



**CITY OF NEWPORT  
SPECIAL PLANNING COMMISSION MEETING  
NEWPORT CITY HALL**

**(May Be Held Electronically From Remote Locations)**

*Zoom Meeting Information* <https://us02web.zoom.us/j/85246335342> Meeting ID: 852 4633 5342 (PW: Newport)

**April 6, 2021 – 5:30 P.M.**

Commissioner:	Anthony Mahmood	City Administrator:	Deb Hill
Commissioner:	Maria Bonilla	Asst. to the City Admin:	Travis Brierley
Commissioner:	Brandon Leyde	City Planner:	Sherri Buss
Commissioner:	Tami Fuelling	Council Liaison:	Marvin Taylor
Commissioner:	Michael Kermes		

**AGENDA**

1. CALL TO ORDER
2. ROLL CALL
3. MEETING MINUTES
  - A. March 9, 2021
4. TREE ORDINANCE
5. SEWER SERVICE ORDINANCE IN THE RE DISTRICT
6. MEETING DATES
7. COMMISSION REPORTS
8. ADJOURNMENT



**CITY OF NEWPORT  
PLANNING COMMISSION MEETING MINUTES  
NEWPORT CITY HALL  
March 9, 2021**

**1. CALL TO ORDER**

Chair Anthony Mahmood called the Planning Commission meeting to order at 5:44 p.m. on March 9, 2021.

**2. ROLL CALL**

Present (4): Chairman Anthony Mahmood, Commissioner Brandon Leyde, Commissioner Tami Fuelling, and Commissioner Michael Kermes.

Not Present (1): Commissioner Maria Bonilla

**3. MEETING MINUTES**

**A. February 11, 2021**

Commissioner Leyde stated on page 3 of the minutes when Chair Mahmood was speaking, he believes Chair Mahmood meant “in addition to” when discussing the IUP.

City Planner Sherri Buss stated in the section regarding the Gordon Nesvig’s testimony, there is a statement they would need a rezoning change for developing as R-1 or R-2. Planner Buss stated they would only need a rezoning change for developing as R-2 as in the RE district, parcels within 100 feet of the sewer are automatically R-1.

Commissioner Leyde motioned to approve the Planning Commission Minutes from February 11 with the discussed corrections. Seconded by Chair Mahmood. Approved 4-0.

**4. PUBLIC HEARING- Shoreland Ordinance**

Planner Buss stated there is an overlap between the MRCCA ordinance and the existing shoreland ordinance. Given the overlap, the DNR stated we can take the Mississippi River area out of the shoreland ordinance and just make a reference to the MRCCA, or we can update the shoreland ordinance so that the standards would be the same as the MRCCA. Planner Buss suggested we take the Mississippi River area out of the shoreland ordinance and therefore we need to hold a public hearing.

Chair Mahmood opened the public hearing at 5:51 p.m. on March 9, 2021.

Bill Sumner who resides at 737 21<sup>st</sup> Street addressed the Commission. Mr. Sumner stated he supports Planner Buss’s recommendations.

Chair Mahmood closed the public hearing at 5:52 p.m. on March 9, 2021.

Commissioner Leyde motioned to recommend the changes to the ordinance as presented by Planner Buss. Seconded by Chair Mahmood. Approved 4-0.

**5. TREE ORDINANCE**

Planner Buss stated the City needs to discuss updating our tree ordinance. Both Susan Lindoo, who used to be on the Planning Commission, and Matt Yokiell who is the Assistant Super-Intendent of Public Works, feel that the City’s tree ordinance needs to be updated. They suggested we look at neighboring communities who have recently updated their tree ordinance as well as the DNR and the U.S. Forest Service recommendations on tree ordinances. The tree ordinance should have two parts. One part that deals with tree diseases and hazardous trees and a second part that deals with tree protection and planting during development. Planner Buss prepared a draft on the first part which is on diseased and hazardous trees.

