

CHAPTER 16
NUISANCES, MISDEMEANORS & OTHER OFFENSES

SECTION 1

1601.000. **CONTROL AND PREVENTION OF DUTCH ELM DISEASE.**

1601.001. **DECLARATION OF POLICY.** The City Council of Winsted has determined that is necessary to establish, develop and administer a comprehensive community tree management program for the care of trees on public property. The City of Winsted further determines that it needs to recognize and effectively manage public tree resources, and encourage the implementation of community tree management. The City also has determined that it is necessary to maintain the City's urban forest (i.e. trees located on City owned real estate). The City has determined that trees infected with any spreading or contagious-type disease such as Dutch Elm, affects trees growing on public and private property and can 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 to control and prevent the spread of diseases that threaten trees on private and public lands located in the City of Winsted. It is also the intention of this Ordinance to encourage good tree management on private property located within the City of Winsted.

1601.002. **TREE BOARD ESTABLISHED.** A Tree Board is hereby established. Said Tree Board consists of two members of the City Council, the City Clerk, the Supervisor of the City of Winsted's Maintenance Department and a citizen appointed by the Mayor. All such persons shall serve a one-year term of office or being appointed annually at the first meeting of the City Council in January, with approval of the City Council. Any vacancies shall be filled at the next regular scheduled Council meeting by appointment of the Mayor with approval of the City Council. Said Board shall meet at such times and with such frequency as it deems necessary to fulfill its duties and obligations herein.

1601.003. **POSITION OF FORESTER CREATED.** The powers and duties of the City Forester as set forth in this Section, are hereby conferred upon the City Maintenance Supervisor, whose duty is to coordinate, under the direction and control of the City Council, all activities of the City relating to the management of the City's urban forest including, but not limited to, the control and prevention of all diseases, including Dutch Elm disease. The Forester shall recommend to the Council the details of any program which he deems necessary for the control of any and all diseases, and perform the duties incident to any such programs adopted by the Council. The tree removal and maintenance program contained in 1601.004 shall be managed by the City Forester.

1601.004. **DISEASE CONTROL AND MANAGEMENT PROGRAM.** It is the intention of Council of Winsted to conduct a program of planned pest control pursuant to all powers of the City including the authority granted by Minnesota Statutes 1961, Section 18.022.

- A. NUISANCES DECLARED. The following things are public nuisances whenever they may be found within the City of Winsted:
1. Any living or standing elm tree or part thereof infected to any degree with the Dutch Elm disease fungus ceratocystis Ulmi (Eichh.) or Hylungopinus Rufipes (Marsh).
 2. Any dead elm tree, or part thereof, including legs, branches or other material from the tree.
 3. Any tree suffering from disease, windstorm, hail, tornado, fire, or other destruction that, in the opinion of the City Forester, renders it incapable of growing as a normal and aesthetically pleasing tree.
- B. ABATEMENT. It is unlawful for any person to permit any public nuisance as defined in Paragraph A. above and remain on any premises owned or controlled by said person within the City of Winsted. Such instances may be abated in the manner prescribed in this Section.
- C. INSPECTION AND INVESTIGATION.
1. ANNUAL INSPECTION. The City Forester shall inspect all premises and places within the City as often as practicable to determine whether any tree is in a condition previously described above. The City Forester shall investigate all reported incidents of any disease or damage to trees.
 2. ENTRY ON PRIVATE PREMISES. The City Forester or his duly authorized agents may enter upon private premises at any reasonable time for the purpose of carrying out the duties assigned said City Forester under this Ordinance. The City Forester, however, shall only be required to take action on trees located on private property if they are infested with Dutch Elm disease or such other disease that is likely to spread to other trees and cause said other trees to die.
 3. DIAGNOSIS. The City Forester shall, upon finding conditions indicating Dutch Elm infestation, take such other steps necessary for diagnosis determination. Except as otherwise provided herein, no action to remove infested trees or wood shall be taken until positive diagnosis of the diseased tree has been made. The City Forester shall take similar action where any tree is suffering from a disease that is likely to spread to other trees and cause them to die.
- D. ABATEMENT OF NUISANCES. In abating the nuisances defined herein, the City Forester shall cause the infected tree or wood to be sprayed, removed, burned or otherwise effectively treated so as to destroy and prevent as fully possible, the spread of any disease or beetle, pest, insect, rodent or other thing causing the spread of such disease.

