



Legislation Details (With Text)

File #: 15064 **Version:** 1 **Name:** Emerald Ash Borer
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On agenda: 7/21/2009 **Final action:** 7/21/2009
Enactment date: 8/11/2009 **Enactment #:** ORD-09-00115
Title: Amending Section 23.40 of the Madison General Ordinances to declare ash trees infected with Emerald Ash Borer to be a public nuisance and to facilitate proper removal and disposal of any infected trees declared to be a public nuisance.
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Indexes:**Code sections:****Attachments:**

Date	Ver.	Action By	Action	Result
7/21/2009	1	COMMON COUNCIL	Adopt	Pass
7/8/2009	1	BOARD OF PARK COMMISSIONERS	RECOMMEND TO COUNCIL TO ADOPT - REPORT OF OFFICER	Pass
6/16/2009	1	COMMON COUNCIL	Referred	
6/9/2009	1	Attorney's Office/Approval Group	Referred for Introduction	

Fiscal Note

The main purpose of this ordinance revision is to provide that trees infested with Emerald Ash Borer be declared a public nuisance. Property owners would then be responsible for removing infested trees. If the trees are not removed, the City Forester would be authorized to cause removal of the the trees, and charge related costs to the property owner. Tree removal would likely be performed by private contractors, with the expenses to be fully recovered by special charges against the parcel of land supporting the trees. No appropriation is therefore required for the adoption of this ordinance.

Title

Amending Section 23.40 of the Madison General Ordinances to declare ash trees infected with Emerald Ash Borer to be a public nuisance and to facilitate proper removal and disposal of any infected trees declared to be a public nuisance.

Body

DRAFTER'S ANALYSIS: This ordinance amendment is intended to declare ash trees infected with Emerald Ash Borer to be a public nuisance and to modify the ordinance procedures for abatement of any trees declared to be a public nuisance. The spraying of elm trees is being omitted because forestry is no longer utilizing this process. Subsection (5) assessment of costs of abatement is being amended to reflect the entire costs of abating any public nuisance under this ordinance as a special charge.

The Common Council of the City of Madison do hereby ordain as follows:

Section 23.40 entitled "Elm Trees Infected with Dutch Elm Disease or Oak Trees Infected with Oak Wilt Disease a Nuisance" is amended to read as follows:

"23.40 ELM TREES INFECTED WITH DUTCH ELM DISEASE OR OAK TREES INFECTED WITH OAK WILT DISEASE OR ASH TREES INFESTED WITH EMERALD ASH BORER A NUISANCE.

(1) Public Nuisances Declared.

(a) The Common Council of the City of Madison having determined that the health of the

elm trees within the City of Madison is threatened by a fatal disease known as Dutch elm disease *Ceratocystis Ulmi* (Buisman) hereby declares the following to be a public nuisance:

1. Any living or standing elm tree or part thereof infected with the Dutch elm disease fungus or which harbors any of the elm bark beetles *Scolytus mulistriatus* (Marsh.) or *Hylargophinus rufipes* (Eichh.).
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 or sprayed with an effective elm bark beetle destroying insecticide.

(b) The Common Council of the City of Madison having determined that the health of oak trees within the City of Madison is threatened by a fatal disease known as oak wilt disease (*Ceratocystis fagacearum*) hereby declares the following to be a public nuisance:

1. Any living or standing oak tree or part thereof infected with the oak wilt disease fungus.
2. Any dead oak tree or part thereof, including logs, branches, stumps, firewood or other oak material from which the bark has not been removed.

(c) The Common Council of the City of Madison having determined that the health of the ash trees within the City of Madison is threatened by Emerald Ash Borer (*Agrilus planipennis*), an exotic wood boring beetle that only feeds on ash trees, hereby declares the following to be a public nuisance:

1. Any living or standing ash tree or part thereof infected with or which harbors any of the beetles Emerald Ash Borer (*Agrilus planipennis*).
2. Any Emerald Ash Borer infested dead ash tree or part thereof, including logs, branches, stumps, firewood or other ash material from which the bark has not been removed and burned.

(2) Nuisances Prohibited. No person, firm, or corporation shall permit any public nuisances as defined in Subsection (1) of this ordinance to remain on any premises owned or controlled by him, her or it within the City of Madison.

(3) Inspection. Following receipt of a complaint, the City Forester, or designee, shall inspect or cause to be inspected all premises and places within the City to determine whether any public nuisance as defined in Subsection (1) of this ordinance exists thereon and shall also inspect or cause to be inspected any elm tree, or oak tree or ash tree reported or suspected to be infected with the diseases or insects defined in Subsection (1) of this ordinance or any elm bark, or oak bark or ash bark bearing material reported or suspected to be infested with the diseases or vectors listed in Subsection (1) of this ordinance.

(4) Abatement of Nuisances.

(a) If the City Forester, or designee, upon inspection or examination in person or by some qualified person acting for her/him, shall determine that any public nuisance as herein defined exists in or upon any public street, alley, park or other public place, including the terrace strip between curb and lot line within the City of Madison, s/he shall:

1. Immediately cause it to be removed and the wood to be debarked, covered or chipped, or
2. Otherwise abate the nuisance in such manner as to destroy or prevent as fully as possible the spread of Dutch elm disease or the insect pests or vectors known to carry such disease fungus, or the spread of oak wilt disease, or the spread of Emerald Ash Borer beetles.