The Commission discussed having Matt Yokiell and/or Susan Lindoo attend the next Planning Commission meeting to further discuss the tree ordinance.

**6. COMMISSION REPORTS**

Commissioner Leyde stated the Council reviewed and approved the Commission’s recommendation for catering in the MX-1 and MX-3 district. They opposed the MX-4 district due to the proximity between Newport and the Refinery. Planner Buss stated in the future the Council discussed possibly expanding to B-1 (business park district) as a permitted use.

**7. ADJOURNMENT**

Commissioner Leyde motioned to adjourn the Planning Commission meeting. Seconded by Commissioner Fuelling. Approved 4-0.

The Planning Commission meeting was adjourned at 6:14 p.m. on March 9, 2021.

Respectfully Submitted:  
Jill Thiesfeld  
Administrative Assistant II

Signed: \_\_\_\_\_  
Anthony Mahmood, Chairman

# Planning Memorandum

<b>To:</b>	Newport Planning Commission	<b>Reference:</b>	April PC Meeting Agenda Items
<b>Copies To:</b>	Deb Hill, City Administrator		
	Travis Brierley, Assistant to the Administrator		
	Matt, Yokiell, Public Works	<b>Project No.:</b>	N2019-0002
<b>From:</b>	Sherri Buss, City Planner	<b>Routing:</b>	
<b>Date:</b>	March 30, 2021		

## 1. Tree Ordinance

The Planning Commission had an initial discussion of updates to the tree ordinance at the March meeting, and members asked for some additional information about how the ordinance is implemented. The Commission requested that Matt Yokiell of the City's Public Works Department attend the April meeting to discuss the ordinance with the Commission. Some of the concerns expressed about the draft ordinance were about the process for identifying diseased trees (particularly city staff entering private property) and the process for ordering abatement and the potential costs to private landowners. Matt will attend the meeting on April 6.

Staff also asked for input on the draft ordinance from Susan Lindoo, who has been an active volunteer assisting the City with tree surveys, pruning, and other activities to protect the health of trees and woodlands in Newport for many years. Sue will not be able to attend the PC meeting but provided comments on the draft ordinance.

Susan's comments on the draft ordinance are attached and summarized as follows:

1. Sue suggested that the ordinance should identify the serious, epidemic diseases that result in significant decline or death of trees. The requirement for mandatory tree removal or abatement should apply only to serious tree diseases. Her suggested changes to the definitions are:

*Serious shade tree disease is an epidemic disease that results in significant decline or death of the tree. These include* Dutch elm disease (Ophiostoma ulmi or Ophiostoma novo-ulmi), oak wilt (Ceratocystis fagacearum), or any other tree disease with potential to cause widespread damage of epidemic nature.

*Serious shade tree pest is a pest that results in significant decline or death of the tree. These include* Emerald Ash Borer (Agrilus plannipennis), European elm bark beetle (Scolytus multistriatus), Native elm bark beetle (Hylurgopinus rufipes) or any other shade tree pest with potential to cause widespread damage.

(Staff note that the Woodbury ordinance includes this statement differentiates tree diseases that are not an immediate problem: "If the danger of infestation of other trees is not imminent because of shade tree disease or shade tree pest dormancy, the forester may choose to reinspect either later in the same growing season or at the beginning of the following

growing season before the active period. If at that time the tree has not recovered, the forester shall proceed by notifying the property owner that the nuisance tree must be abated within a specified time. If the property owner fails to abate the nuisance tree by said period of time, the forester may proceed by abating the nuisance as a public improvement under M.S. Ch. 429.)

2. In Section 18-34, Sue suggested that the order of abatement actions should be changed so that it fits the logical order in which the actions would be taken.
3. In Section 18-35, change the reference to the forester's report to the correct section, which is 18-34 (f)(2).

Staff can make the edits that Susan suggested in #2 and #3. The Planning Commission should discuss the potential changes to the definitions section after it discusses the broader concerns about the ordinance with Matt on April 6.

