

CHAPTER XX

MISDEMEANORS

SECTION 2000 - GENERAL PROVISIONS; STATE
LAW ADOPTED BY REFERENCE

2000.01. Conduct prohibited. It is unlawful to engage in an act or in the behavior prohibited by this chapter. Violation of a provision of this chapter is a misdemeanor and may be punished as provided in section 115 of this code.

2000.03. Provisions of criminal code adopted by reference. Subdivision 1. The provisions of Minnesota Statutes, chapter 609, as set forth in this subsection, are hereby adopted by reference and are as much a part of this code as if fully set forth herein.

Subd. 2. Section 609.221, 609.222, 609.223, 609.2231 and 609.224, "Assault in first to fifth degree".

Subd. 3. Section 609.51, "Simulating legal process".

Subd. 4. Section 609.52, "Theft".

Subd. 5. Section 609.505, "Falsely reporting a crime".

Subd. 6. Section 609.535, "Issuance of dishonored checks".

Subd. 7. Section 609.545, "Misuse of credit card to secure services".

Subd. 8. Section 609.576, "Negligent fires; dangerous smoking".

Subd. 9. Section 609.605, "Trespass".

Subd. 10. Section 609.66, "Dangerous weapons".

Subd. 11. Section 609.68, "Unlawful deposit of garbage, litter or like".

Subd. 12. Section 609.705, "Unlawful assembly".

Subd. 13. Section 609.715, "Presence at unlawful assembly".

Subd. 14. Section 609.72, "Disorderly conduct".

Subd. 15. Section 609.75, "Gambling; definitions".

Subd. 16. Section 609.755, "Acts of or relating to gambling".

2000.05. Violation. A violation of the statutes adopted by reference herein is a violation of this code.

SECTION 2005 - MISDEMEANORS; SPECIFIC PROVISIONS

2005.01. Disorderly conduct. The following acts are disorderly conduct:

- a) lurking, lying in wait, or concealment in any building, yard or street within the city with intent to do mischief, or to pilfer, or to commit any crime or misdemeanor therein;
- b) willfully disturbing any meeting not unlawful in its character, or the peace and quiet of any family or neighborhood;
- c) willfully and lewdly exposing one's person or one's private parts, or procuring another to so expose oneself, and any open and gross lewdness or lascivious behavior, or any act of public indecency;
- d) using profane, vulgar or indecent language in or about any public building, store, place of public entertainment, or place of business, or upon any of the streets, alleys, sidewalks or parks of the city so as to be audible and offensive;
- e) appearing upon any public street or other public place in an intoxicated condition or drinking intoxicating liquor on any street or in a vehicle upon a public street;
- f) unlawfully striking or in any unlawful manner, offering to or doing any bodily harm to another person or unlawfully making an attempt to apply any degree of force or violence to the person of another, or in a violent, rude, angry or insolent manner touch or lay hands upon the person of another;
- g) willfully making a false report to a police officer in the performance of the officer's official duties;
- h) discharging of firearms/BB guns.

2005.03. Resisting a public officer. It is unlawful to willfully resist, delay or obstruct a public officer in discharging or attempting to discharge a duty of the officer's office.

2005.05. False statements. It is unlawful to make a false statement in an application for a permit or license from the city.

2005.07. Loitering. Subdivision 1. Prohibited. It is unlawful to loiter, loaf, wander, stand or remain idle either alone or in consort with others in a public place in such manner as to:

- a) obstruct any public street, public highway, public sidewalk or any other public place or any building generally open to public patronage, by hindering or impeding or tending to hinder or impede the free and uninterrupted passage of vehicles, traffic or pedestrians;
- b) commit in or upon any public street, public highway, public sidewalk or any other public place or any building generally open to public patronage, any act or thing which is an obstruction or interference to the free and uninterrupted use of property or with any business lawfully conducted by any one in or upon or facing or fronting on any such public street, public sidewalk or any other public place or building, all of which prevents the free and uninterrupted ingress, egress, and regress therein, thereon and thereto.