- E. PROCEDURE FOR REMOVAL OF INFECTED TREES AND WOOD. Whenever the City Forester finds with reasonable certainty that the infestation of any disease (including Dutch Elm) previously defined hereinabove, said City Forester shall, in accordance with removal regulations set forth herein:
1. Send written or oral notice to the property owner requiring removal of the diseased tree within 15 days.
 2. Should the diseased tree not be removed as directed, within the specified time, the City Forester may remove the tree and advise the City Clerk of same who shall then have the cost of said removal assessed against the owner of the property.
- F. SPRAYING DISEASED TREES. Whenever the City Forester determines that any tree or wood within the City is infected with a disease that is treatable with chemicals, the City Forester may spray or treat same with an effective chemical. Activities authorized by this Paragraph shall be conducted in accordance with the supervision of the City Forester.
- G. TRANSPORTATION OR STORAGE. Bark bearing any wood infested with disease may be transported or stored for fire wood provided:
1. The wood is stored AT LEAST 50 FEET from any similar tree;
 2. The stored wood is sprayed with a chemical that is known to combat said disease (when stored between April 1 and October 1 of any given year); and
 3. It is not detrimental to other trees or vegetation.
- H. UTILIZATION OF WOOD. To fully utilize the diseased wood and to prevent undue financial hardship to the City, the City Forester may cause to fall any diseased tree, and:
1. The tree then may be sold to any interested party for One (\$1.00) Dollar providing:
 - a. There has been a receipt and waiver of liability signed by the interested party; and
 - b. All brush, debris and other particles are removed fully by the interested party from the felled site.
- I. INTERFERENCE PROHIBITED. It is unlawful for any person to prevent, delay or interfere with the City Forester or his agents while they are engaged in the performance of duties imposed by the Section.

1601.005. **ANNUAL PLAN.** It is the responsibility of the City Clerk to furnish the City Forester with an annual Community Forestry Work Plan which must be developed by the Tree Board annually.

1601.006. **PUBLIC TREE CARE POLICY.**

- A. The City shall be responsible for removal, replacement, planting and maintenance of trees on all public streets, parks, and dedicated land.
- B. The City shall provide to new developments, a variety of species of trees which shall be planted at locations the City desires.
- C. Planting and fertilizing of newly planted trees shall be the responsibility of the City. Watering of the trees shall be responsibility of the property owner where such tree is planted.
- D. The City shall serve notice to property owners regarding watering of new trees if there is a lack of moisture. Said notice shall be placed in the local newspaper.
- E. REMOVAL OF TREES. Any diseased or damaged trees as described in this Section shall be done in a timely manner and pursuant to the procedures as set forth hereinabove.
- F. The City Forester shall cause any trees in the urban forest to be trimmed according to normally accepted guidelines for said tree and for the location of said tree. The City Forester shall insure that all trees located on City property that are near City streets, be trimmed to a height that allows maintenance vehicles to properly maintain said street; the City Forester shall also make sure that all trees on said City streets are trimmed so as to allow all vehicle use of said street to not be inhibited by the growth of said tree, including any trees adjacent to any of the above and appropriate lines of sight for drivers of said vehicles on said streets.
- G. The City Forester is allowed to remove any trees, brush, bushes or plantings of any nature whatsoever located on boulevards (i.e. area between the private property line and the curb line of any street) if the same is necessary to accomplish the objectives contained herein, and/or is necessary to maintain any utility located in said boulevard, or in the event the boulevard is to be put to some other use which has been approved by the City Council of Winsted.

1601.006. **ARBOR DAY.** An Arbor Day observance will occur annually in the first week of May, and shall be declared as such by proclamation of the Mayor of the City of Winsted.

1601.007. **PENALTY.** Any person, firm or corporation who violates the provisions of this Section shall be guilty of a Misdemeanor and may be punished to the extent allowed by State Statute for a Misdemeanor pursuant to M.S. Section 609.02, Subd. 3.

1602.000. **REGULATING THE TIMES WHEN PERSONS MAY BE PRESENT IN CEMETERIES.**

1602.001. **HOURS.** Any cemetery grounds within the City of Winsted are open from sunrise to sunset of every day and at other times by prior written authorization of the Board managing said cemetery. No person shall be permitted within any cemetery at any times other than mentioned in the previous sentence.

