

Menominee Town Ordinance #-46

AN ORDINANCE TO CONTROL AND PREVENT THE SPREAD OF INJURIOUS FOREST INSECTS AND DISEASE AND PROVIDE FOR THE PROTECTION OF TREES, SHRUBS AND PLANTS WITHIN THE TOWN OF MENOMINEE, WISCONSIN

The Town Board of the Town of Menominee do ordain as follows:

SECTION 1. INTENT AND PURPOSE OF ORDINANCE INJURIOUS FOREST INSECTS AND DISEASES DECLARED PUBLIC NUISANCES. Whereas the Town Board has determined that there are many trees, shrubs and plants growing on public and private premises within the Town of Menominee, the loss of which of which would substantially depreciate the value of public and private property and impair the use and enjoyment of public and private premises and that the health and life of such trees, shrubs and plants is threatened by injurious forest insects and diseases, the Town Board hereby declares its intention to control and prevent the spread of such disease and insect pests and declares such insects and diseases to be a public nuisance.

SECTION 2. TOWN FORESTER. The office of Town Forester is hereby created to be filled by appointment by the Town Board Chairman subject to conformation by the Town Board. The Town Forester shall have the powers and perform the duties imposed by this ordinance and by ch. 27 of the Wisconsin Statutes.

SECTION 3. DEFINITIONS. "Injurious forest insect or disease" means any insect or disease which in the judgment of the Town Forester has the potential for significant damage to surrounding public and privately owned trees, shrubs and plants.

SECTION 4. INSPECTION. a. The Town Forester shall inspect or cause to be inspected all premises and places within the Town to determine whether any public nuisance exists thereon. He shall also inspect or cause the inspection of any trees, shrubs or plants reported or suspected to be infected with an injurious insect or disease.

b. Whenever necessary to determine the existence of disease in any trees, shrubs or plants the person inspecting such trees, shrubs or plants shall remove or cut specimens from the tree in such a manner as to avoid permanent injury thereto and deliver such specimens to the Forester who shall forward them to the Wisconsin Department of Natural Resources at Madison for analysis to determine the presence of such nuisances.

c. The Forester and his agents or employees shall have the authority to enter upon private premises at reasonable time for the purpose of carrying out any of the provisions of this ordinance.

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Section 4A PREVENTION OF OAK WILT

A. Definitions

1. "Oak Wilt Fungus" (scientific name: *Ceratocystis fagacearum*) is a disease of oak trees carried by way of grafted root systems between infected and healthy trees or by insects carrying spores.
2. The Town Forester may authorize on behalf of the Town of Menominee other persons to carry-out inspections.

B. Designation of a Tree Disease Control Area The Town Forester shall designate an oak wilt control area within the Township in which this shade tree disease ordinances and control procedures shall be enacted.

C. Prohibition of Damage to Oak Trees

1. To control the overland spread of oak wilt, no person shall cut, trim or prune any oak trees, or allow the cutting, trimming or pruning of oak trees in the Town of Menominee between April 1 and October 1 of each year without first obtaining a written permit from the Town Forester
2. No person shall take any action which causes incidental damage to oak trees from April 1 to October 1 of each year For example doing damage to oaks while falling other trees. This shall include any activity which breaks open the bark of oak trees, thereby making them susceptible to the oak wilt fungus. 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.

D. Removal and Disposal of Diseased Oak Trees

1. To prevent the oak wilt fungus from producing spores and to prevent overland spread of this fungus, any diseased material of the red oak group wilting the previous year, shall be declared hazardous the following year from April 1 until October 1.
2. Any hazardous oak wood to be used as fuel wood or to be salvaged for other purposes must be debarked or else completely covered by heavy plastic (4 mil or greater) from April 1 to October 1 of the year following the appearance of symptoms. After this time there is no danger of spore production, and the wood does not need to be covered.
3. Any branch greater than 3" in diameter of the red oak group determined to be hazardous and not salvaged shall be disposed of by burning, chipping or removal to an authorized dump site prior to April 1 of the year following the appearance of symptoms. Dead standing red oaks that have advanced beyond the potential for spore production need not be removed except where they constitute a hazard to life and/or property.

