

**WORTHINGTON CITY COUNCIL
SPECIAL MEETING**

3:30 P.M., Wednesday, May 23, 2018
City Hall Council Chambers

A. CALL TO ORDER

B. CITY COUNCIL BUSINESS

1. Council Action Regarding Vast Dropping KARE 11 from Their Line Up
2. Review and Discussion of Policy for Disposal of Real Property
3. Review of Hospital Proceeds Available Funds
4. Emerald Ash Borer
5. Local Option Sales Tax Projects
6. Cemetery Advisory Committee

C. ADJOURNMENT

ADMINISTRATION MEMO

DATE: MAY 23, 2018

TO: HONORABLE MAYOR AND CITY COUNCIL

SUBJECT: ITEMS REQUIRING CITY COUNCIL ACTION OR REVIEW

CASE ITEM

1. PROPERTY DISPOSAL POLICY

Prior to offering City-owned Dredge Site real property for sale, Council should either follow the Property Disposal Policy, attached as Exhibit 1, or make a determination that it isn't in the best interests of the City to follow the policy in this specific instance. Should Council decide to depart from the policy, the City Attorney recommends that the reason for departure be stated for future reference and precedence.

Council discussion and Staff directive is requested.

2. CASH FLOW ANALYSIS OF HOSPITAL FUNDS LOANS AND CASH AVAILABILITY

A cash flow analysis of the Hospital Funds loans and cash availability, as of April 30, 2018, is included as Exhibit 2.

Council discussion is requested.

CITY OF WORTHINGTON PROPERTY DISPOSAL POLICY

The purpose of this policy is to establish a means whereby the City may dispose of real or personal property.

A. DEFINITIONS

The following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

Contract - An agreement entered into by the City for the sale of supplies, materials, or other personal property, equipment, or the rental thereof, or the construction, alteration, repair or maintenance of real or personal property.

Dispose of - To sell, alienate, to finish with, bargain away or otherwise convey or transfer ownership, but not including destruction of waste materials or the sale of supplies and materials or other properties by the City in the course of a service being performed by the City in the ordinary scope of its municipal function.

Forfeited Property - All personal property where all right, title and interest thereto, has been acquired by the City pursuant to Minnesota law authorizing the forfeiture of motor vehicles and/or other personal property which have been used in the commission of certain designated offenses in violation of either the criminal code, Minnesota Statutes Chapter 609 and Chapter 152, or Minnesota Statutes Chapters 169-169A.

Personal Property - All property that is not real property and other than the property that has come into the hands of the Police Department and Public Works Department through impoundment.

Real Property - Land and its permanently affixed buildings or other structures, together with its improvements and its natural assets, such as minerals, crops, waters, and with the inclusion of corporeal or incorporeal rights that follow ownership of the land and with the interests in such rights.

Set of Items - More than one item of the same kind that belongs or are used together such that each item would suffer a reduction in value if separated from the other(s).

B. DISPOSAL OF REAL PROPERTY

The following procedures shall be followed when real property that has come into the possession of the City of Worthington, excepting unclaimed property, is intended to be disposed of:

1. **Council Determination.** Prior to the disposal of any real property, Council shall determine if the property is to be disposed of by public sale, disposed of by directed sale,

or transferred to the Economic Development Authority for economic development purposes.

- a. **Public Sale.** Unless otherwise found to be in the public's interest, property which is suitable for potential development or other beneficial use by more than one party is to be disposed of by public sale.
 - b. **Directed Sale.** Property which does not conform to zoning requirements in regards to size, area, or street frontage may be sold to owners of abutting properties without a public sale. Any title the City may have to vacated streets or alleys may be conveyed to the owners of abutting properties without a public sale. Council shall establish the manner the property is to be distributed to abutting owners, sale price and any other terms or conditions found appropriate.
 - c. **Conveyance for Economic Development.** Council may, upon finding it to be in the public's interest, transfer any property suitable for development to the Economic Development Authority for use or sale by the Authority in a manner consistent with the Authority's goals, purpose, and policies.
2. **Disposal by Public Sale.** The following procedures shall be followed when Council has determined that real property shall be disposed by public sale.
- a. **Process for Approval.** The City Administrator or his representative shall be responsible for preparation and processing for approval any real property intended for disposal by public sale. At the time he prepares to dispose of such property, the City Administrator or his representative shall first secure comments and recommendations from affected departments.
 - b. **Notice of Bids.** The City Administrator or his representative shall prepare a notice inviting sealed bids, to be published for two consecutive weeks in the official newspaper and at least five calendar days must intervene between the date of the last publication and the time for filing such sealed bids or proposals. This notice shall contain a description of the property and the terms and conditions of the sale, including any minimum acceptable bid amount.
 - c. **Form of Bids.**
 - (1) All bids shall be filed on forms furnished by the City Administrator or his representative. After receipt of the bids, the City Administrator or his representative shall present a listing of the bid to the City Council for consideration. At the discretion of the City Council, the property may be sold to the highest bidder unless otherwise provided in the notice of bids. Council approval is required before the property may be conveyed.

