



INFORMATION MEMO

Maintenance of City Trees

Learn the value of regular inspection and maintenance of city trees, including prevention and abatement of diseases like Dutch Elm, Oak Wilt and Emerald Ash Borer infestation. Understand the types of liability claims commonly made about trees in city rights-of-way, parks and other public places. Links to a model tree ordinance.

RELEVANT LINKS:

I. Benefits of Trees

Urban trees are a key to the environmental health of a community because they provide social, community, and environmental benefits. Trees are part of the natural life support system that supports native species, maintains natural ecological processes, sustains air and water resources, and contributes to health and quality of life. Trees bring natural elements and wildlife habitats into urban surroundings that increase the quality of life for residents of the community.

Trees also have substantial direct and indirect economic value. Air-conditioning costs are lower in a tree-shaded home. Heating costs are reduced when a home has a windbreak. Trees increase in value from the time they are planted until they mature. Also, landscaped homes are more valuable than non-landscaped homes. The savings in energy costs and the increase in property value directly benefit each home owner.

Some cities are so protective of their trees that councils adopt tree preservation ordinances that protect larger trees on private property from unnecessary or wholesale cutting. With all the benefits trees bring, perhaps the potential costs associated with their damage aren't surprising.

II. Tree-related claims

Every year cities throughout Minnesota are subject to a wide variety of claims involving trees located within street rights-of-way, parks, and public places. Claims also arise from trees located on private property, which affect city rights-of-way, or that city workers allegedly damage. Falling tree trunks and limbs regularly damage houses, garages, and automobiles.

Conflicts between trees and street signs, sidewalks, and utilities can lead to damage and injury. Tree boughs and branches block stop signs and other street signs, and consequently can be a factor in traffic accidents. Tree roots can cause sidewalks and curbs to heave and crack, and damage underground utilities.

This material is provided as general information and is not a substitute for legal advice. Consult your attorney for advice concerning specific situations.

RELEVANT LINKS:

[Tree Trust.](#)

[Minnesota Shade Tree Advisory Committee.](#)

Pederson v. City of Rushford,
146 Minn. 133, 177 NW 943
(1920).

Zacharias v. Nesbitt, 150
Minn. 368, 185 NW 295
(1921).

[Minn. Stat. § 18G.13.](#)

See [Shade Tree Pest Control, LMC Model Ordinance.](#)

Trees that conflict with power lines need special attention and preventive pruning. Some issues arise from trees growing into lines, but more often the conflicts are weather related. Branches or limbs can fall during a storm, damaging power lines. Sometimes a power line during winter or spring will have enough ice build-up that it sags onto a tree. Short circuits can occur, and may result in losses of service or fires.

Improper inspection and removal of trees can lead to costly claims against a city. The city has a duty to maintain trees in their rights-of-way. Trees on private property damaged by negligence of city staff can lead to costly claims.

III. Legal issues

The starting point in limiting claims is to adopt a tree care ordinance. Tree ordinances are of different types, address different issues, and provide for differing programs. Some ordinances address:

- Care of city trees found on city property and provide for tree variety, spacing, trimming, and rights-of-way issues.
- Disease control, including provisions for inspection, investigation, diagnosis, and abatement.
- Other issues, such as tree boards, planting and replanting programs, boulevard trees, and tree preservation.

A number of resources are available for tree ordinance development from the Tree Trust and the Minnesota Shade Tree Advisory Council.

A. Rights-of-way

The control and care for trees in the public rights-of-way involves common law right-of-way principals. Landowners generally own all of the land up to the center of the street in front of their house, including trees, soil, minerals, etc., unless acquired by the city. However, the city has easement rights in the public street, and with it comes a “duty of care.” For the city, this translates to, among other things, an obligation to maintain the trees in the right-of-way. Although the landowner may own the trees, the landowner does not have a legal obligation to take care of easement trees.

B. Disease and pests

State law provides a city may, by ordinance, adopt and enforce regulations to control and prevent the spread of plant pests and diseases, and even pass a specific levy to fund such a program. The ordinance may authorize inspection and removal of diseased trees on private property.

RELEVANT LINKS:

[Minn. Stat. § 561.04.](#)

C. Permission, waivers and private property

When working with or around trees on private property, cities can face claims of negligence in inspection, maintenance, and removal. An important step is for the city to seek permission or a waiver from a landowner before doing any work that might affect their trees or shrubs. In the absence of permission, a city may obtain an administrative warrant from a court that gives the city permission to enter the property for the limited purpose of tree care. Questions often arise as to property boundaries and tree ownership. Getting the facts correct before the work is done is essential because once the trees are trimmed or removed, the damage is done.

Minnesota statutes allow aggrieved landowners to recover treble damages, an award of three times the cost of repair and replacement. The statute says that whoever removes a tree, timber or shrubs on private land is liable for treble damages to the owner of the land.