### Information about the Other Issues the Commission Discussed in March

1. *City Forester entry onto private properties.* All the City ordinances that the Planner reviewed to develop the draft ordinance permit the City Forester to "enter upon private premises at any reasonable time for the purpose of carrying out any of the duties assigned under this ordinance" and state that property owners may not interfere with the actions of the forester when they are carrying out their duties under the ordinance. Some ordinances also state that the Forester must provide "prior notification to landowner. In situations of imminent danger to human life and safety, notification is not necessary."

The sections that permit City Foresters to enter private property are consistent with the overall Nuisance ordinances of Newport and other cities that permit city staff to enter private properties to identify nuisances and implement the ordinances.

2. *Costs of abatement.* The Maplewood ordinance includes a section that states that if the costs of abatement under the tree ordinance exceed \$5,000 for a property within a given year or two years, the issue may be referred to the City Council for a hearing.

The Woodbury and Cottage Grove ordinance do not include this exception and require abatement. All of the example ordinances permit the City to complete the removal and charge the costs back to the owner if the owner does not complete abatement.

Staff have attached the draft of the Tree ordinance that was provided at the March meeting for the continued discussion in April. Staff can make changes to the draft when the PC makes its recommendations.

The next step in this process would be to review the tree requirements for new development in the Subdivision Ordinance.

## **2. Ordinance Requirements for Sewer Service in the RE District within 100 Feet of Existing Municipal Services**

The City Council has requested that the Planning Commission review the Code requirements for properties and subdivisions in the RE district that are treated as R-1 properties to connect to City sewer when it becomes available. The Council identified the following issues:

- The sections of the City Code that require connection to City utilities apply to individual homes, but it is not clear how these sections apply to new subdivisions. The Subdivision ordinance requires that where municipal sewer service is available that the Subdivider must connect all lots to City sewer and water services.
- The Zoning Ordinance and Utilities sections of the code specifically require connections to sewer service. Should connection to the City's water system also be required in these locations?
- The language in the Utilities Code applies to individual homes within 100 feet of city sewer services, while the language in the Zoning and Subdivision ordinances applies to parcels and zoning districts.

We will use a recent concept plan that the owners of the Libby property submitted to the City as an example for the discussion. A copy of the concept plan is attached.

### *Existing Zoning and Subdivision Code language*

The Zoning Code and Subdivision codes require that new development in most districts and new subdivisions be connected to city sewer services. The Subdivision Ordinance requires that new subdivisions be connected to both city sewer and water services.

The Residential Uses section of the City's zoning ordinance (Article IV) says the following:

- † A lot or parcel located in the RE District served by municipal sewer and water facilities shall be treated as a single-family residential (R-1) parcel and shall meet the requirements of the R-1 district.
- The Residential Uses section also requires that all uses in the R-1, R-1A, R-2, R-3 and R-4 zoning districts be served by public sewer services. (Public water service is not specifically required in the ordinance language.) The RE District does not require public sewer service.

The Nonresidential Uses section of the zoning ordinance (Article V) requires that all uses in the MX, Business and Industrial districts be connected to public utilities including sewer and water services.

The Subdivision Ordinance requires that where municipal sewer service is provided, Subdividers shall install sewer and water services to serve subdivisions and shall connect all lots to public sewer and water services. This section does not define how close the city services must be to be considered "provided."

Utilities Section of the City Code (not part of the Zoning or Subdivision Ordinances)

Section 34-13 of the City Code applies to individual homes, not parcels or zoning districts, and includes the requirements for Utility connections says the following regarding required connections to sewer services:

- *Existing buildings.* Any building used for human use or habitation and located on property adjacent to sewer main, or in a block through which the system extends within 100 feet of the property line, shall be connected to the municipal sanitary sewer system within two years from the time a connection is available to any such property.
- *New buildings.* All buildings hereafter constructed within the city on property adjacent to a sewer main, or in a block through which the system extends within 100 feet of the property line, shall be provided with a connection to the municipal sanitary sewer system for the disposal of human wastes. The connection shall be made by the owner of the building at no cost to the city.