Subd. 2. Police order. If a person causes or commits a condition enumerated in subdivision 1, a police officer or any law enforcement officer may order that person to stop causing or committing such conditions and to move on or disperse. A person who fails or refuses to obey such orders is guilty of a violation of this subsection.

2005.09. Fire alarm system and false alarms. It is unlawful to tamper with or in any way interfere with any element of any fire alarm system within the city. It is unlawful to give, or cause to be given, any alarm of fire or other emergency condition when no fire or emergency condition exists.

2005.11. Obstruction of fire hydrants. It is unlawful to park a vehicle in such a way as to obstruct a fire hydrant. The stopping or parking of a vehicle within ten feet of a fire hydrant is an obstruction of the hydrant and a violation of this subsection.

2005.13. Liquor and beer in parks. It is unlawful to bring into, possess, barter, give away or consume any intoxicating liquor or 3.2 percent malt liquor in any public park or any vehicle parking area immediately adjoining such park, except for those organizations that have been issued temporary licenses to sell beer, and for a person to possess beer as a result of a purchase from those organizations holding temporary licenses, or as otherwise authorized or licensed by the city. (Amended, Ord. No. 30, Third Series)

2005.15. Liquor and beer in public places and city buildings and property. Subdivision 1. Public ways. It is unlawful to consume, barter, or give intoxicating beverages or 3.2 percent malt liquor in or upon a public street, avenue, boulevard, alley or other public way, whether in a vehicle or not, in the city. (Amended, Ord. No. 30, Third Series)

Subd. 2. Parking areas. It is unlawful to consume, barter or give any intoxicating beverages or 3.2 percent malt liquor in or upon a parking area open to the public whether in a vehicle or not.

Subd. 3. City buildings and property. It is unlawful to bring into, store, possess, consume, barter or give any intoxicating beverages or 3.2 percent malt liquor in or upon a city building, premise or property except for those organizations that have been issued temporary licenses to sell beer, and for a person to possess beer as a result of a purchase from those organizations holding temporary licenses, or as otherwise authorized or licensed by the city. (Added, Ord. No. 30, Third Series)

2005.17. Trespass; notice. Subdivision 1. Remaining on premises. On premises privately owned but open to the use of the general public, it is unlawful to remain on the premises after having been requested to leave by the owner of the premises, an authorized representative of the owner, or any other person or entity entitled to possession of the premises.

Subd. 2. Two year rule. On any property privately owned but open to the use of the general public, it is unlawful to return to the property after receipt of a written notice of trespass from the owner, an authorized representative of the owner, or any person or entity entitled to possession of the property, or law enforcement official, which notice prohibits the person from returning to the property. This prohibition is effective for two years from the date the written notice was served.

Subd. 3. Notice. The written notice under subdivision 2 must be personally served upon the party prohibited from entering the property. An affidavit of service must be executed at the time of service. A prosecution may not be maintained under subdivision 2 unless the property owner or other complaining party can produce a copy of the notice of trespass and a signed affidavit of its service.

SECTION 2010 - NUISANCES

2010.01. Nuisances. Subdivision 1. Defined. The following acts are declared a public nuisance:

- a) engaging in a business or activity that is dangerous, hurtful, unwholesome, offensive or unhealthy to the neighborhood, or that constitutes an annoyance to the persons in the neighborhood, or is detrimental to the property in the neighborhood;
- b) permitting, suffering or maintaining, or failing to remove offensive, nauseous, hurtful, dangerous, unhealthy conditions resulting from a failure to properly dispose of garbage, sewage, waste, debris or any other unwholesome or offensive substance, liquid or thing, upon one's premises, or to drop, discharge, pass, deposit or otherwise deliver the same upon the premises of another or public property;
- c) constructing, maintaining, permitting or allowing upon one's property any billboard, sign, poster, or advertisement, or to post, publish, promulgate, broadcast, display, issue or circulate insulting, profane or abusive emblem, sign, or device, or blasphemous written or printed statement, calculated or such as is likely to cause a breach of the peace;
- d) displaying, circulating, issuing or publishing slanderous or obscene, immoral, or lewd pictures, posters, literature, writings, drawings or oral statements.

