

ORDINANCE NO. 11-01

**AN ORDINANCE AMENDING NEW HOPE CODE  
SECTION 9-80 BY ADDING REGULATIONS  
RELATING TO EMERALD ASH BORER**

The City Council of the City of New Hope ordains:

Section 1. Section 9-80 “**Oak wilt and dutch elm disease**” of the New Hope City Code is hereby amended to read as follows:

**9-80. Oak wilt, emerald ash borer and dutch elm disease.**

(a) *Purpose.*

(1) Policy declaration. The council has determined that the health of the oak, ash and elm trees within the city limits are threatened by fatal disease known as oak wilt and dutch elm disease and an insect known as the emerald ash borer and that the loss of oak, ash and elm trees growing upon public and private property would substantially depreciate the value of property within the city and impair safety, good order, general welfare and convenience of the public. It is the intention of the council to work in cooperation with the citizens of the city to control and prevent the spread of these diseases and insect population and this section is enacted for that purpose.

(2) Shade tree epidemic disease program. A program of plant pest and disease control shall be conducted in accordance with such technical and expert methods and plans as may be designed by the City and consistent with the regulations and requirements of the Commissioner of Agriculture of the State of Minnesota.

This program is directed specifically at the control and elimination of oak wilt, emerald ash borer and dutch elm disease and is under the regulations of the Commissioner of Agriculture of the State of Minnesota.

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(b) *Tree inspector.*

(1) Position of tree inspector created. The position of tree inspector is hereby created within the park and recreation department of the city, replacing the position heretofore entitled "forester". The tree inspector shall be responsible to the city manager, through normal city channels of communication and authority as established by the city manager.

(2) Duties of tree inspector. It is the duty of the tree inspector to coordinate, under the direction and control of the city manager, all activities of the city relating to the control and prevention of oak wilt, emerald ash borer and dutch elm disease.

The inspector shall recommend to the city manager the details of a program for the control of oak wilt, emerald ash borer and dutch elm disease, and perform the duties incident to such a program adopted by the city manager, after approval by the city council of such program. The inspector shall act as coordinator between the commissioner of agriculture and the city in the conduct of this program.

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(3) Certification of tree inspector. The city tree inspector shall be certified as qualified by the commissioner, and shall maintain certification as required by the regulations of the commissioner.

(4) Reports of tree inspector. It shall be the duty of the tree inspector to make such reports to the commissioner as are required by law or by regulations of the commissioner, and such reports shall also be made to the city manager and the city council.

(c) *Nuisance.*

(1) Declaration of a public nuisance. The following are public nuisances whenever they may be found within the city, whether on private or publicly owned property.

a. *Living or standing diseased elm tree.* Any living or standing elm tree or part thereof infected with the dutch elm disease fungus *ceratocystis ulmi* (buisman) moreau or which harbors any of the elm bark beetles *scolytus multistriatus* (eichh.) or *Hylurgopinus rufipes* (marsh).

b. *Dead oak, ash or elm tree retaining bark.* Any dead oak, ash or elm tree or part thereof, including logs, branches, stumps, firewood or other oak or elm material from which the bark has not been removed.

c. *Living or standing diseased oak tree.* Any living or standing oak tree or part thereof infected with the oak wilt fungus *ceratocystis fagacearum*.

d. Living or standing ash tree infested with emerald ash borer. Any living or standing ash tree infested to any degree with Emerald Ash Borer, Agrilus Planipennis.

e. Shade tree with epidemic disease. Any other shade tree with an epidemic disease.

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(2) Prohibition of public nuisance. No person shall permit any public nuisance as defined in subsection 9-80(c)(1) to remain on any premises said person owns or controls within the city. Such nuisance may be abated in the manner prescribed by this section.

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(d) *Inspection and investigation.*

- (1) Inspection. The tree inspector shall inspect all premises and places within the city as often as practicable and at least as often as required by the regulations of the commissioner to determine whether any condition described in subsection 9-80(c) exists thereon. The inspector shall investigate all reported incidents of infestation by dutch elm fungus or elm bark beetles, emerald ash borer or oak wilt. The inspection of private property shall be subject to notice provisions to the property owner, as shall inspection of trees in boulevards as specified below.
- (2) Entry on private premises. Any person certified by the commissioner of agriculture as a tree inspector may enter upon private premises at any reasonable time for the purpose of carrying out any of the duties assigned to him under this section; however, before making any inspections on private property within a municipality, it shall be the duty of the tree inspector to give notice of said inspection to all affected residents as prescribed in chapter 1.
- (3) Diagnosis. The tree inspector shall, upon finding conditions indicating oak wilt, emerald ash borer or 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. No action to remove infested trees or wood shall be taken until positive diagnosis of the disease has been made. The property owner shall be immediately notified by the tree inspector, as prescribed in chapter 1, of the specific trees, wood or conditions being investigated, and at all times shall be fully informed in detail of conditions suspected, found or diagnosed.

