

ORDINANCE NO. 355

AN ORDINANCE PROVIDING FOR THE CONTROL AND PREVENTION OF ALL HIGHLY CONTAGIOUS AND/OR DESTRUCTIVE TREE DISEASES, THE TRIMMING AND CARE OF TREES, THE PLANTING OF TREES, AND REMOVAL OF UNSOUND DISEASED TREES; DEFINING NUISANCE, AND PROVIDING FOR THE ABATEMENT THEREOF; AND PROVIDING PENALTIES FOR VIOLATION THEREOF.

Whereas the City Council has determined that the health of the elm trees within the City of Rolla is threatened by a fatal disease known as Dutch elm disease and that the loss of these trees growing upon public and private premises would substantially depreciate the market value of the property and impair the safety and welfare of the public and that the program for tree planting and tree care should be more fully defined, the City Council of the City of Rolla do ordain:

Section 1. Administration:

- (a) The position of City Forester is hereby created to be filled by appointment by the City Council upon the recommendation of the Shade Tree Committee created in Section 1 (b). The duties of the City Forester are to enforce this ordinance and to coordinate all tree programs in the City of Rolla.
- (b) A Shade Tree Committee of 5 or 6 members is hereby created to be filled by appointment by the City Council. The committee shall consist of the following or similar composition and shall be appointed as follows:
 - I. For a term of one(1) year for the first year.
 - One member from the County Extension Office
 - One representative of the Public utilities
 - One citizen at large
 - II. For a term of two (2) years
 - One representative of the City Park Board
 - One representative of the Street or Engineering Dept.
 - One citizen at large

Annually thereafter, Group I and Group II shall be re-appointed alternately.

The duties of the Shade Tree Committee shall be to advise and aid in the coordination of the tree care programs in the City of Rolla and to recommend personnel for the position of City Forester.

Section 2. Nuisance Declared: The following are considered

public nuisances whenever they may be found within the City of Rolla

- (a) Any living or standing elm tree or part thereof infected to any degree with the Dutch elm disease fungus, *Ceratocystis ulmi*, and which harbors any of the elm bark beetles, *Scolytus multistriatus* or *Hylurgopinus rufipes*.
- (b) Any tree harboring insect or disease organisms of a contagious and fatal nature which pose a serious threat to surrounding trees if not immediately removed and disposed of.
- (c) Any dead elm tree or part thereof, including logs, branches, stumps, firewood or other elm material from which the bark has not been removed to chipped or buried in a land fill.
- (d) Any tree, shrub or hedge, or part thereof, growing upon public property or upon private property and/or overhanging or interfering with the use or vision of any public walk, street or highway, park, public place or street sign, within the City of Rolla, which in the opinion of the City Forester endangers the life, health, safety, or property of the public, shall be declared a public nuisance.
- (e) Any tree, shrub, or hedge, or part thereof growing upon public property or upon private property which is found to be dangerous or unsafe shall be declared a public nuisance.

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

Section 4. Inspection and Investigation:

- (a) The City Forester, his employees or agents shall inspect all premises and places within the City as often as practicable to determine whether any condition described in Section 2 exists therein.
- (b) The City Forester or his employees or agents may enter upon private premises at any reasonable time for the purpose of carrying out any of the duties assigned to them under this ordinance.
- (c) The City Forester, upon finding a suspect Dutch elm diseased tree, immediately shall take and send

appropriate specimens of samples to a qualified plant disease diagnostician. No action to remove suspect trees or wood shall be taken until positive diagnosis of the disease has been made.

- (d) With five days of receipt of the diagnosis, the owner of the property from which the specimen was obtained shall be notified by the City Forester of the result by registered mail.
- (e) A major survey shall be made every 5 years.
- (f) The inspection shall determine all hazards as specified in Section 2(d). The owner shall be notified in writing of the existence of the nuisance and given a reasonable time for its removal.