- (2) In the event the City Council rejects all bids, Council may call for rebidding or it may then authorize the City Administrator to list the property for disposition with one or more Realtors, or via electronic auction, or it may authorize the City Administrator to negotiate the disposition in a manner that he may deem appropriate. All final disposition of real property shall be approved by City Council.
- d. **Filing of Bond.** The City Administrator may require that any person who files a bid must also furnish a bond commonly referred to as a bidder's bond, or a cash deposit in the amount of not less than five percent of his bid.
- e. **Auction Sales.** If it is determined by the City Administrator that sealed bids should not be utilized or, if a sale was not successfully accomplished utilizing sealed bids, the Administrator may recommend to the City Council that the property be sold at public auction. The City Administrator or his representative, shall be responsible for preparing a notice to the official newspaper for at least two consecutive weeks which must be at least five days before the actual date of sale. The notice shall describe the location of the auction sale and a description of the properties to be sold. At the time of the public auction, the City shall be responsible for providing services of an auctioneer or other personnel necessary to carry out the public auction. The City Administrator, upon completion of the public auction, shall prepare a record of all transactions and file such record with the City Clerk.
- f. **Books and Accounts.** The City Administrator shall be responsible for maintaining a record of each sale and the disposition of money received.

It should be noted that the open meeting law was amended in 2004 to allow a public body to close a meeting for negotiations concerning the purchase or sale of real or personal property. The law permits a closed meeting: (1) to determine the asking price and strategy for the sale of real or personal property; (2) to review appraisal data classified as confidential or nonpublic; and (3) to develop or consider purchase or sale offers or counter-offers. Before holding a closed meeting the public body must identify the subject property on the record. Proceedings of a closed meeting for one of these purposes must be recorded and kept for eight years. Finally, the actual purchase or sale must be approved at an open meeting and the purchase price or sale price is public data.

RESTRICTIONS ON SALES TO EMPLOYEES OF THE CITY OF WORTHINGTON

No real or personal property shall be sold to any officer or employee of the City unless the sale is open, public and competitive. Nothing herein shall prevent the conveyance of real property to an officer or employee of the City as an abutting owner in a directed sale.

C. DISPOSAL OF PERSONAL PROPERTY

All sales of City supplies, materials, or equipment, or other personal property including forfeited property or the rental thereof, shall comply with the provisions of Minnesota Statutes 471.345, "Uniform Municipal Contracting Law."

1. If the estimated market value of the item or set of items is \$10,000.00 or less the sale may be made by quotation or in the open market at the discretion of the City Administrator or General Manager of Utilities or their designee and conducted in a commercially reasonable manner.
 - a. **Sale by Quotation.** Sales made by quotation shall be based, so far as practicable on at least two quotations which shall be kept on file for at least one year from the date of their receipt.
 - b. **Sale in the Open Market.** Sales made in the open market shall specifically include placement of the item or set of items in public auctions, established dealer auctions, or established salvage auctions, which are conducted by a licensed broker and which have been previously approved by the City Administrator or General Manager of Utilities. Open market sales may also include sales made by online electronic auction upon the approval of the City Administrator or General Manager of Utilities.
2. If the estimated market value of the item or sets of items is more than \$10,000 but not in excess of \$50,000 the City Administrator, General Manager of Utilities or their designee may authorize the sale to be made by either the receipt of sealed competitive bids solicited by public notice or by direct negotiation. All such sales shall be conducted in a commercially reasonable manner.
 - a. **Sale by Sealed Competitive Bids.** Sales made by the receipt of competitive bids shall be accordance with procedures established by the City Administrator or the General Manager of Utilities, who shall have the authority to establish a minimum acceptable sale price.
 - b. **Sale by Direct Negotiation.** Sales made by direct negotiation shall include the receipt so far as practicable of at least two quotations, which shall be kept on file for at least one (1) year from the date of their receipt. Sales made by direct negotiation shall also specifically include sale by publication, established dealer auctions or established salvage auctions which are conducted by a licensed broker and which have been previously approved by the City Administrator or General Manager of Utilities. Direct negotiation sales may also include sales made by online electronic auction upon the approval of the City Administrator or General Manger of Utilities.

