

**ORDINANCE NO. F-1497**

**AN ORDINANCE AMENDING CHAPTER 78 "VEGETATION", ARTICLE III  
"DUTCH ELM DISEASE CONTROL" OF THE WHEATON CITY CODE**

BE IT ORDAINED by the Mayor and City Council of the City of Wheaton, Illinois, as follows:

Section 1: That Article III. "Dutch Elm Disease Control" of Chapter 78 "Vegetation" of the Wheaton City Code, 1996, as amended, be further amended by deleting Article III in its entirety and replacing it as follows:

**"Article III. Dutch Elm Disease/Emerald Ash Borer Control**

**Sec. 78-61. Infected trees declared nuisance.**

(a) All species and varieties of elm trees (trees of genus *ulmus*) infected with the fungus known as Dutch Elm Disease (*ceratostomella ulmi*) or any ash tree infested with Emerald Ash Borer (*Agrilus planipennis* Fairmaire) as determined by the City of Wheaton Forestry Division, are hereby declared to be a public nuisance. All such trees shall be removed within thirty (30) days following notification of such infection or infestation. It is unlawful for any person, being the owner of the property whereon such a tree is situated, to possess or keep such a tree after the expiration of the thirty (30) day period following notification of the infection or infestation on their property.

(b) All species and varieties of ash or elm trees that are dead or substantially dead, or parts thereof, which, because of their condition or location, may serve as a breeding place for the European elm bark beetle (*scolytus multistriatus*), the native elm bark beetle (*hylurgopinus rufipes*), and the Emerald Ash Borer (*Agrilus planipennis* Fairmaire), are hereby declared to be public nuisances.

**Sec. 78-62. Owner's duty to remove diseased trees.**

It shall be unlawful for any owner of any lot or parcel of land in the city to permit or maintain on any such lot or parcel of land any ash, elm or parts of which, as provided in section 78-61, subsections (a) and (b), is a public nuisance, and it shall be the duty of any such owner to promptly remove and properly dispose of any such trees, and parts thereof, under the supervision and direction of the city manager or his duly authorized representative.

**Sec. 78-63. Right of entry; inspection by city manager.**

In order to carry out the purposes of this article and to implement the enforcement thereof, the city manager, or his duly authorized representative, is hereby authorized and empowered to enter upon any lot or parcel of land in the city at all reasonable hours for the purpose of inspecting any ash and elm trees or parts thereof, situated thereon, upon obtaining the consent of any person in lawful possession of the subject property or upon obtaining a court order authorizing entrance onto the subject property.

**Sec. 78-64. Removal of specimens by manager.**

The city manager, or his duly authorized representative, may remove such specimens from any tree as required for the purposes of laboratory analysis or to determine whether such tree, because it is dead or substantially dead, may serve as a breeding place for Emerald Ash Borer, European elm bark beetle and the native elm bark beetle.

**Sec. 78-65. Interference with manager.**

It shall be unlawful for any person to take any action to prevent the city manager, or his duly authorized representative, from entering on any lot or parcel of land in the city for the purpose of inspection, or to interfere with the city manager, or such representative, in the performance of any of his duties provided for under the provisions of this article.

**Sec. 78-66. Notice to remove.**

If upon laboratory analysis of specimens removed from any ash or elm trees by the city manager, or his duly authorized representative, it is determined that such tree is a public nuisance as provided in section 78-61(a), or if the city manager determines that any dead, or substantially dead ash or elm trees, or parts thereof, is a public nuisance as provided by section 78-61(b), the city manager shall cause a notice to be personally served or sent by registered mail to the person to whom was sent the tax bill for the general taxes for the last preceding year on the lot or parcel of land on which such ash tree, elm tree, or parts thereof, is located. Such notice shall identify the property, by common description, the tree or trees affected, and shall contain a request that such tree or trees be removed. In addition, such notice shall contain a copy of this article and any amendments thereto.

**Sec. 78-67. Contesting analysis--Request for additional analysis.**

The person upon whom notice is served under this article shall have ten days within which to contest the analysis provided for in this article and request that an additional sample be taken and an analysis be made by an independent laboratory engaged in the determination of the presence of Dutch elm disease or Emerald Ash Borer.

**Sec. 78-68. Same--Procedure.**

The contest and request for an additional analysis under section 78-67 shall be made by filing a statement in writing with the office of the city manager, setting forth the name and address of the independent laboratory chosen by the contesting party to conduct such test. The contesting party shall select a laboratory from a list of qualified laboratories on file in the office of the city manager.

**Sec. 78-69. Same--Results of additional analysis.**

If, as a result of the independent laboratory analysis provided for in this article, it is determined that the tree in question is a public nuisance as defined in this article, the city manager shall so advise the contesting party in writing and require that such party comply with the provisions of this article.

**Sec. 78-70. Removal by city; lien for costs.**

If the person having ownership or control over any lot or parcel of land fails, neglects or refuses to remove and properly dispose of any ash tree, elm tree, or parts thereof, found to be diseased or infested under the provisions of this article within thirty (30) days after service of notice as provided in this article, the city manager or his duly authorized representative may proceed to remove and properly dispose of such trees or parts thereof, and within sixty (60) days thereafter the city manager shall cause a lien to be filed in the office of the recorder of deeds of the county against such lot or parcel of land in the amount of money representing the cost and expense incurred in removing any ash tree, elm tree or parts thereof.

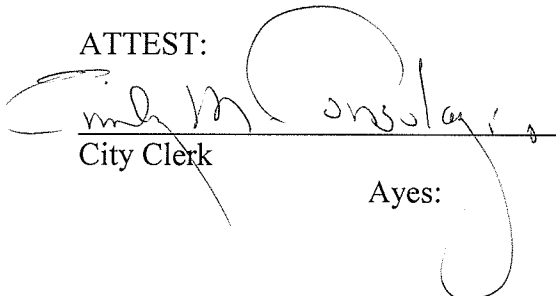
**Sec. 78-71. Removal of diseased or infected trees from city property.**

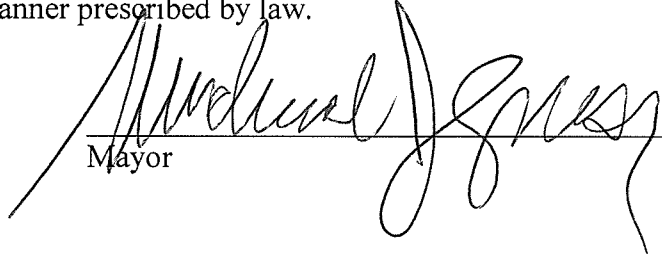
Any ash tree, elm tree or parts thereof, on property owned by the city, which is a public nuisance as provided by section 78-61, subsections (a) and (b), shall promptly be removed and properly disposed of under the supervision of the city manager, or his duly authorized representative, at the expense of the city.”

Section 2: All ordinances or parts of ordinances in conflict with these provisions are repealed.

Section 3: This ordinance shall become effective from and after its passage, approval, and publication in pamphlet form in the manner prescribed by law.

ATTEST:

  
\_\_\_\_\_  
City Clerk

  
\_\_\_\_\_  
Mayor

Ayes:

Roll Call Vote:

- Councilman Mouhelis
- Mayor Gresk
- Councilman Prendiville
- Councilman Scalzo
- Councilman Suess
- Councilwoman Corry
- Councilman Levine

Nays:

None

Absent:

None

Motion Carried Unanimously

Passed: June 21, 2010

Published: June 22, 2010

