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ORDINANCE NO. 134

AN ORDINANCE PERTAINING TO DUTCH ELM DISEASE

The Village Board of the Village of ^UDorchester do ordain as follows:

Section 1. INTENT AND PURPOSE OF ORDINANCE: DUTCH ELM DISEASE AND ELM BARK BEETLES DECLARED PUBLIC NUISANCES: Whereas, the Village Board has determined that there are many elm trees growing on public and private premises within the Village of Dorchester, the loss of which would substantially depreciate the value of public and private property, impair the use and enjoyment of public and private premises and erode the tax base of the village, and that the health and life of such trees is threatened by a fatal disease known as Dutch elm disease, which is spread by the elm bark beetles (Scolytus multistriatus) (Eichb.) or Hylurgopinus rufipes (Marsh), the board hereby declares its intention to control and prevent the spread of such disease and the insect pests and vectors which carry such disease and declares Dutch elm disease and the elm bark beetles which carry such disease to be public nuisances.

Section 2. Village Forester: The office of Village forester is hereby created to be filled by appointment by the Village president, subject to confirmation by the Village Board. The village forester shall have the powers and perform the duties imposed by this ordinance and by Ch. 27 of the Wisconsin Statutes.

Section 3. DEFINITIONS: As used in this ordinance, unless otherwise clearly indicated, by the context:

a. "Public nuisance" means

(1) Dutch elm disease

(2) Elm bark beetles Scolytus multistriatus (Eichb) or Hylurgopinus rufipes (Marsh.)

(3) Any living or standing elm tree or part thereof infected with the Dutch elm disease fungus or in a weakened condition which harbors any of the elm bark beetles, Scolytus multistriatus (Eichb.) or Hylurgopinus rufipes (Marsh.)

(4) Any dead elm tree or part thereof, including logs, 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 destroying concentrate.

b. "Public Property" means premises owned or controlled by the village, including without limitation because of enumeration, public sites, parks, playgrounds, streets, alleys, sidewalks, boulevards, and the terrace strip between the lot line and the curb or improved portion of any public way.

c. "Person" means person, firm or corporation.

Section 4. INSPECTION:

a. The Village forester shall inspect or cause to be inspected

at least twice each year all desired premises and places within the village to determine whether any public nuisance exists thereon. He shall also inspect or cause the inspection of any elm tree reported or suspected to be infected with the Dutch elm disease or any elm bark bearing material reported or suspected to be infested with elm bark beetles.

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b. Whenever necessary to determine the existence of Dutch elm disease or elm bark beetles in any tree, the person inspecting such tree shall remove or cut specimens from the tree in such manner as to avoid permanent injury thereto and deliver such specimens to the forester who shall forward them to the Wisconsin Department of Agriculture at Madison or to other appropriate place, for analysis to determine the presence of such nuisances.

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

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 Dutch elm disease fungus or the insect pests or vectors known to carry such disease fungus.

b. Whenever the forester, after inspection or examination shall determine with reasonable certainty that a public nuisance exists upon private premises or upon the terrace strip between the lot line and the curb, he shall immediately serve or cause to be served personally or by registered mail upon the owner of such property (or the abutting 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 the notice, or shall appear at the hearing to show that such nuisance does not exist or does not endanger the health of elm trees in the City, the forester shall cause the abatement thereof at the expense of the property served (or abutting property). If the owner cannot be found, such notice shall be given by publication in a newspaper of general circulation in the City.

c. 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 as directed within 24 hours after such hearing, 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 but not to exceed 10 additional days.

d. Whenever the forester after inspection or examination shall

determine that a public nuisance as herein defined exists on public property in the Village, he shall immediately abate or cause the abatement of such nuisance in such manner as to destroy or prevent as fully as possible the spread of Dutch elm disease or the insect pests or vectors known to carry such disease fungus.