Example

The different requirements in the section of the City Code make it difficult to determine the requirements for new development in the RE district where sewer and water services have recently been extended and therefore the property must meet the requirements for the R-1 zoning district and Utilities Code:

- In the attached example, if the city requires the developer to follow the requirements in the Utility section of the Code, only the two parcels where the proposed homes are within 100 feet of the City's sewer main are required to connect to sewer services, and they are not required to connect to city water services.
- However, if the developer is required to follow the requirements of the zoning and subdivision ordinance, then they must connect all of the parcels to either city sewer or city sewer and water services.
- The issue is more complex in this case due to the topography in this example. Connecting all parcels to city services may require a lift station(s) since some parcels could not be served with gravity connections. A city-owned lift station to serve just 3 parcels would be expensive initially and would have high maintenance costs for the long-term. The City Engineer noted that private pumps could be used for the sewer connections to some parcels, and these may be less costly in the short and long term.
- It may be desirable to connect all new homes to City water services due to the potential for PFAS contamination in water supplies in Washington County.

Questions for Initial Discussion on April 6

The City should make the requirements for City sewer and water services clear and consistent throughout its Code. To that end, the Planning Commission should discuss the following issues for parcels in the RE district where sewer and water services have become available nearby:

- Should the City require that all lots in the RE/R-1 parcels connect with City sewer services? Water services? Or just the new homes within 100 feet of City services?
- Should the Code include an option that permits the City to require some private options such as private pumps to provide the connections in locations where physical conditions make public infrastructure difficult or expensive?

## Comments on Article II. TREE Ordinance

MAIN SUGGESTION: Find a more complete way to describe the problem than “epidemic”. I’m suggesting this for two reasons. First, some tree problems affect many trees in an epidemic fashion, but are not a serious threat to the tree or the safety of citizens. Examples – anthracnose (fungi) in several tree species that scars the leaves but doesn’t seriously hurt the tree. Non-serious but wide spread pests - ash and oak galls (mites/wasps), even box elder bugs.

Second, a more descriptive definition may help the public understand that not all tree problems are serious, so one solution (cut it down or ignore it completely) doesn’t fit all cases.

Suggestion – refer to these diseases as “serious, epidemic diseases” and define that as “epidemic diseases/pests that result in significant decline or death of the tree”. Suggested changes:

### Sec. 18-31. - Policy findings-Diseased and Hazardous Trees.

The council has determined that the health of the trees within the municipal limits is threatened by serious epidemic shade tree pests. It is further determined that the loss of trees growing upon public and private property would substantially depreciate the value of property within the city and impair the safety, good order, general welfare, and convenience of the public.

It is the intention of the City of Newport to conduct a program of tree pest control pursuant to the authority granted by M.S. Statutes. 89.001, 89.01, and 89.54-64, as amended. This program is directed specifically at the control and elimination of serious shade tree disease and serious shade tree pests and is undertaken at the recommendation of the commissioners of agriculture and natural resources. The city's forester shall act as coordinator between the commissioners of agriculture and natural resources and the city in the conduct of this program.

### Sec. 18-32. – Definitions

*Nuisance tree* is:

- (1) Any living or standing tree or part thereof infected to any degree with a serious shade tree disease or shade tree pest.
- (2) Any logs, stumps, branches, firewood, or other part of dead or dying tree(s) infected with a serious shade tree disease or shade tree pest unless properly treated under the direction of the city forester-tree inspector.

*Serious shade tree disease is an epidemic disease that results in significant decline or death of the tree. These include-is Dutch elm disease (Ophiostoma ulmi or Ophiostoma novo-ulmi), oak wilt (Ceratocystis fagacearum), or any other tree disease with potential to cause widespread damage.of epidemic nature.*

*Serious shade tree pest is a pest that results in significant decline or death of the tree. These include Emerald Ash Borer (Agrilus plannipenis), European elm bark beetle (Scolytus multistriatus), Native elm bark beetle (Hylurgopinus rufipes) or any other shade tree pest with potential to cause widespread damage.*

Add “Serious” to the terms “shade tree disease” and “shade tree pest” in the rest of this Article, except under (d) (2) where the Forester is just investigating reports and hasn’t determined if it’s serious or not.

