



Brainerd City Council Agenda Request

Requested Meeting Date:

Title of Item:

| | |
|---|--|
| <input type="checkbox"/> INFORMATION ONLY <input type="checkbox"/> CONSENT AGENDA <input type="checkbox"/> P&F COMMITTEE <input type="checkbox"/> SPW COMMITTEE <input type="checkbox"/> MAIN AGENDA | Action Requested: <input type="checkbox"/> Approve/Deny Motion <input type="checkbox"/> Adopt Resolution (attach draft) <i>*provide copy of published hearing notice</i> <input type="checkbox"/> Direction Requested <input type="checkbox"/> Discussion Item <input type="checkbox"/> Hold Public Hearing* <input type="checkbox"/> Ordinance 1 st Reading |
| Submitted by: | Department: |
| Presenter (Name & Title): | Estimated Time Needed: |
| Summary of Issue: | |
| Alternatives, Options, Effects on Others/Comments: | |
| Recommended Action/Motion: | |
| Financial Impact: <i>Is there a cost associated with this request:</i> <input type="checkbox"/> Yes <input type="checkbox"/> No <i>What is the total cost, with tax and shipping</i> \$ _____ <i>Is this budgeted?</i> <input type="checkbox"/> Yes <input type="checkbox"/> No <i>Please Explain:</i> | |

**ORDINANCE
NO. 1514**

**AN ORDINANCE REPEALING SECTION 905 OF THE CITY CODE AND AMENDING
SECTION 1400 OF THE CITY CODE**

THE CITY COUNCIL OF THE CITY OF BRAINERD DOES ORDAIN:

SECTION ONE: Section 905 of Chapter IX of the City Code is hereby repealed in its entirety.

SECTION TWO: Section 1400.05 of Chapter XIV of the City Code is hereby amended by adding the following:

Tree Inspector. Subdivision 1. Position Created. The powers and duties of the City Tree Inspector as set forth in this Section are hereby conferred upon the Director of the ~~Parks and Recreation Department~~ Director of the Community Development Department. The Director may designate a member of the staff to perform the duties of the Tree Inspector.

SECTION THREE: All other provisions of Section 1400 shall remain in full force and effect.

SECTION FOUR: This ordinance shall take effect and be in full force one week from and after its publication.

Adopted this _____ day of _____, 2021

KELLY BEVANS
President of the Council

Approved this _____ day of _____, 2021

DAVE BADEAUX
Mayor

ATTEST: _____
JENNIFER BERGMAN
City Administrator

Published: One Time – _____

CHAPTER XIV

VEGETATION AND GREEN SPACE

Section 1400 – Tree Disease Control

1400.01 Declaration of Policy. The City Council has determined that the health of the shade trees within the Municipal Limits are threatened by shade tree diseases. It has further determined that the loss of shade trees, growing upon public and private property, would impair the safety, good order, general welfare, and convenience of the public. It is the intention of the Council to control and prevent the spread of these diseases. This Section is enacted for that purpose and to conform to the policies and procedures embodied in Minnesota Statutes, Sections 18.023 and rules promulgated thereunder.

1400.03 Definitions. Subdivision 1. For purposes of this Section, the terms defined in this Subsection have the meaning given them.

Subd. 2. "Shade Trees" means oak, elm, and all other deciduous trees in the City.

Subd. 3. "Tree Disease" means Dutch elm disease caused by *Ceratocystis ulmi* or oak with oak wilt disease caused by *Ceratocystis fagacearum*, and any biotic (caused by living organisms) and abiotic (caused or induced by non living agents) disorders on other deciduous trees.

Subd. 4. "Tree Insects" means infestation of insects deemed to be harmful to immediate trees and surrounding trees which require removal.

Subd. 5. "Conifer Insect and Diseases" means infestations of insects that are injurious to the life of conifer trees.

Subd. 6. "Commissioner" means the Commissioner of the State Department of Agriculture.

Subd. 7. "Tree Committee" means the seven member committee appointed by the Mayor.

Subd. 8. "Tree Inspector" or "Inspector" means a person having the necessary qualifications to conduct a shade tree program and who is certified by the Commissioner.

Subd. 9. "Disease Control Area" means the entire City except those areas annually designated by the Tree Inspector as "no control zones" pursuant to State law.