Section 6. SPRAYING:

a. Whenever the forester shall determine that any elm tree or part thereof is infected with Dutch elm disease fungus or is in a weakened condition and harbors elm bark beetles, he may cause all elm trees within a 1,000 foot radius thereof to be sprayed with an effective elm bark beetle destroying concentrate.

b. In order to facilitate the work and minimize the inconvenience to the public of any spraying operations conducted under this ordinance, the forester shall cause to be given advance public notice of such operations by newspaper, radio, television, public service announcements or other effective means and shall also cause the posting of appropriate warning notices in the areas and streets where trees are to be sprayed at least 24 hours in advance of spraying. When any residue or concentrate from municipal spraying operations can be expected to be deposited on any public street, the forester shall also notify the chief of police who shall take all necessary steps to make and enforce temporary parking and traffic regulations on such streets as conditions require. Temporary "no parking" notices shall be posted in each block of any affected street at least 24 hours in advance of spraying operations.

c. When appropriate warning notices and temporary "no parking" notices have been given and posted in accordance with subsection b, of this section, the city shall not allow any claim for damages to any vehicle caused by such spraying operations.

d. When trees on private property are to be sprayed, the forester shall notify the owner of such property and proceed in accordance with the requirements of subsection b of Section 5 of this ordinance.

Section 7. COST OF TREE CARE:

The entire cost of abating any public nuisance or spraying any elm tree or part thereof when done at the direction of the forester if the nuisance, tree or wood is located on public property, shall be borne by the Village (except the cost of abating a public nuisance or spraying elm trees or elm wood located on the terrace strip between the lot line and the curb shall be assessed to the abutting property as hereinafter provided).

b. The cost of abating a public nuisance or spraying elm trees or elm wood 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 as follows:

The entire cost shall be assessed to the property on which such nuisance, tree, or wood is located.

(1) The forester shall keep a strict account of the cost of such work or spraying and the amount chargeable to each lot or parcel and shall report such work, charges, description of lands to which charged and names and addresses of the owners of such lands to the village board on or before October 15 of each year.

(2) Upon receiving the forester's report, the board shall hold a public hearing on such proposed charges, giving at least 14 days' advance notice of the time, place and purpose of such hearing to interested persons by publication in a newspaper of general circulation in the municipality and by mail to the owner of each property proposed to be charged. Each property owner shall be notified of the amount proposed to be assessed against his premises and the work for which such charge is being made.

(3) After the hearing, the board shall affirm, modify and affirm, or disapprove such assessments by resolution and shall cause a copy thereof to be published. Upon adoption and publication of such resolution, assessments made thereby shall be deemed final.

(4) The Village clerk shall mail notice of the amount of such final assessment to each owner of property assessed at his last known address, stating that unless paid within 30 days of the date of the notice, such assessment will bear interest at the rate of 6% per annum and will be entered on the tax roll as a delinquent tax against the property, and all proceedings in relation to the collection, return and sale of property for delinquent real estate taxes shall apply to such assessment.

(5) The Village hereby declares that in making assessments under this ordinance, it is acting under its police power and no damages shall be awarded to any owner for the destruction of any diseased or infested elm tree or elm wood or part thereof.

Section 8. PROHIBITED ACTS AND PENALTIES: Any person who does any of the following acts within the Village of Dorchester shall upon conviction thereof forfeit not less than \$10.00 nor more than \$100.00 together with the costs of prosecution and in default of payment thereof shall be imprisoned in the county jail until such costs and forfeiture are paid, but not exceeding 60 days;

a. Transports any bark bearing elm wood, bark or material 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 employes 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;

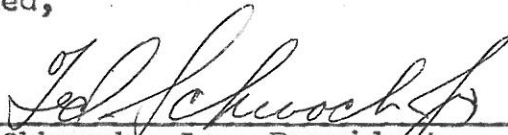
d. Permits any public nuisance to remain on any premises owned or controlled by him when ordered by the forester to abate such nuisance.

Section 9. 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 or phrase hereof. The president and village board of the Village of Dorchester hereby declare that they would have passed this ordinance and each sentence, section, subsection, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions thereof may be declared invalid or unconstitutional.

Section 10 . EFFECT: This ordinance shall take effect upon passage and publication as provided by law.

Dated this 1 day of Oct, 1969.

Signed,


 Ted Shwoch, Jr., President

Countersigned,

 Alice Paulson, Clerk