MINOR SUGGESTION. Under Sec. 18-34. - Program. (e) – rearrange some words so that “treating” follows “spraying”. Those two actions fit better together.

- (e) Abatement of a nuisance tree shall be by ~~spraying,~~ removing, burning, spraying, or otherwise effectively treating the nuisance tree or wood to prevent the spread of shade tree disease and shade tree pests. Such abatement procedures shall be carried out in accordance with current technical and expert opinions and plans as designated by the commissioner of agriculture.

QUESTION: Sec 18-35 refers to a forester’s report required by Sec 18-40(a). I can’t find that section. Is that missing? The only report I found mentioned is under Sec. 18-36, but that’s a once-a-year report to the administrator, which wouldn’t be timely for having the council order the nuisance abated.

Sec. 18-35. - Council action.

**Upon receipt of the forester's report required by section 18-40(a),** the council shall by resolution order the nuisance abated. Before action shall be taken on such resolution, the council shall publish notice of its intention to meet to consider taking action to abate the nuisance. This notice shall be mailed to affected property owners and published once no less than one week prior to the meeting. The notice shall state the time and place of the meeting, the property affected, action proposed, the estimated cost of the abatement, and the proposed bases of assessment, if any, of costs. At the hearing or adjournment thereof, the council shall hear property owners with reference to the scope and desirability of the proposed project. The council shall thereafter adopt a resolution confirming the original resolution with such modifications as it considers desirable and provide for the doing of the work of day labor or by contract.

ARTICLE II. - ~~TREE DISEASES TREES~~

Sec. 18-31. - Policy findings ~~Diseased and Hazardous Trees.~~

The council has determined that the health of the trees within the municipal limits is threatened by ~~fatal tree diseases epidemic shade tree pests~~. It is further determined that the loss of trees growing upon public and private property would substantially depreciate the value of property within the city and impair the safety, good order, general welfare, and convenience of the public. ~~It shall be declared to be the intention of the council to control and prevent the spread of tree diseases, and this section shall be enacted for that purpose.~~

It is the intention of the City of Newport to conduct a program of tree pest control pursuant to the authority granted by M.S. Statutes. 89.001, 89.01, and 89.54-64, as amended. This program is directed specifically at the control and elimination of shade tree disease and shade tree pests and is undertaken at the recommendation of the commissioners of agriculture and natural resources. The city's forester shall act as coordinator between the commissioners of agriculture and natural resources and the city in the conduct of this program.

(Code 1997, § 810.01)

Sec. 18-32. — Definitions

Unless specifically defined below, words or phrases used in this division shall be interpreted to give them the same meaning as they have in common usage and to give this chapter its most reasonable application. The words "must" and "shall" are mandatory and not permissive.

City is the City of Newport.

Forester is a qualified person hired to perform the duties of the city forester as designated by the city council. The powers and duties of the forester may be assigned to other qualified persons in the absence of the forester.

Nuisance tree is:

- (1) Any living or standing tree or part thereof infected to any degree with a shade tree disease or shade tree pest.
- (2) Any logs, stumps, branches, firewood, or other part of dead or dying tree(s) infected with a shade tree disease or shade tree pest unless properly treated under the direction of the city forester-tree inspector.

Shade tree disease is Dutch elm disease (Ophiostoma ulmi or Ophiostoma novo-ulmi), oak wilt (Ceratocystis fagacearum), or any other tree disease of epidemic nature.

Shade tree pest is Emerald Ash Borer (Agrilus plannipenis), European elm bark beetle (Scolytus multistriatus), Native elm bark beetle (Hylurgopinus rufipes) or any other shade tree pest with potential to cause widespread damage.

