

# ORDINANCE 16.01

## AN ORDINANCE REGULATING THE PLANTING, MAINTENANCE AND REMOVAL OF TREES IN THE CITY OF ROTHSAY, MINNESOTA

### SECTION 1. PURPOSE:

It is the purpose of this Ordinance to promote and protect the public health, safety, and general welfare for the citizens of Rothsay, MN, by providing for the regulation of the planting, maintenance, and removal of trees, shrubs, and other plants within the City of Rothsay.

### SECTION 2. AUTHORITY AND POWER:

There is hereby created and established a City Tree Board for the City of Rothsay, which shall consist of four (4) Board Members; certified tree inspector, City Street Superintendent, a current member of the Rothsay City Council, and a resident of the City of Rothsay, who shall be appointed by the Mayor and City Council. Members of the Board shall serve without compensation.

### SECTION 3. TERM OF OFFICE:

The term of office for a resident shall last until they resign and the City Council shall appoint a replacement. The City Council member shall be on the Board until he or she leaves the Council position or another Council member agrees to resume the position. The Certified Tree Inspector and the Street Superintendent shall be on the Tree Board as long as they are employed by the City of Rothsay.

### SECTION 4. APPLICABILITY:

This Ordinance provides full power and authority over all trees, plants and shrubs located within street right-of-way, parks and public places of the City; and to trees, plants and shrubs located on private property that are believed to constitute a hazard or threat, or to those that are suspected to be diseased or insect infested, as described herein.

### SECTION 5. DEFINITIONS:

**a. Street Trees:** "Street Trees" are herein defined as trees, shrubs, bushes, and all other woody vegetation on land lying between property lines on either side of all streets, avenues, boulevards, or within the City.

**b. Park Trees:** "Park Trees" are herein defined as trees, shrubs, and all other woody vegetation in public parks having individual names, and all areas owned by the City, or to which the public has free access as a park.

**c. Tree Sizes:** A "small tree" shall be defined as any plant material that will grow to a height of 30 feet; a "medium tree" shall be any plant material that will grow to a height of 50 feet; a "large tree" shall be defined as any plant material that will grow to a height of over 50 feet.

### SECTION 6. LANDSCAPING:

In new subdivisions or when the development of commercial property occurs, the City Tree Board will review landscaping plans and may require street trees to be planted in any of the streets, parking lots, parks and other public places abutting lands henceforth developed and/or subdivided.

### SECTION 7. TREE PLANTING, MAINTENANCE AND REMOVAL:

**a. Tree Species** – The City Tree Board develops and maintains a list of desirable trees for planting along streets in tree size classes: small, medium, and large.

**b. Spacing** – The spacing of street trees shall be in accordance with the tree species size classes listed in this Ordinance, and no trees may be planted closer together than the following:

small trees – 30 feet; medium trees – 40 feet; and large trees – 50 feet; except in special plantings designed or approved by a landscape architect.

**c. Utilities** – No trees shall be planted within 20 feet of City's main sewer lines.

**d. Distance from Curb & Sidewalk** – The distance trees may be planted from curbs and curb lines and sidewalks will be in accordance with the three species size classes listed in Section 5 of this Ordinance, and no trees may be planted closer to any curb or sidewalk than the following: small trees – 2 feet; medium trees – 3 feet; and large trees – 4 feet.

### **SECTION 8. ADJACENT LANDOWNER RESPONSIBILITY:**

No person shall plant, remove, cut above the ground, or disturb any tree on any street, park, or other public place without first filing an application and procuring a permit from the City Tree Board. The person receiving the permit shall abide by the standards set forth in this Ordinance.

### **SECTION 9. PUBLIC TREE CARE:**

**a. Care of Street Trees** – The City of Rothsay and the City Tree Board shall have the right to plant, prune, maintain, and remove trees, plants, and shrubs with the lines of all streets, alleys, avenues, lanes, squares, and public grounds as may be necessary to insure the public safety or to preserve or enhance the symmetry and beauty of such public grounds. No other planting may be done without the consent of the City Tree Board.

All trees planted on City property shall be mulched with no less than 2 to 3 inches high of mulch, and no less than one foot in diameter around the trunk of the tree.

**b. Reporting discovery of shade tree pest** – Any owner or occupier of land or any person engaged in tree trimming or removal who becomes aware of the existence of a public nuisance caused by a shade tree pest as defined under subdivision 3 shall report the same to the city.

**c. Standard abatement procedure** – Except as provided in subdivisions 1 and 4, whenever a tree inspector determines with reasonable certainty that a public nuisance, as described by this ordinance, is being maintained or exists on premises in the city, the tree inspector is authorized to abate a public nuisance according to the procedures in this subdivision.

(A) The tree inspector will notify in writing the owner of record or occupant of the premises that a public nuisance exists and order that the nuisance be terminated or abated. The notice may be given in person or by mail. Failure of any party to receive the mail does not invalidate the service of the notice. A copy of the notice shall be filed with the city clerk.