3. If the estimated market value of item or items is in excess of \$50,000 it must be sold by the receipt of sealed competitive bids solicited by public notice. The acceptance or rejection of bids shall be by the City Council or the Water and Light Commission.
- a. **Notice of Bids** - The City Administrator, General Manager of Utilities or their representative shall prepare a notice inviting sealed bids to be published for two consecutive weeks in the official newspaper and at least five (5) calendar days must intervene between the date of the last publication and the time for filing such sealed bids or proposals. This notice shall contain a description of the property and the terms and conditions of sale.
 - b. **Form of Bids** - All bids shall be filed on forms furnished by the City Administrator, General Manager of Utilities or their representative. After receipt of the bids, the City Administrator, General Manager of Utilities or their representatives shall present a listing of the bids to the City Council or Water and Light Commission for acceptance. The property shall be sold to the highest bidder unless otherwise provided in the notice to bid.
 - c. **Rejection of Bids** - In the event the City Council or Water and Light Commission rejects all bids as referred to in the notice of bids, they may call for rebidding, or they may authorize the City Administrator or General Manager of Utilities to negotiate the disposition in a manner that they deem appropriate.
 - d. **Receipts from Sales of Property** - Unless state law provides otherwise, all receipts from sales of property under this Section shall be placed in the account for the department disposing of the excess property. If not a particular department then back into the General Fund.

Nothing in this policy is intended to prohibit the disposal of personal property determined to be "scrap" by delivery of such material to an established salvage company, provided that the scrap value does not exceed \$5,000.

Adopted by the City Council of the City of Worthington this 12 day of October, 2004.



Mayor

Attest: 
City Clerk

CITY OF WORTHINGTON
WRH FUNDS LOANS AND
CASH AVAILABILITY
(CASH FLOW ANALYSIS)

AS OF APRIL 30, 2018

		DATE OF "LOAN"	ORIGINAL \$\$ AMOUNT	CURRENT \$\$ BALANCE	RETIREMENT DATE
Memorial Auditorium (sales tax)	LEGACY	Dec-10	1,150,000.00	305,000.00	Feb-19 (Sept 2017??) *
Hotel (TIF)	IMPACT	Oct-12	435,000.00	290,198.00	Feb-23
SW Mental Hlth Center	IMPACT	Mar-13	400,000.00	348,686.00	Mar-43
Rising Sun Apts (HRA)	LEGACY	Aug-15	800,000.00	742,546.00	Aug-45
Mall (max \$2.45M)	IMPACT	2016	2,164,380.69	1,317,198.00	??
			4,949,380.69	3,003,628.00	

*Estimated date of sales tax collections to pay-off loan.

	IMPACT	LEGACY	
CASH BALANCE--4/30/18	1,223,802.00	8,445,650.00	9,669,452.00
<u>FUTURE COMMITMENTS</u>			
BAC Training Center	-220,000.00		
HWY 59		-405,000.00	
Initial Dev. N. Ind/Comm Park		-55,976.00	
MN West Housing		-900,000.00	
Housing		-1,500,000.00	
PW Building		-3,300,000.00	(no repayments)
Beach Nook		-550,000.00	-6,130,976.00
Pavillion		-1,000,000.00	
WELL		-2,000,000.00	
Splash Pad		-400,000.00	
<u>LOAN REPAYMENTS</u>			
Per schedule above	1,956,082.00	1,047,546.00	(repayments)
MN West Housing		900,000.00	
PW Building		3,300,000.00	
REMAINING AVAILABLE	2,959,884.00	3,582,220.00	
GRAND TOTAL REMAINING *		6,542,104.00	6,542,104.00