4. As provided for in Section 5 of this ordinance, trees or parts thereof not removed on or before April 1 by the property owner shall be removed by the municipality within 20 days after notification and the cost thereof assessed against the property.

5. Stumps of trees of the red oak group removed due to oak wilt shall be completely covered, removed or debarked to the ground line to eliminate all possibilities of spore formation and overland disease spread.

E. Root Graft Disruption (barriers) at Property Boundaries

1. If the Town Forester finds that oak wilt threatens to cross property boundaries or disease control area boundaries, the Town Forester may require root graft disruption to prevent the spread of disease in this manner. If plowing or trenching is not possible due to terrain, location, or buried utilities, the Town Forester may require chemical root graft disruption. These barriers will be placed in accordance with current technology.

2. The charge, or any portion thereof, for any necessary root graft barriers may be assessed against the property on which the root barriers are placed.

3. Because oak wilt is a community problem and because oak wilt control may benefit an entire neighborhood, the tree inspector shall recommend and encourage neighborhood participation and cooperation, including cost sharing, in root graft disruption and other control efforts, especially where oak wilt is in danger of spreading across property boundaries.

F. Prohibition of Transport

1. No person shall, at any time, transport or allow to be transported any wood known to be infected with oak wilt fungus through the Town of Menominee without first obtaining a written permit from the Town Forester.

2. Except to allow for disposal of the wood by burning, burying, chipping or debarking before April 1 of the year following the death of the trees, wood from trees known to be infected with oak wilt fungus may not be moved off any property in the Town of Menominee. Property owners must provide proof to the Town Forester of proper disposal of any oak wilt infected wood removed from their property or be subject to the penalties in Section 7.

G. Permit Procedure and Issuance

1. The Town Forester or appointed officials are authorized to issue permits for the cutting, pruning and trimming of living oaks and transport of oak wilt infected wood.

2. Permits for trimming or pruning of oaks shall not be given except in emergency situations, such as severe weather damage to oaks, which would require immediate attention to prevent oak wilt infection or damage to structures, power lines, and the like. If an emergency situation prevents an individual from getting a permit before cutting, pruning or trimming oak trees, within 10 days the individual must give written notification to the Town Forester regarding the circumstances of the emergency.

3. The Town shall provide a standard permit for all authorized officials to use. All permits shall include the following information:

- a. The dates during which the permit is in effect.
- b. Name, address and telephone number of the permittee.
- c. The legal or plat description (or fire number) of the property where the activity is to take place.
- d. An explanation of why the cutting, pruning, trimming or transport is required.
- e. The requirement that all pruning or trimming wounds or stumps be immediately sealed with a tree wound dressing.
- f. A statement explaining the liability on the part of the property owner to take abatement action if the permittee's actions result in oak wilt fungus infecting the permitted lands.
- g. A statement of the potential liability of the permittee and landowner for control efforts and damages to neighboring properties in the event oak wilt fungus infects the permitted lands or the neighboring properties.
- h. Signatures of the permittee, property owner (if different from permittee) and the issuing authority.

4. Permits for cutting of oaks shall include a description of the number and location of all oaks to be removed.

5. Permits for the transport of oak wilt infected wood must list the destination and method of destruction of the wood and the requirement that the Town Forester, upon demand, be given proof of the manner in which the wood was disposed.

6. Permits shall be issued for a period of up to 20 days.

7. The person doing the cutting, pruning, trimming or transporting shall have a copy of the permit at all times while doing the activity and shall provide this copy for inspection upon demand by the Town Forester or any official empowered to enforce this ordinance.

H. Notification of New Property Owners At the time of sale or transfer of real property, the grantor(s) or his agent bears an affirmative obligation to disclose terms of this ordinance regulation to the grantee(s). The Clerk will circulate a copy of this ordinance free of charge to local Realtors currently known at time of passage, and provide information on future requests.