(B) The notice of abatement shall state that unless the public nuisance is abated by the owner or occupant, it will be abated by the city at the expense of the owner or occupant. The notice shall specify the control measures to be taken to abate the nuisance, and provide a reasonable amount of time to abate the nuisance. The notice will also state that the owner or occupant has the right to appeal the determination that a public nuisance exists by submitting a request in writing to the city clerk within seven (7) days after service of the notice, or before the date by which abatement must be completed, whichever comes first.

(C) If no timely appeal is submitted, and the control measures prescribed in the notice of abatement are not complied with within the time provided by the notice or any additional time granted, the tree inspector or designated person shall have the authority to obtain permission or an administrative search warrant, enter the property, and carry out abatement in accordance with the notice of abatement.

**Subd. 1. High-cost abatement.** If the tree inspector determines that the cost of abating a nuisance will exceed \$5,000 based on a reasonable, good faith estimate, the written notice referred to in Section 9c must provide that if the nuisance is not abated within the reasonable amount of time provided, the matter will be referred to the City Council for a hearing. The date, time, and location of the hearing must be provided in the notice.

**Subd. 2. Appeal procedure.** If the city clerk receives a written request for a hearing on the question of whether a public nuisance exists, the City Council shall hold a hearing within seven (7) calendar days

following receipt by the clerk of the written request. At least three (3) days notice of the hearing shall be given to the individual who made the written request for the hearing. The Council may modify the abatement notice or extend the time by which abatement must be completed. Each owner, agent of the owner, occupant, and lien holder of the subject property or properties in attendance, if any, shall be given the opportunity to present evidence at the hearing. After holding the hearing, the City Council may issue an order requiring abatement of the nuisance.

**Subd. 3. Inspection and application of control measures.**

(A) The tree inspector is authorized to inspect premises and places within the city to determine whether shade tree pests exist thereon and to investigate all reported incidents of shade tree pests. The tree inspector is authorized to take all reasonable measures to prevent the maintenance of public nuisances and may enforce the provisions relating to abatement in this section. Diagnosis of shade tree pests may be by the presence of commonly recognized symptoms; by tests as may be recommended by the commissioner of the Minnesota Department of Agriculture or the commissioner of the Minnesota Department of Natural Resources; or other reliable means.

(B) No person, firm, or corporation shall interfere with the tree inspector or with anyone acting under the tree inspector's authority while engaged in activities authorized by this section.

**Subd. 4. Abatement procedure in event of imminent danger.**

(A) If the tree inspector determines that the danger of infestation to other shade trees is imminent, and delay in control measures may put public health, safety, or welfare in immediate danger, the tree inspector may provide for abatement without following Section 9c or subd.1. The tree inspector must reasonably attempt to notify the owner or occupant of the affected property of the intended action and the right to appeal the abatement and any cost recovery at the next regularly scheduled City Council meeting.

(B) Nothing in this section shall prevent the city, without notice or other process, from immediately abating any condition that poses an imminent and serious hazard to human life or safety.

**Subd. 5. Recovery of cost of abatement; liability and assessment.**

(A) The owner of premises on which a nuisance has been abated by the city shall be personally liable for the cost to the city of the abatement, including administrative costs. As soon as the work has been completed and the cost determined, the city clerk or other official shall prepare a bill for the cost and mail it to the owner. Thereupon the amount shall be immediately due and payable at the office of the city clerk.

(B) After notice and hearing, as provided in Minn. Stat. § 429.061 (which may be amended from time to time), the city clerk shall, on or before Sept. 1 next following abatement of the nuisance, list the total unpaid charges as well as other charges for current services to be assessed under Minn. Stat. § 429.101 against each separate lot or parcel to which the charges are attributable. The city council may then certify the charges against the property to the county auditor for collection along with current taxes the following year or in annual installments as the city council may determine in each case.

**Subd. 6. Penalty.**

(A) Any person, firm, or corporation that violates any provision of this section shall, upon conviction, be guilty of a misdemeanor. The penalty, which may be imposed for any crime that is a misdemeanor under this section, including Minnesota Statutes specifically adopted by reference, shall be a sentence of not more than 90 days, or a fine of not more than \$1,000, or both.

(B) Upon conviction of a misdemeanor, the costs of prosecution may be added. A separate offense shall be deemed committed upon each day during which a violation occurs or continues.

(C) The failure of any officer or employee of the city to perform any official duty imposed by this section shall not subject the officer or employee to the penalty imposed for a violation.

(D) In addition to any penalties provided for in this section, if any person, firm, or corporation fails to comply with any provision of this section, the City Council or any official designated by it may institute appropriate proceedings at law or at equity to restrain, correct, or abate the violation.

**Subd. 7. Severability.** Should any part or provision of this ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of the ordinance as a whole or any part thereof other than the part held to be invalid.

**d. Removal of Trees Endangering Utilities or Other Public Improvements** – The City Tree Board may remove or order to be removed any tree or part thereof which is in an unsafe condition or which by reason of its nature is injurious to sewers, electric power lines, gas lines, water lines, or other public improvement, or is affected with any injurious fungus, insect, disease, or other pest. Any and all diseased or insect infested materials must be removed from the City to a proper disposal site where it can be properly treated (such as burning or chemically treated), so as to avoid the spreading of the disease or insect infestation.

