

ORDINANCE NO. 27

**AN ORDINANCE RELATING TO PLANT PESTS AND PROVIDING
FOR THE CONTROL AND ABATEMENT THEREOF AND
REPEALING ORDINANCE NO. 25**

THE TOWN BOARD OF THE TOWN OF WHITE BEAR DOES ORDAIN:

SECTION 1. DECLARATION OF POLICY.

1-1. The Town Board of Supervisors of the Town of White Bear has determined that the health of shade trees and other plants within the Town limits is threatened by such diseases as dutch elm disease, oak wilt and other plant pests, and that the loss of such trees and other plants growing upon public and private property would substantially depreciate the value of property within the Town and impair the safety, good order, general welfare and convenience of the public. It is therefore declared to be the intention of the Town Board to control and prevent the spread of such diseases, and this Ordinance is enacted for that purpose.

1-2. It is the intention of the Town Board of Supervisors to conduct a program of plant pest and shade tree disease control pursuant to authority granted by Minnesota Statutes, Sections 18.022 and 18.023.

SECTION 2. DUTIES OF DIRECTOR OF PUBLIC WORKS.

2-1. It is the duty of the Director of Public Works to coordinate under the direction and control of the Town Board of Supervisors all activities of the Town relating to the control and prevention of dutch elm disease, oak wilt and other plant pests as defined in Minnesota Statutes, Section 18.46, Subd. 13, and in this Ordinance.

2-2. The Director of Public Works or his duly authorized agents shall inspect all premises and places within the Town as often as practicable to determine whether any conditions described in Section 5 of the Ordinance exists thereon. He shall investigate all reported incidents of infestation by dutch elm fungus, elm bark beetles, oak wilt or other plant pests.

2-3. The Director of Public Works 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 Ordinance.

2-4. The Director of Public Works shall, upon finding conditions indicating dutch elm infestation, oak wilt or other plant pests, immediately send specimens or samples to the Commission of Agriculture for analysis, or take such other steps for diagnosis as may be recommended by the Town Board.

SECTION 3. NUISANCES DECLARED. The following things are public nuisances whenever they may be found within the Town of White Bear:

3-1. Any living or standing elm tree, oak tree or other tree, or part thereof, infected to any degree with dutch elm disease fungus, oak wilt or with any plant pest as defined in Minnesota Statutes, Section 18.46, Subd. 13, together with any other form of plant or animal life, including any disease producing organism dangerous to plants of this State and including alternate hosts of any plant disease, hereinbefore and hereinafter referred to as "Plant Pests".

3-2. 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; and any other dead tree or part thereof such as logs, branches, stumps and firewood, which are harboring plant pests, or which are determined to be likely to harbor such pests.

3-3. Any standing dead tree.

SECTION 4. ABATEMENT. It is unlawful for any person to permit any public nuisance as defined in Section 3 to remain on any premises owned or controlled by him within the Town of White Bear. Such nuisances may be abated in the manner prescribed by this Ordinance.

SECTION 5. REMOVAL OF PUBLIC NUISANCES.

5-1. The Director of Public Works or his duly authorized agent shall give to the owner of the premises where the public nuisance described in Section 3 of this Ordinance are found, a written notice of the existence of such nuisance, and require the removal, burying or burning (if permitted) of the same within twenty (20) days following the delivery or sending of such notice. If a VAPA, Barrier or trenching is necessary in accordance with this Ordinance, an additional fourteen (14) days are granted. The notice shall also notify the owner of said premises that unless such nuisance is removed and abated in compliance with the terms thereof in such specified time, the Town will proceed with the removal and abatement of such nuisance and assess the cost thereof against the said property as provided by Minnesota Statutes, Section 429.101.

5-2. Service of such notice shall be by personal service or sent by registered mail to the person to whom was sent the tax bill for the general taxes for the last preceding year on the property. It shall thereupon become the duty of the owner of said premises to cause such diseased tree or trees, breeding place or places, to be removed and burned.

5-3. In the case of removing or treating of trees located on street terraces or boulevards, fifty percent (50%) of such expense may be assessed to the

abutting properties by the Town which expense shall become a lien on the property.