* Possible repayments for sale of land North of I-90 not included in "Remaining Amount"
(Paid in excess of \$1M from WRH funds for land purchase)

PUBLIC WORKS MEMO

DATE: MAY 23, 2018

TO: HONORABLE MAYOR AND CITY COUNCIL

SUBJECT: WORK SESSION

REVIEW ITEM

1. EMERALD ASH BORE MANAGEMENT PLAN

With the highly publicized discovery of the Emerald Ash Bore in Martin County, Minnesota and Minnehaha County, South Dakota. City Public Works staff would like City Council to review and comment on a proposed EAB management plan. The non-native pest has now been found within 60 miles both East and West of our community, and City Forestry staff feels strongly that it is only a matter of time before we find it here in Worthington!

Staff feels that we need to incorporate some plans to deal with this pest, if and when it is discovered in Worthington. We would like Council's direction on:

- Systematic removal of trees (number per year, where?)
- Ordinances (firewood sales, disposal, private removals, Etc.)
- Budget Items (treatments, removals, disposal options, replanting)

City Forestry staff feels that we need to be prepared and have all of the resources available to minimize the devastating effect which this non-native pest can have on our urban forest.

Staff has included a first draft for Council's review and a copy of our tree ordinances.

City of Worthington EAB Management Plan

May 15, 2018

Purpose:

The City will take a proactive approach to mitigate the spread of Emerald Ash Borer and spread the physical and fiscal costs associated with the outbreak of Emerald Ash Borer over an extended time frame. The loss of ash trees in Worthington will have a devastating effect on home values, quality of life and the environment. Our goal is to buffer that impact by implementing current best management activities.

Introduction:

The Emerald Ash Borer (EAB) is a non-native insect that was introduced to North America from Asia. It was discovered in the Detroit, Michigan / Windsor, Ontario area in 2002 and probably arrived in wood packing materials on cargo ships or airplanes. Despite eradication and suppression efforts, EAB has killed over 20 million Ash trees in Michigan, Ohio, Indiana, Illinois, Maryland and Ontario. EAB is a beetle that is smaller than a dime. The adult does very little damage. However, this is not the case with the larvae (immature stage) that feed on the inner bark of Ash trees. This feeding disrupts the tree's ability to transport water and nutrients. Larval feeding takes place over a period of years and eventually kills the infested tree. All species of Ash are susceptible. Because EAB is hard to detect, it can be present for years before an infestation is confirmed. There are some treatment control measures for EAB, but do to the ongoing cost associated with these treatments, they may not be suitable in a public setting. This means that it has the potential of killing millions more Ash trees throughout the United States and Canada. EAB was first discovered in Minnesota on May 13, 2009 (est. infestation of 2005) in the city of Saint Paul.

Economic Impact:

Removing and replanting Ash trees will be a tremendous physical and financial challenge for the City and private property owners. Utilizing a simple formula for removals, stumping and replanting a cost estimate can be determined. For example, consider an average removal cost of \$400, (disposal, stump removal, and restoration) and an average replanting cost of \$200. At these rates, the economic impact of losing just the approximately 1050 boulevard trees and the 400 park trees would be about \$870,000.

Tree Management:

The City of Worthington must prepare and manage for the arrival of EAB on three fronts:

- Boulevard trees within the right-of-way
- Public property (i.e. Parks, Auditorium, City owned lots etc.)
- Private property trees

Boulevard Trees:

1. The City has begun a policy of excluding any new Ash trees on public right-of-way (ROW) – with the recommendation that citizens and businesses discontinue the use of Ash in new plantings.
2. The City will remove any boulevard Ash tree, at citizen request, that is in a state of decline.
3. Trees removed from the boulevard will be replaced if all tree replanting utility easements are clear and the homeowner does want a tree replaced. New tree plantings will be done with species diversity in mind.

