

TOWN OF NEW SCANDIA

52  
ORDINANCE NO. 50

AN ORDINANCE PROVIDING FOR THE CONTROL AND ELIMINATION OF DISEASED TREES WITHIN NEW SCANDIA TOWNSHIP

The Town Board of New Scandia Township, Washington County, Minnesota hereby ordains:

**SECTION 1. Declaration of Policy: Intent**

The Town Board of New Scandia Township has determined that the health of oak trees within the township is threatened by a fatal tree disease commonly known as oak wilt. It has been further determined that the loss of oak trees growing upon public and private property does substantially depreciate the value of property within the township and impair the safety, good order, general welfare and convenience of the public. It is declared to be the intent of the Town Board to control and prevent the spread of oak wilt disease and other epidemic diseases of shade trees and this Ordinance is enacted for that purpose. It is also the intention of the Town Board to conduct a program of plant pest control pursuant to authority granted by Minnesota Statutes, Section 18.023 as amended. This program is directed specifically at the control and elimination of oak wilt fungus and is undertaken at the recommendation of the Commissioner of Agriculture for the State of Minnesota.

**Section 2. Appointment of a Forester and/or Tree Inspector**

The Town Board shall designate a forester and/or tree inspector, certified by the Minnesota Commissioner of Agriculture, who shall administer the shade tree disease program under the direction of the Town Board and in accordance with this ordinance.

**Section 3. Declaration of Nuisance**

The following are declared to be public nuisances whenever and wherever they may be found within the Township.

- 3.1. Any living or standing oak tree or part thereof infected to any degree with oak wilt fungus, *Ceratocystis fagacearum*, that has been determined by the township forester and/or tree inspector to pose a threat of overland transmission of the fungus to other oak trees.
- 3.2. Any dead oak tree or part thereof which, in the opinion of the township forester and/or tree inspector, constitutes a hazard for the overland spread of oak wilt including, but not limited to, branches greater than two inches in diameter at the largest end, logs, stumps or firewood.
- 3.3. Other shade trees with epidemic diseases.

**Section 4. Nuisance Prohibited: Abatement Authorized**

It shall be unlawful for any person to permit a public nuisance, as defined in this Ordinance, to remain on any premises owned or controlled by that person within the Township. Such nuisances shall be abated in the manner prescribed by this Ordinance.

**Section 5. Inspection and Investigation**

- 5.1. Annual Inspection. The forester and/or tree inspector shall inspect, as often as necessary, all public and private places within the township to

determine whether any of the conditions described in Section 3 of this Ordinance exists thereon. The forester and/or tree inspector shall investigate all reported incidents of infection or infestation by oak wilt fungus or any other epidemic disease of shade trees. The term "private place" means every place except private homes and buildings.

- 5.2. Right of Entry. The forester and/or tree inspector or the Town Board's duly authorized agents may enter upon all public and private places at any reasonable time for the purpose of carrying out any of the duties assigned herein. Before making any inspection on private property within the township, the forester and/or tree inspector shall give five days written notice of said inspection to all affected residents and property owners.
- 5.3. Disease Determination. Whenever possible, diagnosis shall be based upon accepted field symptoms. The forester and/or tree inspector may, upon finding indications of oak wilt take such other steps as may be appropriate to confirm the diagnosis. These steps may include analysis of twig and stem samples from oak trees, or parts thereof, suspected of being infected. Laboratory isolation and confirmation of the presence of the fungi shall be done by the Department of Agriculture disease diagnosis laboratory or other laboratories capable of performing such services approved by the Minnesota Commissioner of Agriculture.

#### Section 6. Interference Prohibited.

It shall be unlawful for any person to prevent, delay or interfere with the forester and/or tree inspector while engaged in the performance of duties set forth in this Ordinance.

