

ORDINANCE # 65
DUTCH ELM DISEASE

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Section 1. The City of Danube ordains:

Section 2. Declaration of Policy. The City Council of Danube has determined that the health of the elm trees within the municipal limits 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 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 council to control and prevent the spread of this disease and this ordinance is enacted for the purpose.

Section 3. Forester. Subd. 1. Position Created. The powers and duties of the city forester as set forth in this ordinance are hereby conferred upon the city maintenance manager.

Subd. 2. Duties of Forester. It is the duty of the forester to coordinate, under the direction and control of the council, all activities of the municipality relating to the control and prevention of Dutch elm disease. He shall recommend to the council the details of a program for the control of Dutch elm disease, and perform the duties incident to such a program adopted by the council.

Section 4. Dutch Elm Disease Program. Subd. 1. It is the intention of the council of Danube to conduct a program of plant pest control pursuant to all the powers of this municipal corporation including the authority granted by Minnesota Statutes Section 18.022, as amended.

Subd. 2. 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 shall act as coordinator between the Commissioner of Agriculture and the council in the conduct of this program.

Section 5. Nuisances Declared. Subd. 1. The following things are public nuisances whenever they may be found within the City of Danube:

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 Hylungopinus 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.

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 of Danube. Such nuisances may be abated in the manner prescribed by this ordinance.

Section 6. Inspection and Investigation. Subd. 1. Annual Inspection. The forester shall inspect all premises and places within the city as often as practicable to determine whether any condition described in Section 5 of this ordinance exists thereon. He shall investigate all reported incidents of infestation by Dutch elm fungus or elm bark beetles.

Subd. 2. Entry on Private Premises. The forester 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.

Subd. 3. Diagnosis. The forester shall, upon finding conditions indicating Dutch elm infestation, immediately send appropriate specimens or samples to the Commissioner of Agriculture for analysis, or take such other steps for diagnosis as may be recommended by the Commissioner. Except as provided in Section 8 no action to remove infected trees or wood shall be taken until positive diagnosis of the disease has been made.

Section 7. Abatement of Dutch Elm Disease Nuisances. In abating the nuisances defined in Section 5, the 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 as possible the spread of Dutch elm disease fungus and elm bark beetles. Such abatement procedures shall be carried out in accordance with current

technical and expert opinions and plans as may be designated by the Commissioner of Agriculture.

Section 8. Procedure for Removal of Infected Trees and Wood.

Subd. 1. Whenever the forester finds with reasonable certainty that the infestation defined in Section 5 exists in any tree or wood in any public or private place in the city, he shall proceed as follows:

A. If the forester finds that the danger of infestation of other elm trees is not imminent because of elm dormancy, he shall make a written report of his finding to the council which shall proceed by (1) abating the nuisance as a public improvement under Minnesota Statutes Ch. 429 or (2) abating the nuisance as provided in Subd. 2 of this Section.

B. If the forester finds that danger of infestation of other elm trees is imminent, he shall notify the abutting property owner by certified mail that the nuisance will be abated within a specified time, not less than 3 days from the date of mailing of such notice. The forester shall immediately report such action to the council, and after the expiration of the time limited by the notice he may abate the nuisance.

Subd. 2. Upon receipt of the forester's report required by Subd. 1, part A, the council shall by resolution order the nuisance abated. Before action is taken on such resolution, the council shall publish notice of its intention to meet to consider taking action to abate the nuisance. This notice shall be mailed to affected property owners and published once no less than 5 days prior to such meeting. The notice shall state the time and place of the meeting, the streets affected, action proposed, the estimated cost of the abatement, and the proposed bases of assessment, if any, of costs. At such hearing or adjournment thereof, the council shall hear property owners with reference to the scope and desirability of the proposed project. The council shall thereafter adopt a resolution confirming the original resolution with such modifications as it considers desirable and provide for the doing of the work by day labor or by contract.

Subd. 3. The forester shall keep a record of the costs of abatements done under this Section and shall report monthly to the city clerk 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. 4. On or before September 1 of each year the clerk shall list the total unpaid charges for each abatement against each separate lot or parcel to which they are attributable under this ordinance. The council may then spread the charges or any portion thereof against the property involved as a special assessment under Minnesota Statutes Sec. 429.101 and other pertinent statutes for certification to the county auditor and collection the following year along with current taxes.

Section 9, Spraying Elm Trees. Subd. 1. Whenever the forester determines that any elm tree or elm wood within the city is infected with Dutch elm fungus, he may spray or treat all nearby high value elm trees, with an effective elm beetle destroying concentrate or fungicide or both. Activities authorized by this Section shall be conducted in accordance with technical and expert opinions and plans of the Commissioner of Agriculture and under the supervision of the Commissioner and his agents whenever possible.

Subd. 2. The cost provisions of Section 8 apply to spraying and treatment operations conducted under this Section.

Section 10. 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 forester. The forester shall grant such permits only when the purposes of this ordinance will be served thereby.

Section 11. Interference Prohibited. It is unlawful for any person to prevent, delay or interfere with the forester or his agents while they are engaged in the performance of duties imposed by this ordinance.

Section 12. Penalty. Any person, firm or corporation who violates Sections 10 or 11 of this ordinance is guilty of a misdemeanor and may be punished by a fine not to exceed \$500.00 or imprisonment for 90 days or both.

Section 13. This ordinance is effective from and after its passage and publication.

Adopted by the Council this 9th day of September, 1981.

Attest:

City of Danube

Arlene Frank
Arlene Frank, City Clerk

Melvin Goldhammer
Mayor Melvin Goldhammer