

NEW TREE AND SHRUB ORDINANCE IN CHAPTER 3, ARTICLE 2

EXPLANATION: *Matter in italics is new*; Matter with strikeouts (—) is material to be omitted.

ORDINANCE NO. 2015-1 (MC)

AN ORDINANCE AMENDING CHAPTER 3, ARTICLE 2 "USE AND CARE OF STREETS, SIDEWALKS AND PUBLIC PLACES" OF THE MUNICIPAL CODE BY ESTABLISHING NEW AND AMENDING EXISTING LANGUAGE PERTAINING TO: 1) TREE AND SHRUB PLACEMENT; 2) MAINTENANCE OF TREES AND SHRUBS; AND 3) TO ESTABLISH A TREE BOARD AND CITY FORESTER. UPON ADOPTION, THE ORDINANCE WILL BE EFFECTIVE CITY WIDE THEREBY ENCOMPASSING ALL LANDS WITHIN THE CITY OF BOWMAN JURISDICTIONAL LINES WHICH IS LOCATED IN BOWMAN COUNTY, NORTH DAKOTA, TOGETHER WITH OTHER MATTERS PROPERLY RELATING THERETO.

THE CITY COMMISSION OF THE CITY OF BOWMAN hereby finds, determines, and declares the following:

WHEREAS, it appears in the best interest of the City of Bowman that new regulations pertaining to the location, placement, maintenance and removal of trees be adopted; and

WHEREAS, the City Commission seeks to establish a Tree Board to enforce the regulations to ensure that the health of the City's trees and shrubs remain disease and insect free; and

WHEREAS, the City seeks to establish a City Forester designee to regulate the planting of trees, monitor their ongoing health, and remove them when diseased; and

WHEREAS, the City seeks to establish placement, spacing and distance requirements for trees and shrubs in order to ensure their long term health while concurrently protecting the City's investment in public infrastructure.

THEREFORE, THE CITY COMMISSION OF THE CITY OF BOWMAN DO ORDAIN:

SECTION 1. Amend Chapter 3, Article 2 "Use and Care Of Streets, Sidewalks and Public Places" as follows:

3.0213.2 Boulevard Trees and Shrubs – Definitions

Street Trees and Shrubs: defined as trees, shrubs bushes and all other woody vegetation; on land lying between property lines either side of the streets, avenues or ways within the City.

Public and Park Trees: defined as trees, shrubs, bushes and all other woody vegetation in public parks having individual names, and all areas owned by the City, or to which the public has free access as a park.

City: defined as the City of Bowman, State of North Dakota and shall mean all parks, cemetery, lagoon, and all properties owned by the City of Bowman.

3.0213.3 Maintenance of Boulevard Trees and Shrubs All preexisting trees within twenty (20) feet of the curb corners, which obstructs a sidewalk or creates a traffic hazard by obstructing the view of an intersecting street, shall have all branches removed which are less than seven (7) feet in height above the ground.

All preexisting bushes, hedges, shrubs, or other such growth within twenty (20) feet of the curbs and curb corners, which obstruct a sidewalk shall be trimmed to eliminate any such obstruction. If any such growth is of a height sufficient to create a traffic hazard by obstructing the view of an intersecting street, it shall be trimmed to a height not to exceed three (3) feet above the ground.

(Enacted 12-21-93)

3.0213.4 Bushes, Shrubs or Trees within Alley No bushes, shrubs, trees or other such growth, or structures, containers, or personal property shall be placed upon or extend into the twenty (20) foot City right-of-way within an alley.

3.0213.5 Placement of Boulevard Trees and Shrubs ~~Trees, bushes, hedges, shrubs and other such similar growth must be back 20 feet from the curbs and curb corners~~ *planted outside the thirteen (13) foot public right-of-way which is measured from the back of curb and placed 8 feet from the rear of the lot or alley.*

3.0213.6 Placement of Shrubs *Shrubs, hedges, bushes and other such similar growth that is three (3) feet or less in height at full maturity must be two (2) feet and six (6) inches from the back of curb. Shrubs and other such similar growth over three (3) feet must be placed outside of the thirteen (13) foot public right-of-way which is measured from the back of curb and five (5) feet from the rear of the lot or alley.*

3.0213.7 Distance From Street Corners and Fire Hydrants *No Street Tree shall be planted closer than twenty (20) feet of any street corner, measured from the point of nearest intersection curbs or curb lines. No Street Tree shall be planted closer than ten (10) feet of any fire hydrant.*

3.0213.8 Distance From Utilities No street tree other than those listed as small trees in Section 3.0213.17 of this ordinance may be planted under or within ten (10) lateral feet of any overhead utility wire, or over or within five (5) lateral feet of any underground water line, sewer line transmission line or other utility.