Every tree overhanging any street or right-of-way within the City shall be pruned so that the branches shall not obstruct the light from any street lamp or obstruct the view of any street intersection, and so that there be a clear space of at least 8 feet above the street or sidewalk. Dead, diseased, or dangerous trees, or broken or decayed limbs which endanger the safety of the public shall be removed.

The property owner shall be responsible for keeping the City sidewalks clean of leaves, branches, and other debris that runs adjacent to their property.

All trees that have been removed must include the grinding of stumps to a depth of no more than 18 inches or removed completely.

**e. Trees on Private Property** – The City Tree Board shall have the authority to order the trimming, treatment, and removal of trees, shrubs, or plants upon private property when such action is necessary to insure public safety or to prevent the spread of disease or insects to trees, shrubs, or plants located on public property. Any tree or shrub situated on private property, but so situated as to extend its branches over the improved portion of a public street or highway easement, shall be so trimmed by the owner of the real property upon which the same is located so that there is a clear height of at least 8 feet over that portion of such easement that is used for vehicular traffic and over that portion of such easement used for pedestrian travel; and such persons shall removed the head or disease branches or stubs of trees which are or may become hazardous to the public use of such easement. Any trees obstructing traffic control signs or devices from the City Tree Board to insure proper safety for motorists and pedestrians.

All orders to trim, remove, or treat trees, shrubs, or plants given pursuant to this Section, shall be in writing and shall be served in person or by first class mail upon the owner of the property where such trees, shrubs, or plants are located. Such orders shall afford the owner of the property not less than fourteen (14) days from the date of the mailing of such notice to comply with such order. It shall be unlawful for any owner of property receiving such an order to fail to comply with the order in the time specified.

If the required action is not taken by the property owner within the specified time, the City Tree Board may cause the trees, shrubs, or plants concerned to be trimmed, removed, or treated, with the costs being borne by the property owner. If not voluntarily paid to the City of Rothsay by such owner, the costs of such trimming, removal, or treatment may be recovered by the City of Rothsay by special assessment upon the property owner.

Trees planted on City property in front of residences shall be watered and cared for by the residents. The property owner resident and the City Tree Board shall discuss what species of trees shall be planted on the City-owned boulevard adjacent to the privately owned property.

Any fruit-bearing trees, shrubs, or plants shall not be planted near City sidewalks.

## **SECTION 10. TREE TOPPING:**

It shall be unlawful as a normal practice for any person, firm or City Department to top any street tree, park tree, or other tree on public property without authorization from the City Tree Board. Topping is defined as the severe cutting back of

limbs to stubs within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical may be exempted from this Ordinance at the determination of the City Tree Board. Trees planted underneath electrical power lines must conform with the Power Company's guidelines.

**SECTION 11. INTERFERENCE WITH CITY TREE BOARD:**

It shall be unlawful for any person to prevent, delay, or interfere with the City Tree Board, or any of its agents, while engaging in and about the planting, cultivating, mulching, pruning, spraying, or removing of any street trees, park trees, or trees on private grounds, as authorized in this Ordinance. It shall be unlawful for any person to alter, remove, or destroy any street tree or park tree without prior authorization of the City Tree Board.

**SECTION 12. PENALTIES, CLAIMS AND APPEALS:**

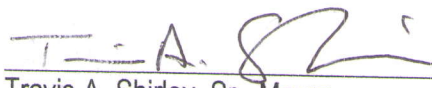
Any person who violates any provisions of this Ordinance or who fails to comply with any notice issued pursuant to provisions of the Ordinance, upon being found guilty of violation, shall be subject to a fine not to exceed \$500.00 for each separate offense. Each day during which any violation of the provisions of this Ordinance shall occur or continue shall be a separate offense. If, as the result of the violation of any provision of this Ordinance, the injury, mutilation, or death of a tree, shrub, or other plant located on city-owned property is caused, or other plant shall be borne by the party in violation. The value of trees and shrubs shall be determined in accordance with the latest revision of "A Guide to the Professional Evaluation of Landscape Tree, Specimen Shrubs, and Evergreens", as published by the International Society of Arboriculture.

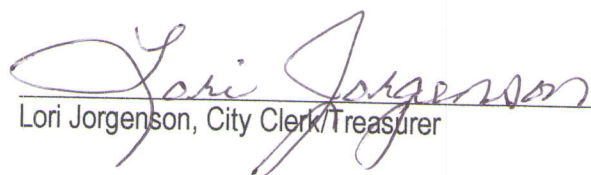
Any person aggrieved by any ruling or order of the City Tree Board may appeal to the City Council, which shall hear the matter and make a final decision. The City Council shall have the right to review the conduct and decisions of the City Tree Board. The City Council may modify, affirm, or reverse any determination of the City Tree Board.

**FIRST CONSIDERATION: APRIL 3, 2012**

**SECOND CONSIDERATION: JULY 2, 2012**

**PASSED UNANIMOUSLY BY ROTHSAY CITY COUNCIL VOTE: JULY 2, 2012**

  
Travis A. Shirley, Sr., Mayor

  
Lori Jorgenson, City Clerk/Treasurer