Subd. 2. Abatement. A nuisance defined herein may be abated after 48 hours notice to remove the same by any officer of the city. The notice describing the property upon which the nuisance is situated and the nature of the nuisance to be abated must be given to the owner or occupant of the property. If the notice cannot be delivered to the owner or occupant of the property the notice must be published in a local newspaper, and must state that the nuisance must be abated within a designated time of not less than 60 hours from the time of publication.

Subd. 3. Penalty. Violation of this section is a misdemeanor. The imposition of one penalty for any violation of this section does not excuse the violation, or permit it to continue. Each ten days that prohibited conditions are maintained constitutes a separate offense.

2010.03. Noise in residential areas. It is unlawful to, between the hours of 10:00 p.m. and 7:00 a.m., to emanate noise of a sufficient volume so as to disturb the peace, quiet or repose of persons residing in any residential area. It is unlawful to visit or remain within any residential dwelling unit wherein such party or gathering is taking place except persons who have gone there for the sole purpose of abating the disturbance.

2010.05. Hazardous conditions. Subdivision 1. Preamble.

- a) Private property. The council finds that accumulation on private property of unlicensed, unregistered or inoperable motor vehicles, household furniture, furnishings or appliances, or parts or components thereof, or metal, wood, glass, paper, rubber, concrete, or other material, whether organic or inorganic, can facilitate the growth or spread of noxious weeds, the nesting and breeding of rodents, insects, and harmful bacteria, and be a threat of fire. The council also finds that unless such accumulation is stored in a lawfully operated junk yard, housed within a lawfully erected building, or in a container permitted, and the contents disposed of, under provisions of the city code, it is a source of filth, cause of sickness, and an immediate danger to the health, safety and welfare of persons and property in the city. The council finds that if such unauthorized, unwholesome and dangerous accumulation is permitted to continue to pose such a threat it is a hazardous condition and a nuisance, must be abated, and that this section is adopted to protect the residents of the city and their property and, in addition, to protect the rights of persons who may be found in violation of its provisions. "Accumulation" as that term is used in this paragraph, means prohibited items in any number or amount.
- b) Business premises. The council finds that accumulation upon premises to which the public has access or may be exposed of food particles or other material causing discomfort to patrons, or disrepair of seating, floor covering, plumbing, heating, or electrical facilities, or failure to maintain a reasonable standard of cleanliness and absence of noxious odors, can facilitate the nesting and breeding of rodents, insects, and harmful bacteria and is a source of filth, cause of sickness, and an immediate danger to the health, safety and welfare of persons and property in the city. The council finds that if such unauthorized, unwholesome and dangerous accumulation is permitted to continue to pose such a threat it is a hazardous condition and a nuisance, must be abated, and that this section is adopted to protect the residents of the city and their property and, in addition, to protect the rights of persons who may be harmed in violation of its provisions. "Accumulation" as that term is used in this paragraph, means prohibited items or conditions in any number or amount. (Added, Ord. No. 19, Third Series)

Subd. 2. Unlawful acts and enforcement.