#### Section 7. Summary of Abatement Procedures

- 7.1 If the forester and/or tree inspector finds with reasonable certainty that the infestation defined as a public nuisance herein exists in any tree or wood in any public or private place in the Township, and that the danger of infestation of other oak trees is imminent, such forester and/or tree inspector shall notify the owner of the property on which such tree or wood is located by certified mail that the nuisance shall be abated within a specified time, not less than ten (10) days from the date of mailing of such notice. The forester and/or tree inspector shall immediately report such action to the Town Board. It shall be the obligation of the property owner to carry out the abatement procedures, within the time frames established by the forester and/or tree inspector, determined by the scope of the problem, physical limitations, etc. After the expiration of the time set forth in the notice, the forester and/or tree inspector may abate the nuisance unless a request for a hearing has been filed as provided in Section 7.2. The cost of such abatement, plus an administrative fee of \$50.00, shall be assessed against the owner of the property involved or against the property itself.
- 7.2 Any property owner who feels aggrieved by an order of the forester and/or tree inspector issued pursuant to Section 7.1 may request a hearing before the Town Board. Such request shall be filed with the Town clerk, in writing, within ten (10) days after the date of the mailing of the notice by the forester and/or tree inspector. Upon receipt of the request, the matter shall be placed before the Town Board at its next meeting. The Town clerk shall notify the property owner of the date, time, and place of the meeting. All actions by the forester and/or tree inspector shall be suspended until such hearing. The property owner may appear with counsel, if he/she so chooses, and present evidence in opposition to the order of the forester and/or tree inspector. Following such hearing, the Town Board shall make a determination of the facts and shall, based upon such determination affirm, repeal, or modify the order of the forester and/or tree inspector.

The Town Board shall also establish a date for compliance of the order as affirmed or modified, which date shall be not less than five days thereafter. Upon expiration of the time limit, the forester and/or tree inspector may abate the nuisance.

- 7.3. To reduce the incidents of overland or long range spread of oak wilt fungus and to prevent oak wilt fungus from producing spores during the hazardous spring period, bark intact diseased material resulting from any tree that wilted from oak wilt in July or August of one year may be declared a nuisance as defined in Section 3 for the spring of the following year as determined by the forester and/or tree inspector. The hazardous spring period for overland or long range spread of oak wilt fungus shall be defined as April 15 to July 1.

Any owner who has been notified by certified mail of any oak wood or tree material declared to be a public nuisance located on such person's property may abate said diseased trees as described. The diseased tree may be used as fuel wood or be salvaged for other purposes. The wood must be debarked, dried or else completely covered by heavy plastic, 4 mil or greater, from April 15 until July 1 of the year following the appearance of the oak wilt symptoms. After this time the wood or tree material will no longer be a public nuisance. Any branch greater than two inches in diameter of the red oak group determined to be hazardous and not to be salvaged shall be disposed of by burning, chipping, or removal to an authorized dump site prior to April 15 of the year following the appearance of the symptoms.

Dead standing wood or tree material of the red oak group that has advanced beyond the potential for spore production need not be removed except where it constitutes a hazard to life and/or property. The forester and/or tree inspector shall determine this status in response to a resident's complaint.

Stumps of trees of the red oak group removed due to oak wilt shall be completely covered with a minimum of two (2) inches of compacted soil, removed, or debarked to the ground line to eliminate all possibilities of spore formation and overland disease spread.

The pruning of oaks shall be avoided during the most susceptible period of infection, April 15 to July 1. If wounding is unavoidable during this period, as in the aftermath of a storm or when the tree interferes with utility lines, a tree wound dressing shall be applied immediately.

- 7.4 If the forester and/or tree inspector finds a nuisance which has the potential of infestation via common root networks to abutting property, the property owner of such abutting property shall be notified of the existing nuisance and proper abatement procedures shall be conducted based on current technology and plans as may be designated by the Commissioner of Agriculture, State of Minnesota.

## Section 8.

It shall be unlawful for any person to transport within the Township any wood from the red oak group that is determined to be hazardous to the spread of oak wilt fungus, without having obtained a permit from the town forester and/or tree inspector. The forester and/or tree inspector shall grant a permit only when it does not interfere with the provisions of this ordinance.

Section 9. Penalty

Any person, firm or corporation who violates the conditions of this ordinance is guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not more than seven hundred (\$700.00) or imprisonment for 90 days or both.

Section 10 Other Controls

In addition to the penalty provided in Section 9, if the Town Board is required to institute proceedings to prevent, restrain, correct or abate any failure to comply with the provisions of this Ordinance and it may assess the cost of such action or proceeding against the affected real property or collect same from the owner.

This ordinance shall be in full force and effect from and after the date of its passage and publication according to law.

Passed and adopted by the Town Board, Town of New Scandia, Minnesota this 18<sup>th</sup> day of July, 1995.

Charles I. Nordin  
Charles I. Nordin  
Chairman

Dolores Peterson  
Dolores Peterson  
Clerk