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(e) *Abatement method.* In abating the nuisances defined in subsection 9-80(c), the tree inspector shall cause the infested tree or wood to be sprayed, removed, burned, girdled, or mechanically or chemically disrupt root grafts, or otherwise effectively treat so as to destroy and prevent as fully as possible the spread of oak wilt disease or dutch elm disease fungus, elm bark beetles and emerald ash borer. 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 and may be performed by the property owner under the supervision of the tree inspector. Abatement procedures shall in all cases be employed with the complete prior knowledge of the real estate owner.

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(f) *Abatement procedure for trees and wood.*

- (1) Tree inspector action. Whenever the tree inspector finds with reasonable certainty that the infestation defined in subsection 9-80(c) exists in any tree or wood within a public or private place in the city, the inspector shall proceed as follows:

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a. *No imminent danger.* If the tree inspector finds that the danger of infestation of other shade trees is not imminent because of dormancy, he shall make a written report of his findings to the council which shall proceed by abating the nuisance as a public improvement under Minn. Stat. ch. 18.023 using procedures in chapter 429, provided, however, that the property owner, may by written agreement elect to privately abate the nuisance, if done within the time agreed to by the tree inspector, and with methods approved by the tree inspector.

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abutting personally, if chapter 1, that the less than 20 days from The tree inspector shall manager by letter or written shall promptly notify the city limited by the notice he may, the nuisance, if the owner of

b. *Imminent danger.* If the tree inspector finds that danger of infestation of other oak, ash or elm trees is imminent, based upon diagnosis as described in subsection 9-80(d), he shall notify the property owner, or the property owner if the infestation is in the boulevard, possible, and also by formal notice as prescribed in nuisance will be abated within a specified time, not the date of mailing or service of such notice. immediately report such action to the city report addressed to the city manager, who council, and after the expiration of the time with the approval of the city manager, abate the real property has not done so.

(2) Assessment.

- a. *Record of the cost of abatements.* The tree inspector shall keep a record of the costs of abatements done under this section and shall report monthly to the clerk (or other officer designated by the city manager) 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.
- b. *Special assessments.* 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 section. The council may then spread the charges or any portion thereof against the property involved as a special assessment under Minn. Stat. §§ 18.023 and 429.101 and other pertinent statutes for certification to the county auditor and collection the following year along with current taxes. In alternative, the council may spread assessments for the purpose over a period of time not to exceed five years.
- c. *Cost of removing or treating tree on boulevard.* The cost of removing or treating a diseased shade tree located on street boulevards is prescribed in chapter 14.

d. *Cost of removing or treating tree on private property.* The cost of removing or treating a diseased shade tree located on private property is prescribed in chapter 14.

(g) *Notice.* Notice, as provided in subsections 9-80(f)(1)a and b and 9-80(h) shall be as prescribed in chapter 1. For the purpose of giving mailed notice, owners shall be those shown to be such as of the date 30 days prior to service of the notice, on the records of the county treasurer, but other appropriate records may be used for this purpose. Provided, however, that any property owner may waive the notice requirement, in writing.

(h) *Spraying nearby trees.* Whenever the tree inspector determines that any oak, ash or elm tree or oak, ash or elm wood within the city is infested with oak wilt, emerald ash borer or dutch elm fungus, the inspector may spray all nearby oak, ash or elm trees, with an effective spray. Spraying activities authorized by this subsection shall be conducted in accordance with technical and expert opinions and plans of the commissioner of agriculture and under the supervision of the commissioner or designee whenever possible, and costs may be assessed as provided in subsection 9-80(f) to benefitted property owners. Notice of spraying operations conducted under this subsection shall be given to affected property owners in accordance with subsection 9-80(g).

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(i) *Transporting oak, ash or elm wood.* It is unlawful for any person to transport within the city any bark bearing oak, ash or elm wood without having obtained a permit from the tree inspector. The tree inspector shall grant such permits when the purposes of this section will be served thereby.

(j) *Pruning during hazardous months.* No oak trees shall be trimmed or pruned during the disease susceptible period of May and June annually without permission of the tree inspector. In the event of unavoidable oak tree wounding during this susceptible period, dressings shall be applied as directed by the tree inspector.

(k) *Elm.* 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 incorporated thereby.

Section 2. *Effective Date.* This Ordinance shall be effective upon its passage and publication.

Dated the 28<sup>th</sup> day of March, 2011.

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Kathi Hemken, Mayor

Attest: \_\_\_\_\_  
Valerie Leone, City Clerk

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