(b) If the City Forester, or designee, shall determine within reasonable certainty that any public nuisance as herein defined in Subsection 1 exists in or upon private premises, s/he shall report the existence of such nuisance to the Board of Park Commissioners; the Board shall, if it determines that such nuisance exists, cause notice to be issued to the owner of the lot or parcel of land on which such tree(s) stand or her/his agent, or if neither is known and there is a tenant or operator, occupying said property then to such

tenant or operator, that the Board of Park Commissioners proposes ordering the removal and destruction of such tree(s) as nuisances under this ordinance. The notice shall specify the general location and number of such tree(s) on the lot or parcel of land, and inform that a hearing will be held before said Board of Park Commissioners for the purpose of ordering the removal and destruction of such tree(s). The notice to the owner, agent or tenant of the property shall be issued at least two (2) weeks prior to the hearing and shall indicate the date, time, and location where the hearing will be held before the Board of Park Commissioners. The notice shall be mailed via first class mail to the property owner's last known address, and a copy shall be served upon the owner or occupant at the property location or may be posted by attaching to the entrance of any dwelling, building or other structure on the premises. After such hearing the City Forester, or designee, subject to the direction of the Board, shall abandon the work or proceed with it as s/he believes the best interests of the public require. Once the Board of Park Commissioners has ordered the removal and destruction of such tree(s) as nuisances under this ordinance, in lieu of such removal by the City Forester, or designee, the City Forester, or designee, ~~may~~shall issue a written notice to the owner, agent or ~~occupant~~ tenant or operator of the property to abate such nuisance within thirty (30) days of the receipt of said notice a reasonable period of time as specified in the notice. The notice shall include the method(s) by which the property owner, agent, tenant or operator shall abate the nuisance and the proper method(s) of disposal of such trees, and that failure to abate the nuisance as so ordered will result in the City abating the nuisance at the property owner's expense. The notice shall be mailed via first class mail to the property owner's last known address, and a copy shall be served upon the owner or occupant at the property location or may be posted by attaching to the entrance of any dwelling, building or other structure on the premises.

- (c) If such owner, agent or ~~occupant~~ tenant or operator does not abate said nuisance within the time limited, the City Forester, or designee, may cause the same to be abated. No damages shall be awarded to the owner for the destruction of any elm trees, elm wood, oak trees, or oak wood, ash trees or ash wood or any part thereof pursuant to this section.

- (5) ~~Spraying of Elm Trees. Whenever it is determined by the Common Council of the City of Madison that because of the prevalence or threatened danger of Dutch elm disease to the elm trees in the City of Madison, or a part thereof, that it is necessary to embark upon a program of tree care and protection of elm trees in the City, or a part thereof, by a system of spraying, the cost of which spraying shall be chargeable to and assessed upon the owners of lots or parcels of land upon which are located any elm trees, the Common Council shall cause notice of a public hearing on the proposed tree care program and of the proposed assessments therefore, to be published in the official newspaper once a week at least ten (10) days before the date of such hearing and by posting of such notices in at least four (4) conspicuous places within the City and mailing a copy thereof to each property owner, of the proposed assessment to be made against property owners for said spraying. Such notice shall specify that on a date certain a hearing will be held by the Common Council to determine whether the spraying shall be performed at the cost of the respective property owners at which hearing anyone interested will be heard.~~

- (65) Assessment of Costs of Abatement and Spraying.

- (a) The entire costs of abating any public nuisance as defined in Subsection (1) of this ordinance, ~~or of spraying any elm tree or part thereof as required by Subsection (5) hereof,~~ may be chargeable to and assessed imposed as a special charge against the parcel or lot upon which such tree stands. The cost of abating any such nuisance or ~~spraying any elm tree, or part thereof,~~ which is located in or upon any park or public grounds, boulevards or public right-of-way shall be borne by the City.
- (b) The City Forester, or designee, shall keep strict account of the costs of work done under this ordinance for which ~~assessments~~ special charges are to be made, stating and

certifying the description of the land, lots, parts of lots or parcels of land and the amount chargeable to each. The City Forester, or designee, shall include in her/his report to the Common Council the aggregate amounts chargeable to each lot or parcel as recorded by her/him and such amounts shall be levied and assessed imposed as special charges against such parcels or lots pursuant to Section 4.09(13). ~~in the same manner as other special taxes. Before such assessments are entered on the tax roll the Common Council shall hold a public hearing on the proposed assessments and shall give advance notice thereof not less than fourteen (14) days before the time set for such hearing by publication in the official newspaper or posting in at least four (4) conspicuous places.~~

- (76) Transporting of Wood Prohibited. No person, firm or corporation shall transport within the City of Madison any bark bearing diseased elm wood or diseased oak wood or Emerald Ash Borer infested ash wood or material without first securing the written permission of the City Forester, or designee.
- (87) Removal or Pruning of Oak Trees Prohibited. No person, firm or corporation shall remove, trim or prune any oak tree or portion thereof between April 15~~1~~ and October 15 without first securing the written permission of the City Forester, or designee.
- (98) Interference With City Forester Prohibited. No person, firm or corporation shall prevent, delay or interfere with the City Forester, or designee, or any of her/his agents or employees while they are engaged in the performance of duties imposed by this ordinance.
- (109) Penalty. Any person, firm, or corporation ~~which shall violate~~ violating any of the provisions of this ordinance shall upon conviction thereof be subject to a forfeiture of not more than five hundred dollars (\$500) ~~and in addition shall pay all costs and expenses involved in the case.~~ Each day such violation continues shall be considered a separate offense.
- (11) Separability. ~~If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by reason of any decision of any court of competent jurisdiction, such decision shall not affect the validity of any other section, subsection, sentence, clause or phrase hereof. The Common Council of the City of Madison hereby declare that they would have passed this ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions thereof may be declared invalid or unconstitutional."~~