Public Property Trees:

1. The City will not plant any new Ash trees on public property.
2. The City shall begin to remove any poor quality trees or trees with major defects.
3. The City will continue to cooperate with the Minnesota Department of Agriculture and Minnesota Department of Natural Resources to establish EAB detection trees as needed on City property.

Private Property Trees:

1. There are thousands of Ash trees, large and small, on private property in Worthington. No reliable inventory exists, and Ash densities vary by neighborhood.
2. Property owners are urged to monitor for the EAB.
3. City of Worthington Ordinance, Chapter 95, Trees, will be updated to reflect the Emerald Ash Borer threat. The same parameters concerning Dutch elm disease are appropriate measures to slow the spread of EAB.
5. The City also encourages residents to replace trees lost with species appropriate for the site, or to plant new trees in advance of EAB infestation and Ash removal as a way of lessening the large economic and environmental impact of the EAB.

Ordinances and Policies:

The City's updated Ordinances and policies must outline what actions the City can take to manage diseased trees. Ordinance revisions will be recommended to the City Council as appropriate to address the infestation of EAB.

Development Plan Approval Process:

Future approvals of development/redevelopment should include a condition stating that no Ash trees shall be allowed as a condition of approval.

Inventory:

A complete boulevard tree survey was conducted in 2010 by city staff. The inventory included location, species, and condition of each tree. Of the 4,200 trees inventoried 1,600 or 33% were found to be Ash trees. This data will help determine which trees and which areas of the City will be targeted for structured removal.

Structured Removal:

The City will adopt a proactive "Structured Removal Plan" of Ash trees, including those in decline, and areas of the City with large pockets of Ash trees in anticipation of the larger loss of the entire Ash

population. The intent is to hopefully slow the spread of EAB by reducing host trees, thus, spreading out management costs over several years by avoiding a “spike” in diseased and dangerous trees.

Disposal:

The prompt removal of EAB infested trees is the first priority in the City’s management plan. The probable loss of thousands of Ash trees creates several challenges for the City in regards to public trees as well as residents and commercial tree services dealing with private property trees.

The most critical period for movement of confirmed EAB Ash trees is the months of May - July. This is the period where adult beetles emerge from trees, begin feeding on foliage, move to even more trees, and lay their eggs. During this period, it is best to leave these trees standing and not chance the possible spread of EAB by transporting beetle infested wood to other areas. After this period, from about August 1st to April 30th each year, EAB trees can be removed and transported so long as they are promptly chipped to the required dimensions, less than 1”x1”x1” in any one dimension, effectively killing any EAB larvae.

Reforestation:

Replanting as ash trees are removed is arguably the most important part of the EAB Management Plan. Reforestation with a diversity of young trees is the primary objective in retaining our urban forest and reducing the chance of future wide-spread, devastating tree loss events caused by biological factors. We should strive for a tree diversity of no more than 10-12% of any given species on public land and ROW. While it is impossible to avoid the onset of pests and diseases, avoiding monocultures through diversity and mixed planting schemes can help reduce the impact. The tree inventory will be a valuable tool in reforestation efforts.

The goal of the EAB Management Plan should be to replant as many new trees as possible for every Ash tree lost. However, if EAB spreads rapidly and funding does not keep pace, the concern is replanting could fall far behind the number of trees removed. All the more important that both residents and officials understand the many benefits that trees provide and the financial as well as environmental impact that will occur if we do not maintain adequate reforestation as part of the program.

Outreach:

The City of Worthington has been active in engaging residents and educating them on EAB at the annual Arbor Day Celebration as well as through newsletter articles. In addition to utilizing TV, radio and newspaper media coverage, there are other means whereby the City can disseminate information about EAB. The most accessible are those that the City has direct control over. These include: The City newsletter, our web site, direct mail and cable TV.

City of Worthington Contacts:

Todd Wietzema

Director of Public Works

Scott Rosenberg

City Forester

1.800.445.5588.PLANTING AND MAINTENANCE OF TREES ON PUBLIC PROPERTY

§ 95.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

PARK TREES. Trees, shrubs, bushes and all other woody vegetation in public parks having individual names, and all areas owned by the city, or to which the public has free access as a park.

STREET TREES. Trees, shrubs, bushes, and all other woody vegetation on land lying between property lines on either side of all streets, avenues, or boulevards within the city.