(Ord. 87-02, Sec. 1, 5/4/87)

1602.002. **PENALTY.** Any person found to be in violation of the terms of this Ordinance is guilty of a misdemeanor and may be sentenced by a Court up to the maximum amount and time permitted for misdemeanor violations according to the Laws of the State of Minnesota.

(Ord. 87-02, Sec. 2, 5/4/87)

1602.003. **CONFLICT.** To the extent that this Ordinance or any portion hereof conflicts with any other Ordinance or any portion thereof, this Ordinance shall prevail.

(Ord. 87-02, Sec. 3, 5/4/87)

SECTION 3

1603.000. **DEFINING AND PROHIBITING NUISANCES.**

1603.001. **INTENT.** The City Council of the City of Winsted has determined that the health, safety, good order, general welfare, and convenience of the public is threatened by certain public nuisances on property within the city limits. It is declared to be the intention of the Council to abate these nuisances, and this Ordinance is enacted for that purpose.

(Ord. 92-02, Sec. 1, 5/19/92)

1603.002. **PUBLIC NUISANCE DEFINED.** Whoever by his or her act of failure to perform a legal duty intentionally does any of the following is guilty of maintaining a public nuisance, which is a misdemeanor;

- A. Maintains or permits a condition which unreasonably annoys, injures, or endangers the safety, health morals, comfort, or repose of any considerable numbers of members of the public; or
- B. Interferes with, obstructs, or renders dangerous for passage, any public highway or right-of-way, or waters used by the public; or
- C. By any use of property abutting on a public street or sidewalk, which causes large crowds or obstructing traffic and the free use of public streets and sidewalks; or
- D. Is guilty of any other act or omission declared by law or this Ordinance to be a public nuisance and for which no sentence is specifically provided.

(Ord. 92-02, Sec. 2, 5/19/92)

1603.003. **PUBLIC NUISANCES AFFECTING HEALTH.** The following are hereby declared to be a nuisance affecting health:

- A. All diseased animals running at large;
- B. To keep or harbor any carcasses of animals not buried or destroyed within 24 hours after death;
- C. Garbage not stored in containers that are rodent free and fly free, or garbage stored so as to emit foul or disagreeable odors, or garbage stored so as to constitute a hazard to public health;
- D. Weeds, tall grasses and other rank growths of vegetation upon public or private property in a manner creating fire, health or safety hazards from such accumulation, or in a residential area in excess of ten percent (10%) of the land.

- E. The piling, storing or keeping of wood or wood debris, firewood, including logs, cut wood and timber, in a manner conducive to harboring rats, mice, snakes or vermin or the rank growth of vegetation among items so accumulated, or in a manner creating fire, health or safety hazards from such accumulation. All wood piles shall be kept in an orderly fashion.
- F. Dense smoke, noxious fumes, gas and soot, or cinders in unreasonable quantities.
- G. Accumulations of manure, refuse or other debris; including synthetic materials, plastic and/or rubber tire and rubber products.
- H. The pollution of any public well or cistern stream of lake, canal or body of water by sewage, waste or other substance.

(Ord. 92-02, Sec. 3, 5/19/92)

1603.004. **PUBLIC NUISANCE AFFECTING PEACE AND SAFETY.** The following are declared to be nuisances affecting public peace and safety:

- A. All trees, hedges, signs, billboards, fences or other obstructions which prevent people from having a clear view of all traffic approaching an intersection;
- B. All wires, limbs of trees, shrubs, hedges, signage or awnings which are deteriorated or so close to the surface of a sidewalk or street as to constitute a danger to pedestrians or vehicles;
- C. All buildings, walls, and other structures which have been damaged by fire, decay or otherwise to an extent exceeding one-half (1/2) of their original value or which are so situated as to endanger the safety of the public, or damage described above to any portion of buildings, walls, or other structures that have not been repaired within sixty (60) days of the date of the damage being incurred.
- D. All unnecessary noises and annoying vibrations; including machinery operated without a proper muffler;
- E. Operation of construction equipment or machinery emitting noise onto adjacent property prior to 6:30 a.m. or after 9:00 p.m.;
- F. Use of illegal fireworks or other pyrotechnic devices without permits required by law;
- G. Accumulation of junk, construction materials not on a temporary job site, unused furniture, appliances, household items, machinery, motor vehicle bodies or parts, including tires, or any other material that may become

conducive to the harboring of rats, snakes, or vermin, or repose, health, safety or welfare of the public;

