

JOHN M. NEFF

CITY ATTORNEY

ORDINANCE NO. 1160

AN ORDINANCE AMENDING CHAPTER 8, ARTICLE VIII, AND REPEALING ARTICLE IX, and reassigning code numbers to former ARTICLES VIII and IX of the Lexington Municipal Code, and providing for the control of Dutch Elm Disease; to declare trees infected therewith a nuisance; to provide for the removal and destruction of any diseased trees; to provide for assessing the cost of such removal and destruction of private property whereon situated; to provide for the inspection of trees on private property to determine the existence of said disease and to provide for the removal thereof; to provide for penalties for violation hereof.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEXINGTON, NEBRASKA.

Section 1. ARTICLE VIII, CHAPTER 8, be and it is hereby amended to read as follows:

"ARTICLE VIII, DUTCH ELM DISEASE - NUISANCE

8-801 DEFINITIONS. City Manager. As used herein the term shall include the City Manager or his designated representative.

Person. The terms as used herein includes any individual, firm, corporation, association, or partnership.

8-802 DUTCH ELM DISEASE - DECLARED A NUISANCE

(a) Trees of all species and varieties of elm, zelkova and planera infected with the fungus *Ceratocystis ulmi* (Dutch Elm Disease) as determined by laboratory analysis, are hereby declared to be a public nuisance, and shall be removed and burned.

(b) Trees, or parts thereof, of elm, zelkova or planera in a dead or dying condition that may serve as breeding places for the European Elm Bark Beetle (*Scolytus multistriatus*) are hereby declared to be a public nuisance, and shall be removed and burned.

8-803 ENFORCEMENT OFFICIAL, RIGHTS AND DUTIES.

The City Manager is charged with enforcement of this Ordinance, and to that end may enter upon private property at all reasonable hours for purposes of inspecting trees thereon, and may remove such specimens as are required for

purposes of analysis to determine whether or not the same are infected. It shall be unlawful for any person to prevent the City Manager from entering on private property for purposes of carrying out his duties hereunder, or to interfere with such City Manager in the lawful performance of his duties under the provisions of this Ordinance.

8-804 NOTICE FOR REMOVAL AND BURNING OF DISEASED TREES OR PARTS THEREOF ON PRIVATE PROPERTY. If trees on private property are found to be infected or in a dead or dying condition, the City Manager shall give to the owner, agent, occupant or person in possession, charge or control of the premises where the same are situated, written notice by personal service, where owner is a resident of the City and present in the City, or otherwise, by certified mail of the existence of such disease or of the dead or dying condition of such trees or parts thereof, and require the removal and burning of the same under the direction and supervision of the City Manager within ten days from receipt of the notice. Such notice shall also notify such person that if such trees are not removed and burned within ten days, the City will proceed with the removal and burning of the same, and may collect the cost thereof in an action at law.

8-805 TREES ON PRIVATE LANDS. After due notice has been given the owner, agent, occupant or person in possession, charge or control of the said premises, it shall thereupon become his duty to cause such trees to be removed and burned, under the direction and supervision of the City Manager. If the owner, agent, occupant or person in possession, charge or control of such premises fails, neglects or refuses to remove and burn such trees, the City Manager may, ten days after notice is given, enter upon such private property and proceed with the removal and burning of the same, and the cost thereof may be collected in an action at law.

In lieu thereof, the person charged with such removal and burning may enter into an agreement with the City that such work be accomplished by the City at his expense and the expense and any interest shall be and is hereby declared to be a lien upon such property whereon such tree was situated from the time the same becomes due until paid. The agreement shall be in such form as the City Attorney may prescribe, to be filed in the office of the Register of Deeds of Dawson County, Nebraska.

8-806 TREES ON CITY-OWNED LANDS. Infected trees, or trees or parts hereof in a dead or dying condition, on City-owned lands including but not limited to street rights-of-way and parks shall be removed and burned by the City Manager within ten days of his discovery that such condition exists, and the cost thereof shall be borne by the City.

8-807 PENALTY FOR VIOLATION. Imposition of any penalty for a violation of this Ordinance shall not be construed as a waiver of the right of the City to collect the cost of removal of such trees in accordance with the provisions of this Ordinance and the provisions of the City Code, in such case made and provided, where it is necessary for the City to remove such trees in accordance with the provisions of this Ordinance."

Section 2. ARTICLE IX be and it is hereby repealed.

Section 3. That the former ARTICLES VIII and IX be reassigned code numbers as follows:

"ARTICLE XII CROSS REFERENCE

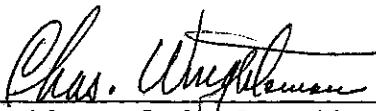
8-1201 CROSS REFERENCE - Restaurants. See Section 5-801 to 5-806 inclusive.

ARTICLE XIII PENALTY SECTION

8-1301 PENALTY SECTION - General. Penalties for violating any of the provisions of this Chapter, for which a penalty is not otherwise provided, shall be as provided in the General Penalty Section, Chapter 7."


Section 4. That any existing code or ordinance in conflict hereto be and it is hereby repealed.

PASSED and APPROVED this 10th day of September, 1968.



President of the Council

ATTEST:



City Clerk

(S E A L)