Subd. 10. “Tree Control Program” or “Program” means a program developed by the City to combat tree diseases in accordance with rules promulgated by the Commissioner.

1400.05 Tree Inspector. Subdivision 1. Position Created. The powers and duties of the City Tree Inspector as set forth in this Section are hereby conferred upon the Director of the Parks and Recreation Department. The Director may designate a member of the staff to perform the duties of the Tree Inspector.

Subd. 2. Duties of Tree Inspector. It is the duty of the Tree Inspector to coordinate, under the direction and control of the Council, all activities of the municipality relating to the control and prevention of tree diseases.

1400.07 Tree Disease Program. It is the intention of the City Council of the City to conduct a program of tree control pursuant to the authority granted by the Minnesota Statute 18.023, as amended. This program is directed specifically at the control and elimination of tree diseases and is undertaken at the recommendation of the Commissioner, and in conformance with rules promulgated by the Commissioner. The Tree Inspector shall act as coordinator between the Commissioner of Agriculture and the Council in the conduct of this program.

1400.09 Tree Disease. Subdivision 1. Nuisances Declared. The following things 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 *Ceratocystus Ulmi* (Buisman) Moreau or which harbors any of the elm bark beetles *Scolytus Multistriatus* (Eichh) or *Hyluigopinus Rufipes* (March).
- b) Any dead elm tree or part thereof, including limbs, branches, stumps, firewood or other elm materials from which the bark has not been removed or burned or sprayed with an effective elm bark beetle insecticide.
- c) Any living or standing northern red oak, northern pine oak, black oak, scarlet oak, or part thereof, infected to any degree with oak wilt disease.
- d) Any tree or shrub which, in the opinion of the Tree Inspector or such other person as designated by him/her has become or threatens to become a hazard because of weakened conditions due to insects, diseases, or other detrimental conditions so as to adversely affect the 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 him within the City. Such nuisances may be abated in the manner prescribed by this Section.

1400.11 Inspection and Investigation. Subdivision 1. Annual Inspection. The Tree Inspector shall inspect all premises and places within the controlled area as often as practicable to determine whether any condition described in Section 1400.09, exists thereon. The Inspector shall investigate all reported incidents of infestation by Dutch elm fungus, elm bark beetles, or oak wilt disease, and any other insect or conifer disease.

Subd. 2. Entry on Private Premises. The Tree Inspector or his/her duly authorized agents may enter upon private premises at any reasonable time for the purpose of carrying out any of the duties assigned him under this Section. Such inspections shall be preceded by a legal notice published once annually in the City's legal newspaper informing all property owners within the City to destroy and dispose of tree materials declared a nuisance by Subsection 1400.09.

Subd. 3. Diagnosis. The Tree Inspector shall identify diseased trees according to generally accepted field diagnostic procedures. There are various field symptoms that can be detected by observation. Confirmation of field diagnosis, when ordered by the Tree Inspector, shall be completed by a tree disease laboratory approved by the Commissioner at no cost to the property owner.

1400.13 Abatement of Tree Disease Nuisances. In abating the nuisances defined in this Section, the Tree Inspector shall cause the infected tree or wood to be removed, burned, or otherwise effectively treated so as to destroy and prevent as fully as possible the spread of disease. Such abatement procedures shall be carried out in accordance with current technical and expert opinions and procedures established by the Commissioner.

1400.15 Procedure for Removal of Infected Trees and Wood. Subdivision 1. Findings. When the Tree Inspector finds it necessary to order the removal of a tree(s) or shrubs upon private property as authorized in Section 1400.13 herein, he shall serve a written order to correct the dangerous condition upon the owner, occupant, or other person responsible for its existence.

a) Method of Service. The order required herein shall be served in one of the following ways:

- 1) By making personal delivery of the order to the person responsible;
- 2) By sending certified mail the order to the property owner subject to a 20 day time limit for removal from the date of the letter;
- 3) By leaving the order with some person of suitable age and discretion upon the premise;
- 4) By affixing a copy of the order to the door at the entrance of the premises in violation;

- 5) By publishing a copy of the order in a local paper once a week for two successive weeks.
- b) After the expiration of the time limit by the notice, the City may abate the nuisance and the costs will be assessed against the property as provided in Subdivision 3.
- c) Trees in paragraphs (a) and (b) above shall be considered "high risks trees" as defined in the Minnesota Department of Agriculture Rules and Regulations, effective 8/14/78.
- d) Any tree or shrub determined to be a public nuisance may be ordered removed and disposed of, and if on private property, the City may enter upon such property to remove and dispose of such tree (s) or shrub(s) and assess the costs thereof against such property as a special assessment as provided in Subdivision 3.