- H. Barbed wire or electric fencing which is not being used for agricultural or commercial use, and not marked with reflectorized devices or proper signage;
- I. Any use of property abutting a public street or sidewalk or any use of a public street or sidewalk which causes a crowd of people to gather and loiter, obstructing traffic and the free use of the street or sidewalk;
- J. All dangerous, unguarded machinery, equipment or other property in any public place or right-of-way, so situated or operated on private property as to attract minor children;
- K. Wastewater cast upon or permitted to flow upon streets or other public properties;
- L. Any well, hole, or similar excavation which is left uncovered or in such other condition as to constitute a hazard to any person coming on the premises where it is located;
- M. Obstruction of the free flow of water in a natural waterway or a public street drain, gutter, or ditch with trash or other materials;
- N. The placing or throwing on any street, sidewalk, or other public property of any glass, tacks, nails, bottles or other substance which may injure any person or animal or damage any pneumatic tire when passing over such substances;
- O. The repair of motor vehicles or tires on a public right-of-way or public property, excepting only emergency repairs when it will not duly impede or interfere with traffic;
- P. The depositing of garbage, refuse, or accumulation of vegetation on any public or private property including, but not limited to: lakes, rivers and public waters, except for compost sites no larger than 10' X 10' on private property;
- Q. Radio aerials or television antenna erected or maintained in a dangerous manner;
- R. The depositing of any non-dustless surfaces or ground on private property which is maintained in such a manner or allowed to exist in such a state that surface waters carry dust, dirt, sand, gravel or other debris from such property into the public roads, streets or sewers or other public property where normal and ordinary maintenance procedures require the removal thereof.

- S. The stacking of pallets, industrial racking, or shipping containers or materials on a public right-of-way, or on any adjacent private property (without owner consent), in a manner as to attract minor children, or in an unsafe manner;
- T. All other conditions or things which are likely to cause injury to the person or property of anyone.

(Ord. 92-02, Sec. 4, 5/19/92)

1603.005. **ENFORCEMENT.**

- A. Duties of City Officers. The City Clerk or other officer as designated by the City Council and all law enforcement officers employed or contracted by the City of Winsted shall enforce the provisions of this Ordinance relating to nuisances. Such officers shall have the power to inspect private premises and take all reasonable precautions to prevent the commission and maintenance of public nuisances.
- B. Procedure. Whenever an officer charged with enforcement determines that a public nuisance is being maintained or exists on premises in the city, the officer shall notify in writing the owner of record or occupant of the premises of such fact and order that such nuisance be terminated or abated. The notice of violation shall specify the steps to be taken to abate the nuisance and the time within which the nuisance is to be abated. If the notice of violation is not complied with within the time specified, the enforcing officer shall report that fact forthwith to the City Council. Thereafter, the Council may, after notice to the owner or occupant of an opportunity to be heard, determine that the condition identified in the notice of violation is a nuisance and further order that if the nuisance is not abated within the time prescribed by the City Council, the city may seek injunctive relief by serving a copy of the City Council order and notice of motion for summary enforcement upon the owner of record or occupant.

(Ord. 92-02, Sec. 5, 5/19/92)

1603.006. **ABATEMENT NOTICE.** Written notice of violation; notice of the time, date, place and subject of any hearing before the City Council; notice of City Council order; and notice of motion for summary enforcement hearing shall be given as set forth in this subdivision.

- A. Notice of Violation and Council Hearing. Written notice of a violation of this ordinance or of a Council hearing shall be served by an officer charged with enforcement on the owner of record or occupant of the premises either in person or by certified or registered mail. If the premises is not occupied, the owner or record is unknown, or the owner of record or occupant refuses to accept notice of violation, notice of violation shall be served by posting it on the premises and mailing a copy of the notice to the owner of the premises

and at such address as shown on the records of the County Auditor of McLeod County.

- B. Notice of City Council Order. Except for those cases determined by the city to require summary enforcement, written notice of any City Council order shall be made as provided in Minnesota Statutes 463.17 (Hazardous and Substandard Building Act).
- C. Notice of Motion for Summary Enforcement. Written notice of any motion for summary enforcement shall be made as provided for in Minnesota Statutes 463.17 (Hazardous and Substandard Building Act).