- a) It is unlawful to park or store any unlicensed, unregistered or inoperable motor vehicle, household furniture, furnishings or appliances, or parts or components thereof, or scrap metal, wood, glass, paper, rubber, concrete, or other material, whether organic or inorganic, on private property, unless such accumulation is stored within a lawfully operated junk yard, housed within a lawfully erected building, or in a container permitted, and the contents disposed of, under other provisions of the city code.
- b) It is unlawful to permit, on premises to which the public has access or may be exposed, any accumulation of food particles or other material causing discomfort to patrons, or disrepair of seating, floor covering, plumbing, heating or electrical facilities, or failure to maintain a reasonable standard of cleanliness and absence of noxious odors.
- c) As to any provision of this section which constitutes an unlawful act, and in addition to all of the civil proceedings described in this section, each day that a violation continues, or is permitted to continue, shall constitute a separate offense in prosecution of such unlawful act. (Added, Ord. No. 19, Third Series)

Subd. 3. Investigation and notice of hearing. Upon receipt of any complaint of violation of subdivision 2 of this section, or on its own initiative, but at least annually during the month of May, the council shall investigate the premises and if it is found that there is a hazardous condition and a nuisance on any premises in violation of this section, the same shall be reported to the city administrator who shall prepare a Notice of Hearing on Order to Abate Nuisance addressed to owners, tenants, mortgagees and other lien holders, all of whose interests are known to the city administrator or appear of record, and bearing the legal description of the premises on which the alleged violation appears. The notice shall state the date, time and place of hearing and describe the violation in general terms. (Added, Ord. No. 19, Third Series)

Subd. 4. Service of notice. The notice shall be served at least 20 days before the date of hearing in the following manner: (1) if the person to whom it is addressed resides in the city, or can readily be found therein, it shall be served personally on the addressee or left at their residence with a person of suitable age and discretion; (2) addressees not served personally shall be served by certified mail at their addresses appearing in records (selected by the city administrator) of Goodhue County; and, (3) by publication of the notice once in the official newspaper at least ten days prior to the date of hearing. Inadvertent failure to serve any addressee personally or by certified mail shall not invalidate the proceedings, but publication shall then suffice. (Added, Ord. No. 19, Third Series)

Subd. 5. Hearing, findings and decision.

- a) The hearing shall be held before the council at a regular or special meeting and conducted in the same manner as an administrative appeal. All persons desiring to be heard shall be afforded an opportunity to present evidence.
- b) At any time after the hearing is closed, but at least at its next regular meeting, the council shall decide whether or not the item or items constitute a nuisance in violation of this section and direct the drawing and serving of Findings of Fact and Decision by certified mail on all addressees. If the council finds that there is a violation, the decision shall include an Order to Abate Nuisance and specify the date by which abatement shall be completed.
- c) Estimated value, if any, of all offensive items described in subdivision 2, subparagraph a), shall be included in the evidence and in the findings. "Value" for the purpose of this section means the amount of money, in cash, which can be obtained in a negotiated sale on a known and ready market in the city. (Added, Ord. No. 19, Third Series)

Subd. 6. City to abate. If abatement of the items described in subdivision 2, subparagraph a), is not completed by the date stated in the Order to Abate Nuisance, the city may enter upon the premises, remove the offending item or items, and clean up the nuisance. (Added, Ord. No. 19, Third Series)

Subd. 7. City disposal. If the city abates the nuisance it shall dispose of the items as follows:

- a) Any item or items of value shall be sold locally in a negotiated sale.
- b) Items of no value shall be disposed of in a landfill or other site acceptable to governmental regulatory authority. (Added, Ord. No. 19, Third Series)

Subd. 8. Allocation of proceeds and assessment. If the city abates the nuisance all costs thereof, including, but not limited to, cost of sale, if any, shall be aggregated, sale proceeds deducted, and the remainder certified as a special assessment. (Added, Ord. No. 19, Third Series)

Subd. 9. Failure to abate nuisance on business premises. If the hazardous condition and nuisance described in subdivision 2, subparagraph b) of this section is not abated within the time limited, all present licenses issued by the city to carry on the business on such premises shall be revoked, and no future license shall be issued therefor until full abatement has been completed. (Added, Ord. No. 19, Third Series)