Subd. 2. Records. The Tree Inspector shall keep a record of the costs of abatements ordered under the Subsection and shall report annually to the City Council and certify the description of the land, lots, parcels involved, and the amount chargeable to each.

Subd. 3. Notice; Hearing. The City 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 Tree Inspector. 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, 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 Subdivision 3 the Council may spread the charges or any portion thereof against the property involved as a special assessment under Minnesota Statutes, Section 429.101 and other pertinent statutes for certification to the County Auditor and collection the following year along with current taxes.

1400.17 Tree Inspector Program. The Tree Inspector shall conduct the tree disease control program in accordance with the rules and regulations of the commissioner adopted herein.

1400.19 Transporting Elm Wood Prohibited. It is unlawful for any person to transport elm wood with bark intact into or within the City disease control area unless going to a designated legal sanitation or utilization site.

1400.21 Interference Prohibited. It is unlawful for any person to prevent, delay, or interfere with the Inspector or his agents while they are engaged in the performance of duties imposed by this Section.

1400.23 Special Rules. Notwithstanding the provisions of this Section, the stockpiling of bark bearing elm wood within the City limits shall be permitted during the period from September 15 through April 1 of any given year. Any such wood not utilized by April 1 of any year must then be removed and disposed of as provided by this Section and the regulations adopted by reference herein.

(Added Ord. 950 – 1993)

Section 905 – Shade Tree Disease Control

905.01 Declaration of Policy. The City Council has determined that the health of the shade trees within the municipal limits is threatened by shade tree diseases. 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 and impair the safety, good order, general welfare and convenience of the public. It is the intention of the Council to control and prevent the spread of these diseases. This Section is enacted for that purpose and to conform to the policies and procedures embodied in Minnesota Statutes, Sections 18.023 and rules promulgated thereunder.

905.03 Definitions. Subdivision 1. For purposes of this Section, the terms defined in this Subsection have the meanings given them.

Subd. 2. "Shade Trees" means oak or elm trees in the City.

Subd. 3. "Shade Tree Disease" means Dutch elm disease caused by *Ceratocystis Ulmi*, or oak wilt disease caused by *Ceratocystis fageceorum*.

Subd. 4. "Commissioner" means the commissioner of the state department of agriculture.

Subd. 5. "Tree Inspector" or "inspector" means a person having the necessary qualifications to conduct a shade tree program and who is so certified by the commissioner.

Subd. 6. "Disease Control Area" means the entire City, except those areas annually designated by the Tree Inspector as "no control zones" pursuant to State law.

Subd. 7. "Shade Tree Control Program" or "Program" means a program developed by the City to combat shade tree disease in accordance with rules promulgated by the commissioner and embodied in 3 MCAR, ACR, Sections 1.0109 through 1.0113; hereby adopted by reference.

905.05 Tree Inspector. Subdivision 1. Position Created. The powers and duties of the City Tree Inspector as set forth in this Section are hereby conferred upon the City Engineer. The Engineer may designate a member of the administrative staff to perform the duties of Tree Inspector.

Subd. 2. Duties of Tree Inspector. It is the duty of the Tree Inspector to coordinate, under the direction and control of the Council, all activities of the municipality relating to the control and prevention of shade tree disease. He shall recommend to the 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.

905.07 Shade Tree Disease Program. It is the intention of the City Council of the City to conduct a program of shade tree control pursuant to the authority granted by Minnesota Statutes 18.023, as amended. This program is directed specifically at the control and elimination of shade tree diseases and is undertaken at the recommendation of the Commissioner, and in conformance with rules promulgated by the Commissioner. The Tree Inspector shall act as coordinator between the Commissioner of Agriculture and the Council in the conduct of this program.