I. Penalty Any person who shall trim, cut or prune any oak trees in the Town of Menominee between April 1 to October 1 without a permit or shall transport into or through the Town any oak wood infected with oak wilt fungus shall upon conviction thereof forfeit not less than \$50.00 nor more than \$500.00 together with costs of prosecution as allowed and in default of payment shall be imprisoned in the County jail until both costs and forfeitures are paid, but not exceeding 60 days. Each tree or portion thereof cut in violation of this ordinance constitutes a separate offense.

Whenever a complaint is filed on behalf of the Town of Menominee and the Court deems it appropriate, an injunction may be authorized to prohibit future conduct in violation of this ordinance.

The cost of abating a public nuisance located on private premises when done at the direction and under the supervision of the Town Forester shall be assessed to the property on which such nuisance, tree or wood is located, in accordance with the provisions of Sec. 66-60, Wisconsin Statutes, which is adopted by reference and incorporated herein.

J. Enforcement by Citation Procedure This Ordinance may be enforced by means of the citation procedure set forth in Town of Menominee Ordinance No. or its successor. Any designated town enforcement officer may issue citations. The schedule of deposits for violation of this Ordinance is as follows:

First Violation: \$75.00 plus court costs \$25.00 per tree.

Second Violation (within three years): \$125.00 plus court costs plus \$25.00 per tree.

SECTION 5. ABATEMENT OF NUISANCES: DUTY OF FORESTER. a. The forester shall order, direct, supervise and control the abatement of public nuisances as defined in this ordinance by spraying, removal, burning or by other means which he determines to be necessary to prevent as fully as possible the spread of the injurious insects or disease.

b. (1) When the Forester shall determine with reasonable certainty that a public nuisance exists upon private premises he shall immediately serve or cause to be served personally or by registered mail upon the owner of such property, if he can be found, or upon the occupant thereof, a written notice of the existence of such nuisance and of a time and place for a hearing, not less than 14 days after service of such notice, on the abatement action to be taken. Such notice shall describe the nuisance and recommended procedures for its abatement, and shall further state that unless the owner shall abate the nuisance in the manner specified in this notice, or shall appear at the hearing to show that such nuisance does not exist or does not endanger the health of trees, shrubs or plants in the Town, the Forester shall cause the abatement thereof at the expense of the property served. If the owner cannot be found, such notice shall be given by publication in a newspaper of general circulation in the Town.

(2) If after hearing held pursuant to this subsection it shall be determined by the Forester that a public nuisance exists, he shall forthwith order the immediate abatement thereof Unless the property owner abates the nuisance with the time period specified the Forester shall proceed to abate the nuisance and cause the cost thereof to be assessed against the property in accordance with the procedures provided in this ordinance. The Forester may extend the time allowed the property owner for abatement work.

SECTION 6. COST OF TREES, SHRTJBS OR PLANTS CARE SPECIAL ASSESSMENTS The cost of abating a public nuisance located on private premises when done at the direction and under the supervision of the Forester shall be assessed to the property on which such nuisance, tree or wood is located, in accordance with the provisions of Sec. 66-60, Wisconsin Statutes, which is adopted by reference and incorporated herein.

SECTION 7. PROHIBITED ACTS AND PENALTIES Any person who does any of the following acts within the Town of Menominee shall upon conviction thereof forfeit not less that \$50 nor more than \$500 together with the costs of prosecution and in default of payment shall be imprisoned in the county jail until such costs and forfeiture are paid, but not exceeding 60 days:

- a. Transports any wood or bark containing injurious insects or diseases on public streets or highways or other public premises without first securing the written permission of the Forester
- b. Interferes with or prevents any acts of the Forester or his agents or employees while they are engaged in the performance of duties imposed by this ordinance;
- c. Refuses to permit the Forester or his duly authorized representative to enter upon his premises at reasonable times to exercise the duties imposed by this ordinance;
- d. Permits any public nuisance to remain on any premises owned or controlled by him when ordered by the Forester to abate such nuisance.

SECTION 8. 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, phrase or portion thereof irrespective of the fact that anyone or more sections, subsections, sentences, clauses, phrases or portions thereof may be declared invalid or unconstitutional

SECTION 9. EFFECT. This ordinance shall take effect upon passage and publication.