TREE SIZES.

SMALL TREE. Any plant material that will grow to a height of 30 feet.

MEDIUM TREE. Any plant material that will grow to a height of 50 feet.

LARGE TREE. Any plant material that will grow to a height of over 50 feet.

(Ord. 803, passed 12-12-94)

§ 95.02 ESTABLISHMENT, DUTIES OF CITY TREE ADVISORY BOARD.

(A) The Park and Recreation Advisory Board shall appoint a standing subcommittee from its membership or from other residents of the city to serve as a City Tree Advisory Board. The Park and Recreation Advisory Board shall prescribe the number of members, term of office, and subsidiary responsibilities not defined by ordinance for the City Tree Advisory Board.

(B) It shall be the responsibility of the City Tree Advisory Board to assist the City Forester in the development and administration of a written plan for the care, preservation, pruning, planting, replanting, removal or disposition of trees and shrubs, in parks, along streets and in other public areas. The plan shall be presented to the Council, and following the review and approval by the Council shall constitute the official comprehensive City Tree Plan. The Board, when requested by the Council, shall consider, investigate, make findings, report and recommend upon any special matter of question coming within the scope of its work.

(Ord. 803, passed 12-12-94)

§ 95.03 STREET TREE SPECIES TO BE PLANTED.

No species may be planted on public property within the city without the prior written permission of the City Forester. The City Forester shall review all requests for planting to assure that the species are appropriate.

(Ord. 803, passed 12-12-94)

§ 95.04 SPACING AND LOCATION OF STREET TREES.

(A) *Spacing.* The spacing of street trees shall be in accordance with tree species size classes provided in this chapter, and no trees may be planted closer together than as follows: small trees, 30 feet; medium trees, 40 feet; and large trees, 50 feet; except in special plantings designed or approved by the City Forester. No coniferous or fruit bearing type trees shall be allowed in street boulevards.

(B) *Location.* The location of street trees will be determined by the City Forester based on tree species size classes listed in division (A), location of current and projected utilities, and dimensions of the boulevard area. No trees may be planted closer to any curb than the following: small trees four feet; medium and large trees, five feet. No tree(s) may be planted closer than

three feet to any sidewalk. In commercial and industrial districts where physical conditions preclude the application of these standards, alternative tree planting methods may be approved by the City Engineer and City Forester.

(C) *Corners, fire hydrants and driveways.* On any corner lot, no foliage, fence, sign or other structure shall extend or be erected between a height of two and one-half feet and eight feet above the elevation of the established grade at the intersection of the two street lines on that part of the lot which is bounded by the street lines of the two intersected streets and a line connecting two points of the street lines 25 feet from their point of intersection. No street tree shall be planted closer than 15 feet to any fire hydrant, nor five feet from any driveway.

(D) *Utilities.* No street trees may be planted under, or within ten level feet of, any overhead utility wire; or over or within ten lateral feet of any underground water line, sanitary sewer line, storm sewer line, or other utility buried greater than five feet deep; or over or within five lateral feet of any underground utility buried less than five feet deep.

(Ord. 803, passed 12-12-94) [Penalty, see § 10.99](#)

§ 95.05 PUBLIC TREE CARE.

(A) *Care of street trees.* The city shall have the right to plant, prune, maintain, and remove trees, plants, and shrubs within the lines of all streets, alleys, avenues, lanes, squares, and public grounds as may be necessary to insure the public safety or to preserve or enhance the symmetry and beauty of such public grounds. No other planting may be done without consent of the City Forester.

(B) *Removal of certain trees.* The City Forester may remove or cause or order to be removed any tree or part thereof which is in an unsafe condition or which by reason of its nature is injurious to sewers, electric power lines, gas lines, water lines, or other public improvement, or is affected with any injurious fungus, insect, or other pest.

(C) *Trees on private property.* The City Forester shall have the authority to order the trimming, treatment, and removal of trees, shrubs or plants upon private property when such action is necessary to public safety or to prevent the spread of disease or insects to trees, shrubs, or plants located on public property. Any tree or shrub situated upon private property, but so situated as to extend its branches over the improved portion of a public street or highway easement, shall be so trimmed by the owner of the real property upon which the same is located, so that there is a clear height of at least eight feet over that portion of such easement that is used for vehicular traffic and over that portion of such easement used for pedestrian travel; and such persons shall remove the dead or diseased branches or stubs of trees which are or may become hazardous to the public use of such easement.

