

**CITY OF MEDICINE LAKE
ORDINANCE NO. 140**

**AN ORDINANCE DECLARING NUISANCES AND ESTABLISHING A PROGRAM FOR THE PREVENTION OF
SHADE TREE DISEASE AND PEST CONTROL WITHIN THE CITY OF MEDICINE LAKE.**

The City of Medicine Lake does ordain:

Section 1. Purpose.

The health of the shade trees within the city limits is threatened by shade tree diseases and pests. It has further determined that the loss of shade trees growing upon public and private property would substantially depreciate the value of property within the City of Medicine Lake and impair the safety, good order, general welfare and convenience of the public. The purpose of this Ordinance is to control and prevent the spread of these diseases and pests within the City of Medicine Lake. This Ordinance is enacted for that purpose, and conforms to the policies and procedures embodied in Minnesota Statutes, Chapter 89, as amended, and rules promulgated there under.

Section 2. Definitions.

For purposes of this Ordinance, the following definitions apply:

- A. "Commissioner" means the Commissioner of the State Department of Agriculture.
- B. "Forestry" means the science, art, and profession of managing forests.
- C. "Forester" means the person contracted by the City to complete the duties as described in this Ordinance or her/his duly authorized agents.

Section 3. Duties of the Forester.

- A. It is the duty of the Forester to coordinate, under the direction and control of the City Public Works and Park Commissioner, all activities of the municipality relating to the control and prevention of Shade Tree Disease.
- B. The Forester shall recommend to the City Public Works and Park Commissioner, and Council the details of a program for the control of Shade Tree Disease, and perform the duties incident to such a program adopted by the Council.
- C. It is unlawful for any person to prevent, delay, or interfere with the Forester or City Public Works and Park Commissioner or duly authorized agents while they are engaged in the performance of duties imposed by this Ordinance.

Section 3. Shade Tree Disease Program.

It is the intention of the City Council to conduct a Shade Tree Control Program pursuant to the authority granted by Minnesota Statutes Chapter 89, as amended. This program is directed specifically at the

control and elimination of Shade Tree Diseases and pests and is undertaken at the recommendation of the City Public Works and Parks Commissioner and in conformance with rules promulgated by the same.

Section 4. Declaration of Shade Tree Diseases and Pests.

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.

Subd. 1. **Nuisances Declared.** The following are public nuisances whenever they may be found within the City of Medicine Lake:

- A. Any living or standing elm tree or part thereof infected to any degree with the Dutch elm disease fungus *Ophiostoma Nova-Ulmi* or *Ophiostoma Ulmi* or which harbors any of the elm bark beetles *Scolytus Multistriatus* (Eichh.) or *Hyluigopinus 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.
- C. Any living or standing oak tree, or part thereof infected to any degree with oak wilt disease (Scientific name for the fungus is *Bretziella fagacearum*).
- D. Any dead oak tree or part thereof, including logs, branches, stumps, firewood, or other oak material which has not been stripped of its bark and burned or sprayed with an effective fungicide.
- E. Any other shade tree with an epidemic disease.
- F. Any shade tree or shrub which is host to an insect and/or pest that threatens the health of the tree, including, but not limited to, the Gypsy moth, Asian Long-horned beetle, and Emerald Ash borer.
- G. Any tree or shrub which in the opinion of the Forester, has become or threatens to become a hazard so as to adversely affect public safety, whether such tree or shrub shall be on public or private property.

Subd. 2. **Abatement.** It is unlawful for any person to permit any public nuisance as defined in Subdivision 1 to remain on any premises owned or controlled by that person within City limits. Such nuisances may be abated in the manner prescribed by Section 6 of this Ordinance.

Section 5. Inspection and Investigation.

Subd. 1. **Frequency of Inspection.** The City Public Works and Parks Commissioner shall order the Forester to inspect all premises and places within the City as often as practical to determine whether any condition described in Section 4 exists thereon. The Forester shall investigate all reported incidents of infestation by Dutch elm fungus, elm bark beetles or oak wilt, or other Shade Tree Disease and pests or hazardous trees and shrubs.

Subd. 2. **Entry on Private Premises.** The Forester may enter upon private premises at any reasonable time for the purpose of carrying out any of the duties assigned the Forester under this Section. Such inspections shall be preceded by a legal notice published once annually in the City's legal newspaper and on the City's official web site informing all property owners within the City to destroy and dispose of tree materials declared a nuisance.

Subd. 3. **Diagnosis.** The Forester shall identify diseased trees according to generally accepted field diagnosis procedures such as wilting, yellowing of leaves and/or staining of cambial wood under tree bark. Confirmation of field diagnosis, when ordered by the Forester shall be completed by a Tree Disease laboratory approved by the Minnesota State Department of Natural Resources. The Forester shall assess potential hazardous trees. A hazard tree is a tree that has structural defects in the roots, stem, or branches that may cause the tree or part thereof to fail, where such failure may cause personal injury or property damage to a target. A "target" includes, but is not limited to, people, vehicles, buildings, and property, etc. Trees without targets are not considered hazards even if they are likely to fail and can be considered beneficial in habitat protection.

Section 6. Abatement of Shade Tree Disease Nuisances.

In abating the nuisances defined in Section 4, the Forester shall cause the infected tree, shrub or wood to be removed, burned, debarked, trenched or otherwise effectively treated so as to destroy and prevent as fully as possible the spread of disease and pests. Such abatement procedures shall be carried out in accordance with current technical and expert opinions and procedures as may be established by the Commissioner of Agriculture.

Section 7. Procedure for Removal of Infected Trees and Wood.

Subd. 1. **Findings.** Whenever the Forester finds with reasonable certainty that the infestation defined in this Section exists in any tree, shrub or wood in any public or private place in the City, the Forester shall proceed as follows: If the Forester finds that danger of infestation of other trees is imminent, or a potentially hazardous condition is identified, the Forester shall notify the City Council. The City Council or their designated officer, shall notify the property owner by mail and by leaving a notice on the property that the nuisance will be abated within a specified time, not more than 30 calendar days from the date of mailing of such notice. After the expiration of the time limited by the notice, the City may abate the nuisance, the costs of which will be assessed against the benefiting property as provided in Section 7, Subd. 4.

Subd. 2. **Records.** The City Public Works and Parks Commissioner shall keep a record of the costs of abatements ordered under this Subsection and shall report to the Council 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. 3. **Notice; Hearing.** The Council shall publish notice of its intention to meet to consider the adoption of a special assessment roll in accordance with the report provided by the City

Public Works and Parks Commissioner. The 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 properties affected, action proposed, and 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 proposed assessments. The Council shall thereafter adopt a resolution confirming the original resolution with such modification as it considers for the levy of special assessments.

Subd. 4. **Assessment.** Following the public hearing provided for in Section 7 Subd. 3., the Council may then spread the charges or any portion thereof against the property involved as a special assessment under pertinent State statutes for certification to the County Auditor and collection the following year along with current taxes.

Section 8. Interference Prohibited.

It is unlawful for any person to prevent, delay or interfere with the Forester or his/her agents while they are engaged in the performance of duties imposed by this Ordinance.

Subd. 9. 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 10. Effective Date

This Ordinance shall be in full force and effect from and after its passage and approval and publication, as required by law.

Passed by the City Council of Medicine Lake on April 3, 2023.

Chris Heim, Mayor

Attest: Therese Polum, City Clerk