905.09 Shade Tree Diseases. Subdivision 1. Nuisances Declared. The following things 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 *Hyluigopinus Rufipes* (Marsh).
- b) Any dead elm tree or part thereof, including legs, 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 northern red oak, northern pine oak, black oak or scarlet oak, or part thereof infected to any degree with oak wilt disease.
- d) Any tree or shrub which in the opinion of the Tree Inspector, or such other person as designated by him, has become or threatens to become a hazard so as to adversely affect the 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 him within the City. Such nuisances may be abated in the manner prescribed by this Section.

905.11 Inspection and Investigation. Subdivision 1. Annual Inspection. The Tree Inspector shall inspect all premises and places within the City as often as practicable to determine whether any condition described in Subsection 905.09, exists thereon. He shall investigate all reported incidents of infestation by Dutch elm fungus, elm bark beetles, or oak wilt.

Subd. 2. Entry on Private Premises. The Tree Inspector or his duly authorized agents may enter upon private premises at any reasonable time for the purpose of carrying out any of the duties assigned him under this section. Such inspections shall be preceded by a legal notice published once annually in the City's legal newspaper informing all property owners within the City to destroy and dispose of tree materials declared a nuisance by Subsection 905.09.

Subd. 3. Diagnosis. The Tree Inspector shall identify diseased trees according to generally accepted field diagnosis procedures such as wilting, yellowing of leaves or staining of cambial wood under tree bark. Confirmation of field diagnosis, when ordered by the tree inspector shall be completed by a tree disease laboratory approved by the Commissioner.

905.13 Abatement of Shade Tree Disease Nuisances. In abating the nuisances defined in this Section, the Tree Inspector shall cause the infected tree or wood to be removed, burned, or otherwise effectively treated so as to destroy and prevent as fully as possible the spread of disease. Such abatement procedures shall be carried out in accordance with current technical and expert opinions and procedures as may be established by the Commissioner.

905.15 Procedure for Removal of Infected Trees and Wood. Subdivision 1. Findings. Whenever the Tree Inspector finds with reasonable certainty that the infestation defined in Subsection 905.09 exists in any tree or wood in any public or private place in the City, he shall proceed as follows:

- a) If the Tree Inspector finds that the danger of infestation of other trees is imminent during dormancy, he shall notify the property owner by certified mail or personal delivery that such tree(s) are subject to a 20-day time limit for removal from the postmarked date of the letter. After expiration of the time limit by the notice he may abate the nuisance, the costs of which will be assessed against the benefited property as provided in Subdivision 3.
- b) If the Tree Inspector finds that danger of infestation of other trees is imminent, he shall notify the property owner by certified mail that the nuisance will be abated within a specified time, not less than 20 days from the date of mailing of such notice. After the expiration of the time limit by the notice, he may abate the nuisance, the costs of which will be assessed against the benefited property as provided in Subdivision 3.
- c) Trees in paragraphs (a) and (b) above shall be considered "high risk trees," as defined in Minnesota Department of Agriculture Rules and Regulations, effective 8/14/78.
- d) Any tree or shrub determined to be a public nuisance may be ordered removed and disposed of, and if on private property, the City may enter upon such property, remove and dispose of such tree or shrub and assess the costs thereof against such property as a special assessment as provided in Subdivision 3.

Subd. 2. Records. The Inspector shall keep a record of the costs of abatements ordered under this Subsection and shall report annually to the City 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 Tree Inspector. 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 Subdivision 2, the Council may spread the charges or any portion thereof against the property involved as a special assessment under Minnesota Statutes, Section 429.101 and other pertinent statutes for certification to the County Auditor and collection the following year along with current taxes.

905.17 Tree Inspector; Program. The Tree Inspector shall conduct the shade tree disease control program in accordance with the rules and regulations of the Commissioner adopted herein.

905.19 Transporting Elm Wood Prohibited. It is unlawful for any person to transport Elmwood with bark intact into, or out of, or within the City disease control zone unless going to a designated legal sanitation or utilization site.

905.21 Interference Prohibited. It is unlawful for any person to prevent, delay or interfere with the Inspector or his agents while they are engaged in the performance of duties imposed by this Section.

905.23 Special Rules. Notwithstanding the provisions of this Section, the stockpiling of bark bearing elm wood within the City Limits shall be permitted during the period from September 15 through April 1 of any given year. Any such wood not utilized by April 1 of any year must then be removed and disposed of as provided by this section and the regulations adopted by reference herein.