3.0213.9 Administration – Composition and Terms A Tree Board is hereby created and shall be composed of five (5) members; two (2) City Commissioners and three (3) individuals which shall be residents of the city. The term of the three (3) residents to be appointed by the City Commission shall be three (3) years; and the term of the two (2) City Commissioners appointed to the Board shall be for four (4) years. In the event that a vacancy shall occur during the term of any member, a successor shall be appointed for the unexpired portion of the term.

3.0213.10 Compensation Members of the Tree Board shall serve without compensation.

3.0213.11 Comprehensive Forestry Work Plan It shall be the responsibility of the Board to study, investigate and develop and/or update annually a written plan for the care, preservation, trimming, planting, replanting and removal of trees and shrubs in public ways, streets and alleys. Such plan will be presented annually to the City Commission in February and upon their acceptance and approval shall constitute the official comprehensive annual forestry work plan for the City.

3.0213.12 Board Responsibilities The Tree Board, or its Agent/s, shall be responsible for the planting, pruning and removal of all trees located within the street right-of-way, easements, alleys, cemetery, and parks of the City.

- a. The owner of land abutting on any street may, when acting within the provisions of this ordinance, prune, spray, plant or remove trees in that part of the street abutting his land not used for public travel. A street tree permit shall be required only when the owner of property intends to deviate from the rules and regulations contained in this ordinance.
- b. The Board, when requested by the City Commission, shall consider, investigate, make finding, report and recommend upon any special matter of question coming with the scope of its work.

3.0213.13 Officers The Board shall choose its own officers, make its own rules and regulations and keep a journal or meeting minute book of its proceedings. A majority of the members shall be a quorum for the transaction of business.

3.0213.14 City Forester This position is hereby created to be filled by appointment by the City Commission in consultation with the Tree Board. The term shall be for three (3) years. The City Forester shall be an ex-officio member of the Tree Board and serve without compensation.

3.0113.15 Authority and Jurisdiction of the City Forester *The City Forester shall have the authority and jurisdiction, through the Tree Board, to regulate the planting, maintenance, protection and removal of all trees on streets and other public places to ensure safety or preserve the aesthetics of such streets and public places.*

- a. *The City Forester shall have the authority to make known, with the approval of the Tree Board, the rules and regulations of the Arbor-cultural Specifications and Standards of Practice governing the planting, maintenance, protection, and removal of trees as specified on the streets and public areas of the City.*
- b. *The City Forester shall have the authority to supervise all work done under any permit issued in accord with the terms of the ordinance.*

3.0213.16 Street Tree Species to be Planted *The Tree Board will formulate an official Street Tree species list for the city. The list of allowable species shall be broken down into categories of small, medium and large trees. No species other than those included in this list may be planted as Street Trees without written permission of the Tree Board.*

3.0213.17 Spacing *The spacing of Street Trees will be in accordance with the three (3) species size classes listed in this ordinance, and no trees may be planted closer together than the following: small trees, twenty (20) feet; medium trees, thirty (30) feet; and large trees, forty (40) feet.*

3.0213.18 Public Tree Care *The City shall have the right to plant, prune, spray, preserve and remove trees, plants and shrubs within the lines of all streets alleys, avenues, lanes, squares and public grounds, as may be necessary to ensure safety when serving City utilities or to preserve the symmetry and beauty of such public grounds. The Tree Board may remove or cause or order to be removed, any tree or part thereof which is in an unsafe condition or which by reason of its nature is injurious to sewers, electric power lines, gas line, waterlines or other public improvements, or is affected with any injurious fungus, insect or other pest.*