Section 5. Abatement of Nuisance on Public Property:

- (a) In abating the nuisances on public streets, alleys, boulevards or public ways as defined in Section 2(a and b), the City Forester shall cause the infected tree or wood to be removed 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 latest technical and expert methods and plans as may be designated by the Commissioner of Agriculture of the State of North Dakota. The City Forester shall establish specifications for tree removal and disposal methods consistent therewith.
- (b) In abating tree hazards on public property as defined in Section 2(c), the City Forester shall cause such hazards to be removed and disposed in accordance with tree care regulations of the Forestry Department, the cost be assessed as defined in Section 8.

Section 6. Abatement of Nuisances on Private Property:

- (a) Whenever the City Forester finds with reasonable certainty that the Dutch elm disease defined in Section 4(c) exists in any tree or wood located on private property, outside of any public way in the City, he shall notify the owner or person in control of such property on which the nuisance is found by registered or certified mail within five days of receipt of the diagnosis. The City Forester shall direct that the diseased tree be removed and effectively treated in a manner approved by the City Forester within ten (10) days receipt of such notice. If such owner cannot be found, a copy of said notice shall be posted upon said infected tree. If said tree

is not so removed and/or treated as specified within ten days after posting of the notice, the City Forester shall remove and/or treat said tree. The owner or person in charge may be charged with a violation of this ordinance of maintaining a nuisance and that the City by and through its Office of the City Forester may abate the nuisance, the cost be assessed as defined in section 8.

(b) Abatement of Tree Hazards on Private Property:

The nuisance as defined in Section 2(d and e) shall be abated by the owner following notification of the existing nuisance. If not corrected or removed within the time allotted, the City Forester shall authorize the removal or correction to be done in accordance with recommended procedures of the Office of the City Forester, the property owner to bear the cost.

(c) The City Auditor shall keep in City office a book called "Nuisance Abatement, Special Assessment Book" and shall enter the cost of the abatement of a nuisance as declared by the City Council therein as a special assessment against the lot or parcel of land from which the nuisance was abated, with the name of the owner.

(d) At the regular meeting of the City Council in October of each year, the City Council shall review all such assessments and hear all complaints against the same and approve the same as finally adjusted, and the City Auditor shall certify to the County Auditor a list of the lots and parcels of land specially assessed for such purpose, and the sum shall be collected as other city taxes are collected.

Section 7. Interference Prohibited: It shall be unlawful for any person to prevent, delay or interfere with the City Forester, his employees or agents while they are engaged in the performance of duties imposed by this ordinance.

Section 8. Costs: The costs for abating of the public nuisances as defined in Section 2 shall be borne as follows:

(a) For abatement of the nuisance as defined in Section 2(a)(b) and with the nuisance occurring on public land, the cost will be borne by the City of Rolla as provided herein.

(b) For abatement of the nuisance as defined in Section 2(a)(b) and with the nuisance occurring on private land or any street, alley, boulevard or other public way adjoining the private property, the cost shall be

borne by the private owner.

- (c) For abatement of the nuisance as defined in Section 2(d and e), the costs shall be borne by the private owner if occurring on private land.
- (d) For abatement of the nuisance as defined in Section 2(d and e), and the nuisance occurring on public land, the cost will be borne by the City of Rolla.
- (e) The cost of tree planting for replacement of diseased trees on boulevards private property will be borne by the private owner.

Section 9 Tree Care Maintenance

- (a) It shall be unlawful as a normal practice for any person, firm or city department to top any street tree, park tree or other tree on public property. Topping is defined as the severe cutting back of limb to stubs larger than three (3) inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree.
- (b) Exemptions are made to Section 14 in the event of an emergency condition as determined by the public utilities companies.
- (c) Every owner of any tree overhanging any street or right-of-way within the city shall prune the branches so that such branches shall not obstruct the light from any street lamp or obstruct the view of any street intersection and so that there shall be a clear space of eight (8') feet above the surface of sidewalk and twelve (12') feet above street.