2010.07. Dangerous trespasses and other acts. It is unlawful for any person to: 1) smoke in the presence of explosives, or inflammable materials, or in a building, or area, in which “No Smoking” notices have been prominently posted; or, 2) interfere with or obstruct the prevention or extinguishing of any fire, or destroy the lawful orders of a law enforcement officer or fireman present at the fire; or, 3) show a false light or signal or interfere with any light, signal or sign controlling or guiding traffic upon a highway, railway track, or navigable water; or, 4) place an obstruction upon a railroad track; or, 5) expose another or their own property to an obnoxious or harmful gas, fluid or substance, with intent to injure, molest or coerce; or, 6) trespass or permit animals under their control to trespass upon a railroad track; or, 7) permit domestic animals or fowl under their control to go upon the lands of another within the city; or, 8) interfere unlawfully with any monument, sign or pointer erected or marked to designate a point of a boundary, line or a political subdivision, or a tract of land; or, 9) trespass upon the premises of another, and without claim of right refuses to depart therefrom on demand of the lawful possessor; or, 10) occupy or enters the dwelling of another, without claim of right, or consent of the owner, or the consent of one who has the right to give consent, except in an emergency situation; or, 11) enter the premises of another with intent to take or injure any fruit, fruit trees or vegetables growing thereon without the permission of the owner or occupant; or, 12) without the permission of the owner tamper with or get into or upon a motor vehicle, or ride in or upon such motor vehicle knowing it was taken and is being driven by another without the permission of the owner. (Added, Ord. No. 19, Third Series)

2010.09. Storage, deposit and disposal of refuse. Subdivision 1. Definitions. The following terms, as used in this section, shall have the meanings stated:

- a) Refuse - means and includes all drained organic material resulting from the preparation of food and spoiled or decayed food from any source, bottles, cans, glassware, paper or paper products, crockery, ashes, rags, and discarded clothing, and tree or lawn clippings, but not including construction material or debris.
- b) Recyclable materials - means that refuse generated and collected at residences, more particularly described as newsprint, glass containers, aluminum containers and aluminum scrap, plastic containers, tin containers, and corrugated cardboard.
- c) Yard waste - means that refuse generated and collected at residences, more particularly described as trees and branches and clippings, leaves, lawn clippings, and garden waste.
- d) Residential dwelling - means any single building consisting of one through four dwelling units with individual kitchen facilities for each.
- e) Multiple dwelling - means any building used for residential purposes consisting of more than four dwelling units with individual kitchen facilities for each.

- f) Commercial establishment - means any premises where a commercial or industrial enterprise of any kind is carried on, and shall include restaurants, clubs, churches and schools where food is prepared or served. (Added, Ord. No. 19, Third Series)

Subd. 2. Storage.

- a) It is unlawful for any person to store refuse on residential dwelling premises for more than one week. All such storage shall be in five to 30 gallon metal or plastic containers with tight-fitting covers which shall be maintained in a clean and sanitary condition; provided, that tree leaves, weeds and grass clippings may be stored in plastic bags and tree limbs must be stored in bundles weighing no more than 50 pounds and no longer than four feet.
- b) It is unlawful for any person to store refuse on multiple dwelling premises for more than one week. Such storage shall be in containers as for residential dwelling premises, except that so-called "dumpsters" with close-fitting covers may be substituted.
- c) It is unlawful for any person to store refuse on commercial establishment premises for more than 48 hours. Such storage shall be in containers as for residential dwelling premises, except that so-called "dumpsters" with close-fitting covers may be substituted.
- d) It is unlawful to store organic refuse unless it is drained and wrapped. (Added, Ord. No. 19, Third Series)

Subd. 3. Deposit.

- a) It is unlawful for any person to deposit refuse from any source, rubbish, offal of the body of a dead animal, in any other place than a sanitary landfill or other appropriate waste disposal site approved by federal, state or local regulations for the acceptance of said waste. It is unlawful for any person to deposit materials defined as recyclable or as yard waste co-mingled with their refuse for collection. All recyclable materials as defined above and modified from time to time [by local regulations and disseminated to the garbage customers of the city (both commercial and residential) and considered commonly understood information by said garbage customers] must be deposited in containers approved by the city for collection. All yard waste must be transported by the person(s) generating said yard waste to the designated disposal site commonly known as the city compost site and must be deposited as prescribed by local regulations. It is unlawful for any person to deposit in the compost pile and/or branch pile at the city compost site anything other than defined yard wastes. It is unlawful to place plastic garbage type bags on any piles or locations at the city compost site.