5-4. If the affected tree is near to another tree or trees of the same species, elm to elm, or oak to oak, whereby root graft is possible, trenching or a VAPAM Barrier, as prescribed by Minnesota Department of Agriculture must be completed so as to protect other non-diseased trees.

5-5. It is the responsibility of the property owner or controller to trim any dead or dying branch or branches that could be a place for the elm or oak bark beetles to harbor and propagate. Trees must not be trimmed in the late spring season (sap time, April and May) to prevent the infection of the fungi spores through the fresh wound and infecting any otherwise healthy trees.

SECTION 6. SPRAYING INFECTED TREES. Whenever the Director of Public Works determines that any tree or wood within the Town is infected with dutch elm fungus, oak wilt or other plant pests, he may spray all nearby high value trees with an effective plant pest destroying concentrate. Spraying activities authorized by this section shall be conducted in accordance with technical and expert opinion and plans of the commissioner of agriculture and under supervision of the commissioner or his agents whenever possible. The notice and assessment provision of Section 5 apply to spraying operations conducted under this section.

SECTION 7. TRANSPORTING INFECTED WOOD PROHIBITED.

7-1. It is unlawful for any person to transport within the Town any bark bearing elm wood, oak wood or other wood infected with plant pests without having obtained a permit from the Director of Public Works. The Director shall grant such permits only when the purposes of this Ordinance will be served thereby.

7-2. It is unlawful for any person to store diseased firewood between April 1 and September 1 of each year without having obtained a permit from the Director of Public Works. The Director shall grant such permits only when the purposes of this Ordinance will be served thereby.

7A. INTERFERENCE PROHIBITED.

1. It is unlawful for any person to prevent, delay or interfere with the Director of Public Works or his agents while they are engaged in the performance of duties imposed by this Ordinance, Minnesota Statutes, and the rules of the Commissioner of Agriculture.

2. It is unlawful to cover over, deface or otherwise obliterate any identification noted on trees to mark them as infected to any degree with dutch

elm disease fungus, oak wilt or plant pests, which are to be removed or treated to abate the existing public nuisance.

SECTION 8. PENALTY. Any person who violates any provision of this Ordinance, upon conviction thereof, shall be punished by a fine not exceeding \$300.00 or by imprisonment for a period not exceeding 90 days, or both.

SECTION 9. SEPARABILITY. Each and every section, paragraph, sentence, clause or phrase of this Ordinance is separate and distinct of any other provision, and if any part or provision thereof shall be declared unconstitutional, it shall not affect the validity of any other part or provision thereof.

SECTION 10. REPEAL. Ordinance No. 25, adopted July 29, 1968, and entitled "An Ordinance Relating to Dutch Elm Disease and Providing for the Control and Abatement Thereof" is repealed.

SECTION 11. EFFECTIVE DATE. Passed by the Town Board of the Town of White Bear, Minnesota, this 17th day of November, 1969.

APPROVED:

TERRANCE M. ROONEY, Chairman

ATTEST:

MARIE ROLPH, Clerk-Treasurer

Board of Supervisors:
TERRANCE M. ROONEY, Chair
THOMAS MALLOY, JR., Supervisor
JEROME L. PERRON, Supervisor

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Historical Notes

2006

Section 3-3 passed February 21, 2006, and effective March 8, 2006 by Weisenburger, (Chair), Sand and Mample; Short (Clerk-Treasurer).

1980

Section 7A passed July 7, 1980, and effective July 17, 1980 by Perron (Chair), Sand and Jungkunz; LaFosse (Clerk-Treasurer).

1979

Section 7 passed July 16, 1979, and effective August 31, 1979 by Perron (Chair), Sand and Jungkunz; Rolph (Clerk-Treasurer).

1976

Section 1, 2, 3, and 5 passed May 17, 1976, and effective May 27, 1976 by Perron (Chair), Sand and Ransom; Rolph (Clerk-Treasurer)

1969

Ordinance, Title and Section 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11 originally passed November 17, 1969, and effective November 26, 1969 by Rooney (Chair), Malloy and Perron; Rolph (Clerk-Treasurer).