Section 10. Injuring Trees and Shrubs: It shall be unlawful to injure any tree or shrub planted or growing in any boulevard.

Section 11. Trimming: It shall be unlawful for any person to trim trees in any boulevard unless done as follows:

- 1) All cuts shall be made with a saw or pruner and only at the node crotches. No stubs shall be left.
- 2) All dead or rotted limbs in the utility trimming areas shall be removed.

Section 12. Wires: It shall be unlawful to attach any wire or rope to any tree or shrub in any public street, parkway or other public place without the permission of the City Forester. Any person or company which maintains poles and wires in the streets, alleys or other public places, shall in the absence of

provisions in the franchise concerning the subject, keep such wires and poles free from and away from any trees and shrubs in such places as far as may be possible, and keep all such trees and shrubs near such wires and poles properly trimmed, subject to the supervision of the City Council, so that no injury shall be done either to the poles or wires or to the shrubs and trees by their contact. The location of such poles and wires shall be approved by the City Council.

Section 13.

- (a) Tree Replacement Public: Replacement of diseased trees on public property removed to prevent spread of Dutch elm disease will be in accordance with tree planting standards and programs of the Office of the City Forester.
- (b) Tree Replacement on Private Property: The City will not be liable for the replacement of diseased trees on private property removed to prevent spread of Dutch elm or other diseases. However, an option will be presented to the private property owner whose tree has been removed in accordance with tree planting standards and programs of the Office of the City Forester. This option will allow the private owner to replace the diseased tree under the tree replacement program of the Office of the City Forester, the cost to be borne by the private property owner.

Section 14. All personnel involved in the care and maintenance of trees in the City of Rolla must show a degree of proficiency in accordance with the regulations of the Office of the City Forester and must receive authorization from the City Forester before practicing tree care and maintenance. For groups working together, only the job supervisor shall be required to be authorized by the City Forester, the job supervisor to be held responsible for any violation of this ordinance.

Section 15. The following trees may be used for planting in public parkways and berm: Honeylocust, Bur Oak, Black Walnut, Hackberry, Northwest Poplar, Silver Maple, Green Ash and Cultivars (Bergeson, Patmore, Summit, Kindred), American Linden, Moutrain Ash(fruitless)(Fireblight resistant), Russian Olive, Mayday Tree, Ironwood, Redmond Linden, Native Paper Birch, Canada Red Cherry(Non-Suckering)(Schubert chokecherry), Flowering Crabapple (Fruitless)(Fireblight resistant), Amur Chokecherry, Amur Maple; and no

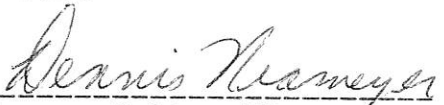
tree not herein mentioned shall be planted without special permission from the Office of the City Forester. The following trees may NOT be planted on the parkways, berms, or boulevards of Rolla: Cottonwood and Poplar, Siberian Elm, Willow, fruit trees and conifers. In order to achieve certain landscape effects, the City Forester may at times, use trees not generally recommended. Tree sizes and spacing of trees shall be in accordance with the standards of the Office of the City Forester.

Section 16. Separability: In case any section of this ordinance is held invalid by the Court of competent jurisdiction, the invalidity shall extend only to the section affected and other sections of this ordinance shall continue in full force and effect.

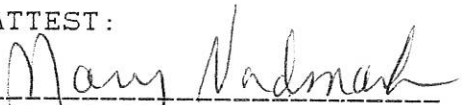
Section 17. Penalty: Any persons, firm or corporation who violates any of the provisions of this ordinance shall upon conviction thereof be subject to a fine not to exceed Five Hundred Dollars(\$500.00) for each offense.

First Reading: October 17, 1990

Second Reading and approval: November 5, 1990



Mayor, Rolla, ND

ATTEST:


City Auditor