- b) It is unlawful for any person to deposit their refuse on or in the property of another person or business. This includes so called dumpsters located at various public places owned by the city such as, but not exclusively, parks, except that garbage generated at the site of said dumpsters in the normal use of a facility is to be deposited in that facility's dumpster. (Added, Ord. No. 19, Third Series)

Subd. 4. Fire and explosion danger. It is unlawful for any person to deposit or dispose of any refuse which is in flame or heated to the point that it could cause danger of fire or any other material which is flammable or so volatile as to create a danger of fire or explosion. If ashes are to be disposed of as a part of the refuse collection system, the ashes must be placed in a separate container and not commingled with any other garbage or refuse to be collected. The ashes must be contained in such a way that the refuse collectors are able to distinguish the same as ashes and be able to observe that they are safe to be deposited in the refuse collection vehicle. (Added, Ord. No. 19, Third Series)

Subd. 5. Disposal. The council may, by resolution, adopt, and from time-to-time amend, adjust and revise such rules, regulations, rates and charges as it deems necessary or proper for the operation and management of the sanitary landfill. It may give notice of any such action as it deems necessary. (Added, Ord. No. 19, Third Series)

2010.11. Abandoning a motor vehicle. It is unlawful for any person to abandon a motor vehicle on any public or private property without the consent of the person in control of such property. For the purpose of this section, a "motor vehicle" is as defined in Minnesota Statutes, chapter 169. For the purpose of this section, an "abandoned motor vehicle" is defined as in the section of the city code relating to disposal of abandoned motor vehicles. (Added, Ord. No. 19, Third Series)

2010.13. Maintenance of private property. Subdivision 1. It is the primary responsibility of any owner, occupant or agent of any lot or parcel of land to maintain any weeds or grass growing thereon at a height of not more than six inches; to remove all public health or safety hazards therefrom; to install or repair water service lines thereon; to treat or remove insect-infested or diseased trees thereon; and, when deciduous trees have seasonally lost their leaves, to clean up and remove such leaves from such premises. (Added, Ord. No. 19, Third Series)

Subd. 2. It is unlawful for any owner, occupant or agent of any lot or parcel of land to allow any weeds or grass growing upon any such lot or parcel of land to grow to a greater height than eight inches or to allow such weeds or grass to go to seed. (Added, Ord. No. 19, Third Series)

Subd. 3. It is unlawful for any owner, occupant or agent of any lot or parcel of land to fail to promptly, when deciduous trees have seasonally lost their leaves, to clean up and remove such leaves from such premises. (Added, Ord. No. 19, Third Series)

Subd. 4. It is unlawful for any owner, occupant or agent of any lot or parcel of land to fail to remove all public health or safety hazards thereon, or to fail to install or repair water service lines thereon, or to fail to treat or remove insect-infested or diseased trees thereon. (Added, Ord. No. 19, Third Series)

Subd. 5. If any such owner, occupant or agent fails to comply with this section, and after notice given by the city, has not within four days of such notice complied, the city shall cause such weeds or grass to be cut, or leaves to be cleaned up and removed, or public health or safety hazards removed, or water service lines repaired, or diseased or insect-infested trees treated or removed, and the expense thus incurred, including administrative costs, shall be the personal liability of the owner of such premises. A bill, indicating the cost, shall be sent to the owner, occupant or agent. If the total amount is not paid in accordance with the terms indicated on the bill, the amount of the costs and expenses incurred plus accrued interest on the unpaid balance shall be certified and entered as a special assessment against such lot or parcel of land. (Added, Ord. No. 19, Third Series)

