate officer 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.

(C) *Assessment.* On or before September 1 of each year, the City Administrator shall list the total unpaid charges for each abatement against each separate lot or parcel to which they are attributable under this subchapter. The City Council may then spread the charges or any portion

thereof against the property involved as a special assessment under M.S. §429.101, as it may be amended from time to time, and other pertinent statutes for certification to the County Auditor and collection the following year along with the current taxes.

§96.08 TREES IN RIGHT OF WAYS.

(A) *City to control trees.* The city shall have control and supervision over all shrubs and trees upon or overhanging all streets or other public property. The supervision of all trees and shrubs may include ordering trimming or removal.

(B) *Permission to plant, remove and trim trees.* No person shall trim, cut or remove any of any tree which is under the supervision of the city without first procuring written permission from the city to do so, nor shall the authority conferred by written permission be exceeded. No person shall plant a tree or trees in a right of way or upon other public property under the supervision of the city without first procuring permission from the City Forester.

§96.09 INTERFERENCE PROHIBITED.

It is unlawful for any person to prevent, delay or interfere with the designated officer or his or her agents while they are engaged in the performance of duties imposed by this subchapter. However, it is a defense to prosecution under this subchapter that the interference alleged consisted of constitutionally protected speech only.

Section 3. Effective date. The effective date of this ordinance shall be the 24th day of March, 2024.

Section 4. Summary Publication. Pursuant to Minn. Stat. §412.191, in the case of a lengthy ordinance, a summary may be published. While a copy of the entire ordinance is available without cost at the office of the City Administrator, the following summary is approved by the City Council and shall be published in lieu of publishing the entire ordinance.

Ordinance No. 53, Eighth Series, adopted by the Fergus Falls City Council on the 4th day of March, 2024, deletes City Code Chapter 151.002 entitled Trees in Streets and amends City Code Chapter 96 entitled Trees.

THIS ORDINANCE was introduced on the 20th day of February, 2024, and adopted by the City Council of the City of Fergus Falls, Minnesota, on the 4th day of March, 2024, by the following vote:

AYES: Job, Kvamme, Kremeier, Rachels, Hicks
NAYS: None
ABSENT: Fish, Rufer, Thompson

ATTEST:
Andrew Bremseth
City Administrator

APPROVED:
Ben Schierer
Mayor

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