Sec. 18-33. -Forester.

- (a) Position created. The powers and duties of the city forester as provided by this article shall be conferred on the public works supervisor.
- (b) Duties. It shall be the duty of the forester to coordinate, under the direction and control of the council, all activities of the city relating to the control and prevention of tree diseases. The forester shall recommend to the council the details of a program for the control of tree diseases, and perform the duties incident to such a program adopted by the council.

(Code 1997, § 810.02)

Sec. 18-334. - Program.

- (a) It is the duty of the city forester to coordinate all activities of the city relating to the control and prevention of shade tree disease and pests. The forester shall recommend the details of a program for the control of shade tree disease and pests and perform the duties of such a program.
  - (b) It is unlawful for any person to prevent, delay or interfere with the forester while the forester is engaged in the performance of duties under this division.
  - (c) It is unlawful for any person to permit any nuisance tree as defined in section 18-32 to remain on any premises owned or controlled by the person within the city. Such nuisance trees may be abated in the manner prescribed by this division.
  - (d) Inspection and investigation.
    - (1) The forester may enter upon private premises at any reasonable time for the purpose of carrying out of any of the duties assigned under this division with prior notification to landowner. In situations of imminent danger to human life and safety, notification is not necessary.
    - (2) The forester has the authority to inspect properties within the city to determine whether any nuisance tree exists thereon. The forester has the authority to investigate all reported incidents of shade tree disease or shade tree pests.
    - (3) The forester has the authority to, upon finding conditions indicating shade tree disease or shade tree pests, remove samples or specimens for further diagnosis, or take such other steps for diagnosis as may be recommended by the commissioner of agriculture. No action to remove nuisance trees or wood shall be ordered until the forester finds with reasonable certainty a shade tree disease or shade tree pest is present.
  - (e) Abatement of a nuisance tree shall be by spraying, removing, burning, or otherwise effectively treating the nuisance tree or wood to prevent the spread of shade tree disease and shade tree pests. Such abatement procedures shall be carried out in accordance with current technical and expert opinions and plans as designated by the commissioner of agriculture.
  - (f) Whenever the forester finds with reasonable certainty that a shade tree disease or shade tree pest infestation exists on any public or private property in the city, the forester has the authority to follow the procedures below:
    - (1) If the danger of infestation of other trees is not imminent because of shade tree disease or shade tree pest dormancy, the forester may choose to reinspect either later in the same growing season or at the beginning of the following growing season before the active period. If at that time the tree has not recovered, the forester shall proceed by notifying the property owner that the nuisance tree must be abated within a specified time. If the property owner fails to abate the nuisance tree by said period of time, the forester may proceed by abating the nuisance as a public improvement under M.S. Ch. 429.
    - (2) If danger of infestation of other trees by shade tree disease or shade tree pest is imminent, the forester shall proceed by notifying the property owner by certified mail that the nuisance tree must be abated within a specified time. If the property owner fails to abate the nuisance tree by said period of time the forester may order the work done either by city employees or by contractor. The cost of this work shall be billed to the owner. If the bill is not paid within 30 days, the city shall assess the costs to the property.
- At the same time that the forester notifies the property owner about the nuisance and requirement for abatement, the forester shall submit a report to the City Council about the nuisance and requirements for abatement.

~~(b) Immediate action.~~

If the forester finds with reasonable certainty that immediate action is required to prevent the spread of the disease, he shall proceed to abate the nuisance forthwith. He shall report the action immediately to the council and to the owner of the property where the nuisance is located.

(g) *Emergency abatement.* Nothing in this division 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.