IV. Tree maintenance

To minimize claims and improve tree health, cities should implement a regular inspection and maintenance program. Regular inspection and maintenance activities, and all complaints and follow-up, should be fully documented with forms and photos. Regular inspection and maintenance will improve tree health, reduce future disease, and minimize potential conflicts.

A tree inventory is the first step for cities to learn and document what tree species and issues exist in the city's urban forest. Qualified professionals can identify structural faults or defects and associated target areas and determining risk level. Structural defects include:

- Large cracks.
- Decayed areas.
- Cavities.
- Leans.
- Root damage.

An inventory should be targeted at gathering data in areas where people and property could be damaged by a tree. Determination of risk level is a professional judgment that should be carefully documented.

RELEVANT LINKS:

[National Arborist Association – tree pruning.](#)

[American National Standards Institute: Tree, Shrub, and Other Woody Plant Maintenance Standard Practices.](#)

[See Shade Tree Pest Control, LMC Model Ordinance.](#)

Tree maintenance often involves a replanting program, particularly after disease or storm. Tree selection depends on why the tree is being planted, the size and location of planting site, site and soil conditions, and expected maintenance. Trees with less destructive root systems should be used for boulevard plantings. Trees with shallow roots should be avoided near sidewalks. Smaller trees should be used under power lines. Some trees are more tolerant of root pruning than others. Trees must be suitable for the region, soil conditions, and pest resistant.

Regular maintenance ensures a tree's value will grow. Pruning is used to remove dead, diseased or infected branches, improve tree structure, or maintain safety. Types of pruning include crown cleaning, thinning, raising, reduction, and restoration. A trimming policy can set forth ideal trimming cycles but should also take into account budget constraints, availability of city staff or contractors, and backlog of requests. Tree trimming guidelines include American National Standard for Tree Care Operations: Tree Shrub and Other Woody Plant Maintenance Standard Practices, and National Arborist Association's "Standards for Pruning of Shade Trees."

Topping trees is a harmful tree pruning practice. Topping (also referred to as heading, stubbing, rounding, or dehorning) is the removal or cutting back of large branches in mature trees with little regard for location of the pruning cut. Topping stresses trees and makes them more susceptible to disease, causes decay, and creates hazards.

V. Disease prevention and abatement

Tree diseases are either infections or disorders. Disorders can be caused by such factors as nutrient deficiencies, temperature extremes, vandalism, pollutants, and fluctuations in moisture. Fungus infections and pest infestations affect trees, including the following:

- Oak Wilt is a fungus that travels through trees beneath the bark preventing water from reaching the top of tree and causing leaves to wilt, and the tree dies within weeks. To prevent spread of oak wilt, do not wound or prune Oaks during the months of April, May and June.
- Dutch Elm is a fungus that grows in Elm trees and that prevents water from reaching the leaves. The leaves wilt, and the tree dies. Communities need disease control programs to battle Dutch Elm, including inspections, removal, and disposal of infected trees.

RELEVANT LINKS:

[Tree City USA Program.](#)

[The National Arbor Day Foundation.](#) [MN DNR Division of Forestry.](#) [MN DNR Forestry Grants.](#) [Minnesota Forest Resource Council.](#) [International Society of Arboriculture.](#)

- The Emerald Ash Borer (EAB) first appeared in Minnesota in 2009. The EAB larvae cut S-shaped patterns through the fibrous vessels under the bark, disrupting the flow of water, minerals and nutrients, thereby denying nourishment to the rest of the tree. Without removing the bark, the EAB larvae typically go unnoticed, the only visible indicators are one-eighth-inch D-shaped exit holes on the bark and increased woodpecker activity. The tree is then starved to death, typically over two to four years. Since there appear to be no resistant strains of ash, and Minnesota has around 950 million ash trees, the potential economic and environmental costs from EAB alone are astounding.

Cities may consider becoming a member of the Tree City USA program. Tree City USA was developed by the National Arbor Day Foundation in conjunction with the United States Forest Service and the National Association of State Foresters. The purpose is to improve community forestry programs by providing local community groups with financial incentives, local government program development including tree inventories, insect and disease control plans, ordinance development and staffing.

Cities must meet four criteria in order to join the Tree City USA program. The city must have

- A tree board or department.
- A tree care ordinance.
- A community forestry program with \$2 annual per capita; and
- An Arbor Day observance and proclamation.

Belonging to Tree City USA is often an advantage in qualifying for financial assistance for tree programs. For instance, the Minnesota Department of Natural Resources administers urban and community forestry challenge grants to local units of government that have met Tree City USA standards.

City trees are a capital asset requiring regular inspection and maintenance to protect and sustain value. Healthy trees mean happy citizens and fewer claims.

VI. Further assistance

In addition to the organizations already mentioned, other tree-related resources may be of assistance to you. You may also contact your loss control consultant at the League.