3.0213.19 Trimming and Corner Clearance *Every owner of any tree overhanging any street or right-of-way within the City shall prune the branches so that such branches shall not obstruct the light from any street lamp; or obstruct the view of any street intersection and so that there shall be a clear space of eight (8) feet above the surface of the street or right-of-way. Said owners shall remove all dead, diseased or dangerous trees, or broken or decayed limbs which constitute a menace to the safety of the public. The City shall have the right to prune any tree or shrub on private property when it interferes with the proper spread of light along the street from a street light, or interferes with visibility of any traffic control device or signs, such pruning to be confined to the area immediately above the right-of-way.*

3.0213.20 Dead or Diseased Tree Removal on Private Property The City shall have the right to cause the removal of any dead or diseased trees on private property within the City, when such trees constitute a hazard to life and property, or harbor insects or disease which constitutes a potential threat to other trees within the City. The Tree Board will notify in writing the owners of such trees. Removal shall be done by said owners at their own expense within sixty (60) days after the date of service notice. In the event of failure of owners to comply with such provisions, the City shall have the authority to remove such trees and charge the cost of removal on the owner's property tax notice.

3.0213.21 Interface with Tree Board It shall be unlawful for any person to prevent, delay or interfere with the Tree Board, or any of its agents, or servants, while engaging in and about the planting, cultivating, mulching, spraying or removing of any street trees, park trees or trees on private grounds, as authorized in this ordinance.

3.0213.22 Arborist License and Bond It shall be unlawful for any person or firm to engage in the business of occupation of pruning, treating or removing street or park trees within the City without first applying for and procuring a license. The license fee of twenty-five (\$25) shall be paid annually in advance; provided, however, that no license shall be required of any public service company or City employee doing such work in the pursuit of their public service endeavors. Before any license shall be issued, each applicant shall first file evidence of possession of liability insurance in the minimum amounts of one-hundred thousand (\$100,000) bodily injury and three-hundred thousand (\$300,000) for property damage indemnifying the City or any person injured or damaged resulting from the pursuit of such endeavors as herein described.

3.0213.23 Review by City Commission The City Commission shall have the right to review the conduct, acts and decisions of the Tree Board. Any person may appeal from any ruling or order of the Tree Board to the City Commission who may hear the matter and make a final decisions.

3.0213.24 Violation of Ordinance and Penalty Any persons firm or corporation violating or failing to comply with the provisions of this ordinance shall be guilty of a Class B misdemeanor and upon conviction thereof, shall be subject to a fine not to exceed five-hundred dollars (\$500).

3.0213.25 Severability Should any part or provision of this ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of the ordinance as a whole, or any part thereof, other than that declared to be invalid.

3.0213.26 Protection of Public Trees No person shall intentionally damage, cut or carve any public tree; attach any rope, wire or nail advertising posters or other contrivance to any tree; allow any gaseous liquid, or solid substance which is harmful to such trees to come in contact with them; or set fire to, or permit any fire to burn which will injure the tree.

3.0213.27 Removal of Stumps All stumps of street and park trees shall be removed below the surface of the ground so that the top of the stump shall not project above the surface ground.

3.0213.28 Tree Topping It shall be unlawful as a normal practice for any person, firm or City department to top any street tree, park tree, or other tree on public property. Topping is defined as the severe cutting back of limbs to stubs larger than three (3) inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree. Tree's severely damaged by storms or other causes or certain trees under utility wires or other obstruction where other pruning practices are impractical may be exempted from this ordinance at the determination of the City Tree Board.

SECTION 2. This Ordinance shall be in effect from and after its passage, adoption and publication in one issue of the City's official newspaper, The Pioneer, printed and published in the City of Bowman.

SECTION 3. The City Zoning Director of the City of Bowman is hereby authorized and directed to have this Ordinance published in one issue of the Bowman Pioneer, a newspaper printed and published in the City of Bowman.

PASSED AND ADOPTED this 2nd day of June, 2015, by the following vote of the Commission:

AYES: Whitney, Limesand, Sondeland, West + James

NAYS: none

ABSTAIN: none

ABSENT: none

APPROVED this 2nd day of June, 2015.

PRESIDENT OF THE CITY OF BOWMAN CITY COMMISSION



LYN JAMES, PRESIDENT

ATTEST

Cheryl D. Ryan, AICP
ZONING DIRECTOR

Regan Allen
CITY AUDITOR

OF THE CITY OF BOWMAN, NORTH DAKOTA

EFFECTIVE DATE: June 15, 2015