(Ord. 92-02, Sec. 6, 5/19/92)

- 1603.007. **EMERGENCY PROCEDURE: SUMMARY ENFORCEMENT.** In cases of emergency, where delay in abatement required to complete the notice and procedure requirements set forth in Sections 1603.005. and 1603.006. above will permit a continuing nuisance to unreasonably endanger public health safety or welfare, the City Council may order summary enforcement and abate the nuisance. To proceed with summary enforcement, the officer charged with enforcement shall determine that a public nuisance exists or is being maintained on premises in the City and that delay in abatement of the nuisance will unreasonably endanger public health, safety, or welfare. The enforcement officer shall notify in writing the occupant or owner of the premises of the nature of the nuisance and of the city's intention to seek summary enforcement and the time and place of the Council meeting to consider the question of summary enforcement. The City Council shall determine whether or not the condition identified in the notice to the owner or occupant is a nuisance, whether public health, safety, or welfare will be unreasonably endangered by delay in abatement required to complete the procedure set forth in Sections 1603.005. and 1603.006. above, and may order that such nuisance be immediately terminated or abated. If the nuisance is not immediately terminated or abated, the City Council may order summary enforcement and abate the nuisance.

(Ord. 92-02, Sec. 7, 5/19/92)

- 1603.008. **IMMEDIATE ABATEMENT.** Nothing in Sections 1603.005., 1603.006., and 1603.007. of this Ordinance shall prevent the city, without notice or other process, from immediately abating any condition which poses an imminent and serious hazard to human life or safety.

(Ord. 92-02, Sec. 8, 5/19/92)

- 1603.009. **RECOVERY COSTS.**

- A. Personal liability. The owner of the premises on which a nuisance has been abated by the city shall be personally liable for the cost to the city of the abatement, including administrative and legal costs. As soon as the work has

been completed and the cost determined, the city shall prepare a bill for the cost and mail it to the owner. Thereupon the amount shall be immediately due and payable at the office of the City Clerk-Treasurer. The city may recover by civil action against the owner and/or the person who committed or maintained the nuisance for all costs and expenditures, including attorney's fees and a civil penalty, incurred by the city in abating or enjoining the nuisance or the city may assess such costs against the property as provided in Section 1603.009.B. below.

- B. Assessment. If the City of Winsted is not fully reimbursed for all its reasonable costs incurred in the abatement or enjoinder of the nuisance or enforcement of this Ordinance, all such unpaid costs, charges and fees may be assessed against each lot or parcel or property to which such costs, charges, and fees are attributable. The City Council may direct that the costs, charges and fees be certified to the McLeod County Auditor for collection along with the current real estate taxes for the following year or in annual installments, not exceeding five years, as the Council may determine in each case.

(Ord. 92-02, Sec. 9, 5/19/92)

- 1603.010. **PENALTY.** Any person convicted of violating any provision of this Ordinance is guilty of a misdemeanor and shall be punished by fine not to exceed \$700.00 or imprisonment for not more than 90 days, or both, plus costs of prosecution in either case.

(Ord. 92-02, Sec. 10, 5/19/92)

1604.000 **RELATING TO RADIOS, TAPE AND DISC PLAYERS, ETC.**

1604.001 No person shall play, use, or operate any radio, tape or disc player, musical instrument, phonograph, or other machine or device for the production of sound in such a manner, considering the time and place and the purpose for which the sound is produced, as to unreasonably disturb the peace, quiet, or repose of a person or persons of ordinary sensibility.

1604.002. The play, use, or operation of any radio, tape or disc player, musical instrument, phonograph, or other machine or device for the production of sound in such a manner as to be plainly audible at a distance of fifty (50) feet from said machine or device shall be prima facie evidence of a violation of this section.

1604.003 When sound violating this section is produced by a machine or device that is located in or on a vehicle, the vehicle's owner is not present, the person in charge of the vehicle at the time is guilty of the violation.

1604.004 This section shall not apply to sound produced by the following:

- A. Amplifying equipment used in connection with activities for which permits have been granted;
- B. Anti-theft devices; and
- C. Machines or devices for the production of sound on or in authorized emergency vehicles.

1604.005 With the exception of the machines and devices listed in 1601.004.A., B., and C., this section shall apply to all radios, tape and disc players, musical instruments, phonographs, and machines and devices for the production of sound, whether on public or private property.

1604.006 **PENALTY.** A violation of this section shall be punishable as a misdemeanor.