(1) All orders to trim, remove, or treat trees, shrubs, or plants given pursuant to this section, shall be in writing and shall be served in person or by first class mail upon the owner of the property where such trees, shrubs, or plants are located. Such orders shall afford the owner of the property not less than 14 days from the date of the mailing of such notice to comply with such order. It shall be unlawful for any owner of property receiving such an order to fail to comply with the order in the time specified.

(2) If the required action is not taken by the property owner within the specified time, the city may cause the trees, shrubs, or plants concerned to be trimmed, removed, or treated, with the costs being borne by the property owner. If not voluntarily paid to the city by such owner, the costs of such trimming, removal, or treatment may be recovered by the city by special assessment upon the property.

(Ord. 803, passed 12-12-94) [Penalty, see § 10.99](#)

§ 95.06 PERMIT TO PLANT, REMOVE AND TRIM TREES.

(A) No person shall plant or remove any trees on public property without first procuring a written permit from the City Forester, nor shall the authority conferred by such a permit be exceed.

(B) No person shall be allowed to trim park trees except those expressly authorized by the City Forester. No person shall be allowed to trim street trees where the branches are in excess of three inches in diameter without first procuring a written permit from the City Forester, nor shall the authority conferred by such permit be exceeded.

(Ord. 803, passed 12-12-94) [Penalty, see § 10.99](#)

§ 95.07 EMERGENCY TREE REMOVAL.

No tree or portions thereof on private property shall be allowed to block a public sidewalk or street. The city shall provide for the immediate removal of the tree(s) with such cost to be paid by the property owner, and may be recovered by the city by special assessment upon the property.

(Ord. 803, passed 12-12-94) [Penalty, see § 10.99](#)

§ 95.08 TREE TOPPING.

It shall be an unlawful practice for any person, firm, or city department to top any street tree, park tree, or other tree on public property without authorization from the City Forester. Topping is defined as the severe cutting back of limbs to stubs larger than three inches in diameter with the tree's crown, to such a degree so as to remove the normal canopy and disfigure the tree. Trees severely damaged by storms or other causes, or certain trees under utility wires or obstructions where other pruning practices are impractical may be exempted from this section at the determination of the City Forester.

(Ord. 803, passed 12-12-94) [Penalty, see § 10.99](#)

§ 95.09 INTERFERENCE WITH CITY FORESTER.

It shall be unlawful for any person to prevent, delay, or interfere with the City Forester, or any of his/her agents, while engaging in and about the planting, cultivating, mulching, pruning, spraying, or removing of any street trees, park trees, or trees on private grounds, as authorized in this subchapter.

(Ord. 803, passed 12-12-94) [Penalty, see § 10.99](#)

DUTCH ELM DISEASE

§ 95.20 DECLARATION OF POLICY.

The city has determined that the health of the elm trees 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 that value of property and impair the safety, good order, general welfare and convenience of the public. It is declared to be the intent of the city to control and prevent the spread of this disease and this section is intended for that purpose. ('69 Code, § 6.71, Subd. 1)

§ 95.21 DUTCH ELM DISEASE PROGRAM.

It is the intention of the city to conduct a program of plant pest control pursuant to authority granted by M.S. § 18.022. 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 Commissioner of Agriculture. The City Forester, hereinafter provided for, shall act as coordinator between the Commissioner of Agriculture and the city in the conduct on the program.

('69 Code, § 6.71, Subd. 2)

§ 95.22 PUBLIC NUISANCE DECLARED.

The following things are public nuisances whenever they are found within the city:

(A) Any living or standing elm tree or part thereof infected to any degree with Dutch Elm Disease fungus, *Ceratocystis ulmi* (Buisman) Mureau, or which harbors any of the elm bark beetles, *Scolytus multistriatus* (Eich.) or *Hylurgopinus 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.

('69 Code, § 6.71, Subd. 3)

§ 95.23 ABATEMENT PROCEDURES.