(Code 1997, § 810.03)

~~Sec. 18-34.— Nuisance declared.~~

~~The following are declared to be public nuisances whenever they may be found within the city:~~

- ~~(1) Any living or standing elm tree or part thereof infected to any degree with the Dutch elm disease fungus, *Ceratocystis ulmi* (Buisman) Moreau, or which harbors any of the elm bark beetles, *Scolytus multistriatus* ( Eich.) or *Hylurgopinus rufipes* (March).~~
- ~~(2) Any 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 insecticide.~~
- ~~(3) Any living or standing oak tree or part thereof infected to any degree with the oak wilt disease fungus *Ceraloiyctis fogacearum*.~~
- ~~(4) Any dead oak trees or part thereof which in the opinion of the forester constitutes a hazard, including, but not limited to, logs, branches, stumps, firewood, or other oak material, which has not been stripped of its bark and burned or sprayed with an effective fungicide.~~
- ~~(5) Any other shade trees with an epidemic disease.~~

(Code 1997, § 810.04)

~~Sec. 18-35.— Abatement.~~

~~It is unlawful for any person to permit any public nuisance as defined in section 18-34 to remain on any premises owned or controlled by him within the city. The nuisance may be abated in the manner prescribed by sections 18-38 to 18-43.~~

~~(Code 1997, § 810.05)~~

~~Sec. 18-36.— Inspection and investigation.~~

~~The forester shall inspect all premises and places within the city as often as practicable to determine whether any condition described in sections 18-34 and 18-35 exists thereon. He shall investigate all reported incidents of diseased trees.~~

(Code 1997, § 810.06)

~~Sec. 18-37.— Entry on private premises.~~

~~The forester or his duly authorized agents may enter upon private premises at any reasonable time for the purpose of carrying out any of the duties assigned him under this article.~~

(Code 1997, § 810.07)

~~Sec. 18-38.—Diagnosis.~~

~~The forester shall, upon finding conditions indicating disease infestation, immediately send appropriate specimens or samples to the commissioner of agriculture for analysis, or take such other steps for diagnosis as may be recommended by the commissioner of agriculture. Except as provided in sections 18-40 through 18-42, no action to remove infected trees or wood shall be taken until positive diagnosis of the disease has been made.~~

(Code 1997, § 810.08)

~~Sec. 18-39.—Abatement of tree disease nuisances.~~

~~In abating the nuisances defined in sections 18-34 and 18-35, the forester shall cause the infected tree or wood to be sprayed, removed, burned, or otherwise effectively treated so as to destroy and prevent as fully as possible the spread of tree diseases. The abatement procedures shall be carried out in accordance with current technical and expert opinions and plans as may be designated by the commissioner of agriculture.~~

(Code 1997, § 810.09)

~~Sec. 18-40.—Procedures for removal of infected trees and wood.~~

~~(a) *Ordinary procedure.* Whenever the forester finds with reasonable certainty that the infestation defined in sections 18-34 and 18-35 exists in any tree or wood in any public or private place in the city, he shall proceed as follows: If the forester finds that the danger of infestation of the trees is not imminent because of dormancy, he will determine a specified time as to when the nuisance shall be abated according to the infestation and dormant season. The abutting property owner or the owner of the property upon which the tree is located will be notified of the specified time by certified mail. The forester shall immediately report the action to the council, and after the expiration of the time limited by the notice he may abate the nuisance by:~~

~~(1) Abating the nuisance as a public improvement under M.S.A. § 429.101; or~~

~~(2) Abating the nuisance as provided in section 18-41.~~

~~(b) *Immediate action.* If the forester finds with reasonable certainty that immediate action is required to prevent the spread of the disease, he shall proceed to abate the nuisance forthwith. He shall report the action immediately to the council and to the owner of the property where the nuisance is located.~~

(Code 1997, § 810.10)

Sec. 18-~~4135~~. - Council action.

Upon receipt of the forester's report required by section 18-~~4034~~ (f)(2)(a), the council shall by resolution order the nuisance abated. Before action shall be taken on such resolution, the council shall publish notice of its intention to meet to consider taking action to abate the nuisance. This notice shall be mailed to affected property owners and published once no less than one week prior to the meeting. The notice shall state the time and place of the meeting, the property affected, action proposed, the estimated cost of the abatement, and the proposed bases of assessment, if any, of costs. At the hearing or

adjournment thereof, the council shall hear property owners with reference to the scope and desirability of the proposed project. The council shall thereafter adopt a resolution confirming the original resolution with such modifications as it considers desirable and provide for the doing of the work of day labor or by contract.

