ORDINANCE O2021-026
AN ORDINANCE OF THE CITY OF SHAKOPEE, MINNESOTA AMENDING SHAKOPEE CITY CODE CHAPTER 130.15, SHADE TREE DISEASE AND SHADE TREE PEST CONTROL AND PREVENTION

THE CITY COUNCIL OF THE CITY OF SHAKOPEE, MINNESOTA ORDAINS:

SECTION 1: Chapter 130.15 of the Shakopee City Code is amended to read as follows:

CHAPTER 130: PUBLIC PROTECTION, CRIMES, AND OFFENSES

130.15 Shade Tree Disease And Shade Tree Pest Control And Prevention

A. *Policy and purpose.* The city has determined that the health of shade trees is threatened by fatal disease and pests. It has further determined that the loss of shade trees located on public and private property would substantially depreciate the value of property and impair the safety, good order, general welfare, and convenience of the public. It is declared to be the intention of the Council to control and prevent the spread of these diseases and pests, and provide for the removal of dead or diseased trees, as nuisances.

B. *Definitions*. For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

NUISANCE.

1. Any living or standing tree infected to any degree with a shade tree disease or shade tree pest; or
2. Any logs, branches, stumps, or other parts of any dead or dying tree, so infected, unless such parts have been fully burned or treated under the direction of the Tree Inspector; or
3. Any dead tree, or part thereof a dead or living tree identified as a hazard by the Tree Inspector.

SHADE TREE DISEASE. A disease affecting an over story deciduous tree such as Dutch elm disease or oak wilt disease.

SHADE TREE PEST. Any vertebrate or invertebrate animal, plant pathogen, or plant in the community threatening to cause significant damage to a shade tree or community forest such as the Emerald Ash Borer.

TREE INSPECTOR. The City Administrator, or such other employee of the city as the Council may designate and who shall thereafter qualify, together with their duly designated assistants.

C. *Scope and adoption by reference.* M.S. §§ 89.001, 89.01, 89.51 through 89.64, Ch.18G, as they may be amended from time to time, and M.S. Ch. 18J, as it may be amended from time to time, inclusive, as they may be amended by from time to time, are hereby adopted by reference and incorporated as part of this code of ordinances as fully as if set out at length herein, together with the rules and regulations of the State Commissioner of Agriculture relating to shade tree diseases; provided, that this section shall supercede such statutes, rules, and regulations, only to the extent of inconsistencies.

D. *Unlawful act.* It is a petty misdemeanor for any person to keep, maintain, or permit upon premises owned by that person or upon public property where that person has the duty of tree maintenance, any nuisance as herein defined.

E. *Inspection and diagnosis*. It is the power and duty of the Tree Inspector to enter upon public and private property, at any reasonable time, for the purpose of inspecting for and diagnosing a suspected tree nuisance, and in performance of Inspector's duties, the Tree Inspector may remove such specimens, samples, and biopsies as may be necessary or desirable for diagnosis.

F. *Abatement of nuisance.* Abatement of a nuisance, defined herein, shall be by spraying, removing, burning, or otherwise effectively treating the infected tree or wood to prevent spread of shade tree disease or shade tree pest. Such abatement procedures shall be carried out in accordance with the current technical and expert methods and plans as may be designed by the Commissioner of Agriculture of the state. The city shall establish specifications for tree removal and disposal methods consistent therewith.

G. *Procedure for removal of nuisance trees and wood*.

1. Whenever the Tree Inspector finds with reasonable certainty that the infection, danger of infection, or nuisance exists in any tree or wood on any public or private property, the Tree Inspector shall proceed as follows.
    a. The Tree Inspector shall 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 will be filed with the Public Works Department.
    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.
    c. If 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 enter the property, and carry out abatement in accordance with the notice of abatement.
2. If the Tree Inspector determines that the nuisance, infection, or infestation to other shade trees is imminent or is a danger, and delay in control measures may put public health, safety, or welfare in immediate danger, the Tree Inspector may provide for abatement without following division (G)(1) above or division (H) below. The Tree Inspector must reasonably attempt to notify the owner or occupant of the affected property of the intended action and any cost recovery by the next regularly scheduled Council meeting.
3. 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.
4. The Tree Inspector shall keep a record of the costs of abatements done under this division (G) and shall report quarterly to the City Administrator all 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.
5. 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.
6. On or before September 1 of each year, the City Administrator shall 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 M.S. § 429.101, as it may be amended from time to time, and other pertinent statutes for certification to the County Auditor and collection the following year along with current taxes.

7. No damage shall be awarded the owner for destruction of any tree, wood, or part thereof pursuant to this section.

H. *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 division (G) above 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.

I. *Spraying trees*.

1. Whenever the Tree Inspector determines that any tree or wood is infected or threatened with infection, the Tree Inspector may spray or treat all nearby high value trees with an effective concentrate or fungicide or both. Activities authorized by this division (I) shall be conducted in accordance with technical and expert opinions and plans of the Commissioner of Agriculture and under the supervision of the Commission and Inspector's agents whenever possible.
2. The notice and assessment provisions of division (G) above apply to spraying and treatment operations conducted under this division (I).

J. *Transporting wood prohibited*. It is against the law (M.S.§§ 89.551, § 2, subd. 3b, as it may be amended from time to time) to bring unapproved firewood into any state park, state forest, or day-use area.

K. *Interference prohibited*. It is a petty misdemeanor for any person to prevent, delay, or interfere with the Tree Inspector while the Tree Inspector is engaged in the performance of duties imposed by this

L. *Additional duties of Tree Inspector*. It is the additional 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 or shade tree pests. The Tree Inspector shall recommend to the Council the details of a program for the control of the diseases or pests, and perform the duties incident to such a program adopted by the Council.

M. *Diseased or dead trees in streets*. The rights, duties, and responsibilities of property owners set forth in this section shall be equally applicable to, and binding upon, abutting property owners with tree maintenance responsibilities under § 90.05.

N. *Subsidies*. The duty of any property owner to bear the cost of removing or maintaining trees, whether by private contract or assessment, shall be subject to a subsidy policy, if any, established by the city for the treatment or removal of trees infected with shade tree disease or shade tree pest.

(2013 Code, § 10.70) (Ord. 1, passed 4-1-1978; Ord. 337, passed 7-23-1992, Ord. 826, passed 12-10-2009) Penalty, see § 130.99

SECTION 2: Effective Date: This ordinance becomes effective from and after its passage and publication.

Adopted in regular session of the City Council of the City of Shakopee, Minnesota, held this 21st day of December 2021.

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Mayor of the City of Shakopee

ATTEST:

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City Clerk

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