2010.15. Toilet installation required. It is the duty of every owner or occupant of any property within the city, having a dwelling house or business building, other than a business building used for storage use purposes only, situated thereon, to install a toilet in such dwelling or business building and make connection thereof to city water main if located within 500 feet of such main and with city sewer main if located within 200 feet of such main as provided in the sewerage service regulations of the city code. (Added, Ord. No. 19, Third Series)

2010.17. Window peeping. It is unlawful for any person to go upon the private premises of another, and in a surreptitious manner look, gaze, stare or peep into any window, door or other opening in any building located thereon which is occupied by a person or persons as a place of abode with intent to intrude upon the privacy of a member of the household thereof. (Added, Ord. No. 19, Third Series)

SECTION 2015 - CONDUCT IN OR AROUND SCHOOL BUILDINGS

2015.01. Defacement of school property. It is unlawful to mark with ink, paint, chalk, or other substance, or post hand bills on, or in any other manner deface or injure any public or private school building or structures used or usable for school purposes within the city, or mark, deface or injure fences, trees, lawns or fixtures appurtenant to or located on the site of such buildings, or post hand bills on such fences, trees or fixtures or place a sign anywhere on any such site.

2015.03. Breach of peace on, or adjacent to school grounds. It is unlawful to willfully or maliciously make or assist in making on any school grounds adjacent to any school building or structure any noise, disturbance or improper diversion or activity by which peace, quiet and good order is disturbed.

2015.05. Offensive language and conduct. It is unlawful to use offensive, obscene or abusive language or engage in boisterous or noisy conduct tending reasonably to arouse alarm, anger or resentment in others on school grounds or in buildings or structures.

2015.07. Improper conduct while school in session. It is unlawful to, in any school room or in any building or on the grounds adjacent to the same, disturb or interrupt the peace and good order of the school while in session. A person not in immediate attendance in the school and being in such building or upon the premises belonging thereto who conducts or behaves improperly, or who upon the request of a teacher of such school or the person in charge thereof to leave said building or premises, neglects or refuses so to do, is in violation of this section. It is unlawful to loiter on school grounds or in school buildings or structures.

SECTION 2020 - NUISANCES; SHADE TREE DISEASE CONTROL

2020.01. Declaration of policy. The city council has determined that the health of the shade trees within the city limits is threatened by shade tree diseases. It has further determined that the loss of shade 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 the intention of the council to control and prevent the spread of these diseases, and this section is enacted for that purpose, and to conform to the policies and procedures embodied in Minnesota Statutes, section 18.023 and rules promulgated thereunder.

2020.03. Definitions. Subdivision 1. The terms defined in this section have the meanings given them.

Subd. 2. "Shade tree" means an oak or elm tree situated in the city of Kenyon.

Subd. 3. "Shade tree disease" means Dutch elm disease caused by *ceratocystis ulmi*, or oak wilt disease caused by *ceratocystis fagaceorum*.

Subd. 4. "Commissioner" means the commissioner of the Minnesota department of agriculture.

Subd. 5. "Tree inspector" or "inspector" means a person having the necessary qualifications to conduct a shade tree program and who is so certified by the commissioner.

Subd. 6. "Disease control area" means the city of Kenyon.

Subd. 7. "Shade tree control program" or "program" means a program developed by the city to combat shade tree disease in accordance with rules promulgated by the commissioner.

2020.05. Tree inspector. Subdivision 1. Position created. The powers and duties of the city tree inspector as set forth in this section are hereby conferred upon the city administrator. The administrator may designate a city employee to perform the duties of tree inspector.

Subd. 2. Duties of tree inspector. It is the duty of the tree inspector to coordinate, under the direction and control of the council, all activities of the city relating to the control and prevention of shade tree disease. The inspector must recommend to the council the details of a program for the control of shade tree disease, and perform the duties incident to such a program adopted by the council.