(Code 1997, § 810.11)

Sec. 18-~~4236~~. - Records.

The forester shall keep a record of the costs of abatements done under this section and shall report ~~monthly~~ annually to the clerk-administrator. All work done for each assessment shall be made stating and certifying the description of land, lots, parcels involved and the amount chargeable to each.

(Code 1997, § 810.12)

Sec. 18-~~4337~~. - Assessments.

On or before November 30 of each year, the clerk-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.A. § 429.101 and other pertinent statutes for certification to the county auditor and collection the following year along with current taxes.

(Code 1997, § 810.13)

Sec. 18-~~4438~~. - Treatment.

Whenever the forester determines that any tree or wood within the city is infected with disease, he may spray or otherwise treat all nearby high value trees with an effective disease destroying agent. Spraying and other treatment activities authorized by this section shall be conducted in accordance with technical and expert opinions and plans of the commissioner of agriculture and under the supervision of the commissioner and his agents whenever possible. The notice provisions of section 18-~~4435~~ 35 apply to spraying and treatment operations conducted under this section.

(Code 1997, § 810.14)

Sec. 18-~~4539~~. - Transporting wood prohibited.

It is unlawful for any person to transport within the city any diseased wood or any bark-bearing elm or oak wood without having first obtained permission from the forester. The forester shall grant such permission only when the purpose of this section shall be served by minimizing the risk of spread of the disease.

(Code 1997, § 810.15)

Sec. 18-~~4640~~. - Interference prohibited.

It is unlawful for any person to prevent, delay or interfere with the forester or his agents while they are engaged in the performance of duties imposed by sections 18-~~314~~ through 18-45.

(Code 1997, § 810.16)

Sec. 18-41. - Enforcement.

The city shall be responsible for the enforcement of this division. Any person who fails to comply with or violates any section of this division shall be deemed guilty of a misdemeanor and, upon conviction, shall be subject to punishment in accordance with this Code. All land use, building, and grading permits shall be suspended until the applicant has corrected the violation. Each day that a separate violation exists shall constitute a separate offense.

The city reserves the right to inspect the site or property at any reasonable time for compliance with tree preservation requirements. If the city finds the site in violation, the city may issue a stop work order until conditions are corrected.

Secs. 18-472—18-65. - Reserved.



EXHIBIT A - showing trees





# MEMO

TO: Newport Planning Commission

FROM: Travis Brierley, Assistant to the City Administrator

DATE: April 6, 2021

SUBJECT: Meeting Dates

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**Background:** Mayor Elliott requested the Planning Commission to consider moving the Planning Commission meetings from Thursday to earlier in the week. This is to limit the potential for additions to City Council packets and allow for a more efficient process in City Council consideration of Planning Commission recommendations.

**Discussion:** The Planning Commission voted at the February 2021 meeting to change the Planning Commission meeting dates to the 2<sup>nd</sup> Tuesday of each month in order to achieve the goals of the Mayor. However, the intent of the change and the approved meeting date and time subjected the efficiency of City actions to an unintended negative consequence. During the months of April, July, September, and December 2021, the Planning Commission would meet 2 days prior to the second City Council meeting of the month. During these meetings, the recommendations from the Planning Commission would not be presented to the City Council for up to three weeks. This is the opposite of the intention for the meeting date change.

**Recommendation:** It is the recommendation of staff that the Planning Commission cancels the April 13, 2021 Planning Commission meeting and adopts a meeting time and date to be the 1<sup>st</sup> Tuesday after the 1<sup>st</sup> regularly scheduled City Council meeting of each month. If approved by the Planning Commission, the meeting dates for 2021 would be:

- May 11
- June 8
- **July 6**
- August 10
- **September 7**
- October 12
- November 9
- **December 7**