(A) *Abatement.* It is unlawful for any person to permit any public nuisance as herein defined to remain on any premises owned, leased, occupied, or controlled by him. Such nuisance may be abated in the manner prescribed by this section. ('69 Code, § 6.71, Subd. 4)

(B) *Inspection and investigation.*

(1) The City Forester, his agents or employees, shall inspect all premises and places within the city as often as practicable to determine whether any condition described herein exists thereon. They shall investigate and report incidents of infestation of Dutch Elm fungus or elm bark beetles to the Council.

(2) The City Forester, his agents or employees, may enter upon private premises at any reasonable time for the purpose of carrying out any of the duties assigned to them hereunder.

(3) The City Forester, his agents or employees, upon finding conditions indicating Dutch Elm infestation, immediately shall take and send appropriate specimens or samples to the Commissioner of Agriculture (Bureau of Plant Industry) State of Minnesota, for analysis, or take such other steps for diagnosis as may be recommended by the Commissioner of Agriculture. No action to remove infected trees nor wood shall be taken until positive diagnosis of the disease has been made.

(4) Within five days of receipt of the diagnosis, the owner, lessee, occupant or person in control of the property from which the specimen was obtained shall be notified of the result by registered mail.

('69 Code, § 6.71, Subd. 5)

(C) *Abatement of Dutch Elm Disease nuisance.* In abating the nuisances defined herein, the City Forester, his agents or employees, shall cause the infected tree or wood to be removed and 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 the current technical and expert methods and plans as may be designed by the Commissioner of Agriculture of the State of Minnesota. The city shall establish specifications for tree removal and disposal methods consistent therewith. ('69 Code, § 6.71, Subd. 6)

(D) *Abatement of Dutch Elm nuisance on private property.* Whenever the City Forester, his agents or employees, finds with reasonable certainty that a nuisance, as defined in § 95.22, and the nuisance is located on private property, outside any public way in the city, they shall notify by registered or certified mail, the owner, lessee, occupant or person in control of such property on which the nuisance is found, of the infestation and direct that the infestation shall be removed and burned, or otherwise effectively treated in an approved manner by such owner, lessee, occupant or person in control within ten days after receipt of such notice. The notice shall also state that if such nuisance shall not be abated by the owner, lessee, occupant or person in control within the time provided, the owner, lessee, occupant or person in control may be charged with a violation of this section for maintaining a nuisance and that the city by and through its Council may abate the nuisances and assess the costs against said property. If the owner, lessee, occupant or person in control of any private premises upon which such a tree is situated fails to have such a tree so removed and burned or otherwise effectively treated, within ten days after receipt of

notification by mail the City Forester, his agents or employees, shall proceed to have such tree removed and burned or otherwise effectively treated, and any expense incurred by the city in so doing shall be a charge and lien upon the property and shall be collected as a special assessment in the same manner as other special assessments. ('69 Code, § 6.71, Subd. 7) (Ord. 481, eff. 9-13-71)

§ 95.24 COLLECTION OF ASSESSMENT.

The cost of the assessment of any such nuisance paid by the city and not reimbursed by the owner on or before September 1 of each year shall be reported by the City Forester to the Council and the Council shall assess and levy and cause to be collected the amount of such costs as a special assessment upon and against the premises and property upon which said nuisance existed in like manner as such other special assessments, payable in one sum.

('69 Code, § 6.71, Subd. 8)

§ 95.25 TRANSPORTING ELM WOOD PROHIBITED.

It is unlawful for any person to transport within the city any bark-bearing elm wood without having obtained a permit from the City Forester. The City Forester shall grant such permits only when the purpose of this subchapter shall be served thereby.

('69 Code, § 6.71, Subd. 9) [Penalty, see § 10.99](#)

§ 95.26 INTERFERING WITH CITY FORESTER PROHIBITED.

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

('69 Code, § 6.71, Subd. 10) [Penalty, see § 10.99](#)

§ 95.27 POSITION OF CITY FORESTER CREATED.

The position of City Forester is hereby created. The Superintendent of Public Works of the city or such other city official or person as may be designated from time to time by the City Administrator shall perform the duties of City Forester.

('69 Code, § 6.71, Subd. 11)

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