

*ORDINANCE NO. 2002*  
*CITY OF LEXINGTON, NEBRASKA*  
*AUGUST 23 1994*

ORDINANCE NO. 2002

AN ORDINANCE TO AMEND CHAPTER 26 OF THE LEXINGTON CITY CODE; TO CHANGE PROVISION FOR MAINTENANCE OF TREES ON PUBLIC RIGHT-OF-WAY; TO PROVIDE PENALTIES AND FOR ABATEMENT; TO REPEAL ORIGINAL CHAPTER 26, AND ALL OTHER ORDINANCES OR SECTIONS OF ORDINANCES IN CONFLICT HERewith; AND TO PROVIDE FOR AN EFFECTIVE DATE AND FOR PUBLICATION IN PAMPHLET FORM.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF LEXINGTON, NEBRASKA AS FOLLOWS:

**Section 1.** That Chapter 26 of the Lexington City Code is hereby amended to read as follows:

Sec. 26-1 Diseased Dead or Dying Trees Declared Nuisances and Prohibited; Dutch Elm Disease;

(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. (Ord. No. 1160, Sec. 1)

(c) Trees of any species in a diseased, dead or dying condition are hereby declared to be a public nuisance and shall be removed.

Sec. 26-2 Removal of Trees; Notice of Landowner Responsibility:

If trees on private property or in public street right-of-way adjoining 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 of the same under the direction and supervi-

sion of the City Manager within 30 days from receipt of the notice. Such notice shall also notify such person that if such trees are not removed within 30 days, the City will proceed with the removal of the same, and may assess the cost thereof against the property benefited.

Sec. 26-3 Removal of Trees;

After due notice has been given the owner, agent, occupant or person in possession, charge or control of the premises, it shall thereupon become his duty to cause diseased or dead trees to be removed, 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 such trees, the City Manager may, 30 days after notice is given, enter upon such private property or Street right of way and proceed with the removal of the same, and the cost thereof may be levied and assessed upon the lot or piece of ground so benefited in the same manner as other special taxes for assessments are levied and assessed.)

In lieu thereof, the person charged with such removal 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 the county.

Sec. 26-4 Removal of Trees on City-Owned Land.

Infected trees, or trees or parts thereof in a dead or dying condition, on City-owned lands, other than Street right-of-ways, shall be removed by the City Manager upon actual notice that such condition exists, and the cost thereof shall be borne by the City.

Sec. 26-5 Enforcement of Chapter.

The City Manager is charged with enforcement of this chapter, 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. It shall be unlawful for any person to prevent the City Manager from entering on private property for purposes of carry-

ing out his duties hereunder, or to interfere with such City Manager in the lawful performance of his duties under the provisions of this chapter.

Sec. 26-6 Violation; Penalty.

Any person who shall violate or refuse to comply with the enforcement of any of the provisions of this Chapter shall be deemed guilty of a misdemeanor and punished as provided in Section 1-7 of the Lexington City Code. If it is established that a nuisance exists, the Court may, together with the fine or penalty imposed, enter an order of abatement as part of the judgment in the case.

Sec. 26-7 Penalty for Violation of Chapter not to be Waiver of City's Right to Collect Cost of Removal of Tree.

Imposition of any penalty for a violation of this chapter 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 Code, in such case made and provided, where the City has removed such trees in accordance with the provisions of this chapter.

**Section 2.** That original Chapter 26, together with all ordinances or sections of ordinances in conflict herewith are hereby repealed.

**Section 4.** That this Ordinance shall be published in pamphlet form and take effect as provided by law.

Passed and approved this 23rd day of August, 1994.

  
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Mayor

Attest:

  
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City Clerk