2020.07. Shade tree disease program. It is the intention of the city council to conduct a program of shade tree control pursuant to the authority granted by Minnesota Statutes, section 18.023. This program is directed specifically at the control and elimination of shade tree diseases and is undertaken at the recommendation of the commissioner of agriculture, and in conformance with rules promulgated by the commissioner. The city tree inspector acts as coordinator between the commissioner of agriculture and the council in the conduct of this program.

2020.09. Shade tree diseases. Subdivision 1. Nuisances declared. The following things are public nuisances whenever they may be found within the city:

- a) a 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 *hyluigopinus rufipes* (marsh).
- b) a 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.
- c) a living or standing northern red oak, northern pine oak, black oak or scarlet oak, or part thereof infected to any degree with oak wilt disease.

Subd. 2. Abatement. It is unlawful for any person to permit any public nuisance as defined in subdivision 1 to remain on premises owned or controlled by that person within the city. Such nuisances may be abated in the manner prescribed by this section.

2020.11. Inspection and investigation. Subdivision 1. Annual inspection. The tree inspector must inspect all premises and places within the city as often as practicable to determine whether any condition described in subsection 2020.09 exists thereon. The inspector must investigate all reported incidents of infestation by Dutch elm fungus, elm bark beetles or oak wilt.

Subd. 2. Entry on private premises. The tree inspector may enter upon private premises at any reasonable time for the purpose of carrying out any of the duties of the inspector under this section. Such inspections must be preceded by two days' written notice to the owner of said private property, unless such notice is waived in writing by the owner.

Subd. 3. Diagnosis. The tree inspector must, upon finding conditions indicating shade tree disease infestation, immediately send appropriate specimens or samples to the commissioner of agriculture for analysis, or take such other steps for diagnosis as may be provided by the commissioner by rule. Except as provided in subsection 2020.13 no action to remove infected trees or wood must be taken until positive diagnosis of the disease has been made.

2020.13. Abatement of shade tree disease nuisances. In abating the nuisances defined in this section, the tree inspector must 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 disease. Such abatement procedures must be carried out in accordance with current technical and expert opinions and procedures as may be established by the commissioner of agriculture.

2020.15. Procedure for removal of infected trees and wood. Subdivision 1. Findings. Whenever the tree inspector finds with reasonable certainty that the infestation defined in subsection 2020.09 exists in any tree or wood in any public or private place in the city, the inspector must proceed as follows:

- a) If the inspector finds that the danger of infestation of other trees is not imminent because of dormancy, the inspector must make a written report of those findings to the council which must proceed by (i) abating the nuisance as a public improvement under Minnesota Statutes, chapter 429, or (ii) abating the nuisance as provided in subdivision 2 of this subsection.
- b) If the inspector finds that danger of infestation of other trees is imminent, the inspector must notify the abutting property owner by certified mail that the nuisance will be abated within a specified time, not less than five days from the date of mailing of such notice. The inspector must immediately report such action to the council, and after the expiration of the time limited by the notice the inspector may abate the nuisance.

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

Subd. 3. Records. The inspector must keep a record of the costs of abatements ordered under this subsection and report monthly to the city administrator 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. Assessment. On or before September 1 of each year, the city administrator must 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 Minnesota Statutes, section 429.101 and other pertinent statutes for certification to the county auditor and collection the following year along with current taxes.

2020.17. Tree inspector; program. The tree inspector must conduct the shade tree disease control program in accordance with the rules and regulations of the commissioner embodied in AGR 101-120 "shade tree disease control" and subsequent amendments thereto.

2020.19. Transporting elm wood prohibited. It is unlawful to transport within the city any bark-bearing elm wood without having obtained a permit from the tree inspector. The inspector will grant such permits only when the purposes of this section will be served thereby.

2020.21. Interference prohibited. It is unlawful to prevent, delay or interfere with the inspector while engaged in the performance of the duties imposed by this section.