

ORDINANCE NO. 594

AN ORDINANCE AMENDING ARTICLE 15 OF CHAPTER IV OF THE CITY OF WATFORD CITY ORDINANCES RELATING TO TREES.

Section 1. Purpose.

To enhance the quality of life and the present and future health, safety, and welfare of all residents, to enhance property values, and to ensure proper planting and care of trees on public property, the City Council herein delegates the authority and responsibility for managing public trees, creates a Tree Advisory Board, establishes practices governing the planting and care of trees on public property, and makes provision for the emergency removal of trees on private property under certain conditions.

4-1501 - Definitions:

For the purposes of this ordinance, the following terms, phrases, words and their deviations shall have the meaning given herein.

- A. "City" is the City of Watford City, State of North Dakota and shall mean all parks, airports, landfills and lagoons.
- B. "Person" means any person, firm, partnership, association, corporation, company, or organization of any kind.
- C. "Streets" means the entire width of every public way or right of way when any part thereof is open to the use of the public, as a matter of right, for purposes of vehicular and pedestrian traffic.
- D. "Boulevard" means the space between the sidewalk, or the normal location of the sidewalk or the property lines and the curb line or curb.
- E. "Width of Boulevard" means the distance between the sidewalk, or the normal location of the sidewalk or the property lines and the curb line or curb.
- F. "Property Lines" means the outer boundaries of any lot or parcel of land.
- G. "Property Owner" means the person owning such property as is shown by the McKenzie County, North Dakota Register of Deeds.
- H. "Public Tree" are all shade and ornamental trees now or hereafter growing on any public right of way or in any public place or park.
- I. "Damage" – any injury to or destruction of a tree, including but not limited to: uprooting; severance of all or part of the root system or main trunk; storage of material on or compaction of surrounding soil; a substantial change in the natural grade above a root system or around a trunk; surrounding the tree with impervious paving materials; or any trauma caused by accident or collision.
- J. "Nuisance" – any tree, or limb thereof, that has an infectious disease or insect; is dead or dying; obstructs the view of traffic signs or the free passage of pedestrians or vehicles; or threatens public health, safety, and welfare.

- K. "Public property" – all grounds and rights-of-way (ROWs) owned or maintained by the City.
- L. "Public tree" – any tree or woody vegetation on city-owned or city-maintained property or rights-of-way.
- M. "Top or Topping" – the non-standard practice of cutting back of limbs to stubs within a tree's crown to such a degree so as to remove the normal canopy and disfigure the tree.

4-1502 - Administration

- a) A Pest Control Board is hereby created and composed of one (1) member of the Watford City Council as appointed by the Mayor, one (1) member of the Watford City Park Board as appointed by that body, one (1) member of the County as appointed by the McKenzie County Board, and two (2) at large resident members from the City as appointed by the City Council.
 - a. For a term of two (2) years: The two (2) at large members.
 - b. For a term of two (2) years: The City Council, Park Board and County members.
 - c. Annually thereafter, Group I and Group II shall be reappointed alternately.
 - d. The duties of the Pest Control Board shall be to advise and aid in the coordination of the vector control program and the tree care programs throughout the City of Watford City on properties controlled by the City of Watford City and the Vector Control Board as agreed upon in the agreement between the City of Watford City, the Park Board and the County of McKenzie, dated on the thirteenth (13) day of April, 1999. Other duties of the board are as follows:
 - i. Coordinate and promote Arbor Day activities;
 - ii. Review and update a five-year plan to plant and maintain trees on city property;
 - iii. Support public awareness and education programs relating to trees;
 - iv. Review city department concerns relating to tree care;
 - v. Submit an annual report of its activities to the city council;
 - vi. Assist with the annual application to renew the Tree City USA designation;
 - vii. Recommend a list of tree species for planting on city property, and a list of prohibited species; and
 - viii. Other duties that may be assigned by City Council.
 - e. The Pest Control Board shall serve without compensation.

- b) The City Forester position is hereby created to be filled by appointment by the City Council in consultation with the Pest Control Board

4-1503 - Authority and Jurisdiction of the City Forester

The authority and jurisdiction of the City Forester shall be as follows:

- (a) The City Forester shall have the authority and jurisdiction, through the Board, to regulate the planting, maintenance, protection, and removal, of all trees on streets and other public places, to ensure safety, or preserve the esthetics of such streets and public places.
- (b) The City Forester shall have the authority to make known, with the approval of the Pest Control Board, the rules and regulations of the Arboricultural 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 of Watford City.
- (c) The City Forester shall have the authority to supervise all work done under any permit, issued in accord with the terms of this ordinance.

4-1504 - Tree Planting and Care Standards.

- (a) Standards. All planting and maintenance of public trees shall conform to the American National Standards Institute (ANSI) A-300 "Standards for Tree Care Operations" and shall follow all tree care Best Management Practices (BMPs) published by the International Society of Arboriculture.
- (b) Requirements of franchise utility companies. The maintenance of public trees for utility clearance shall conform to all applicable utility industry standards.
- (c) Preferred species list. The Director shall maintain an official list of desirable tree species for planting on public property in two size classes: Ornamental (20 feet or less in height at maturity) and Shade (greater than 20 feet at maturity). Trees from this approved list may be planted without special permission; other species may be planted with written approval from the Director.
- (d) Planting distances. The Director shall develop and maintain an official set of spacing requirements for the planting of trees on public property. No tree may be planted within the visibility triangle of a street intersection or within 10 feet of a fire hydrant.
- (e) Planting trees under electric utility lines. Only trees listed as Ornamental trees on the official city tree species list may be planted under or within 15 lateral feet of any overhead utility wire.

4-1505 - Prohibition Against Harming Public Trees.

- (a) It shall be unlawful for any person, firm, or corporation to damage, remove, or cause the damage or removal of a tree on public property without written permission from the Director.
- (b) It shall be unlawful for any person, firm, or corporation to attach any cable, wire, sign, or any other object to any street, park, or public tree.

- (c) It shall be unlawful for any person, firm, or corporation to “top” any public tree. Trees severely damaged by storms or other causes, where best pruning practices are impractical may be exempted from this provision at the determination of the Director.
- (d) Any person, firm, corporation, or city department performing construction near any public tree(s) shall consult with the Director and shall employ appropriate measures to protect the tree(s), according to procedures contained in the Best Management Practices (BMPs) for “Managing Trees During Construction” published by the International Society of Arboriculture.
- (e) Each violation of this section as determined and notified by the Director shall constitute a separate violation, punishable by fines and penalties under Section 10, in addition to mitigation values placed on the tree(s) removed or damaged in violation of this section.

4-1506 - Nuisance Declared

The following conditions are public nuisances whenever they may be found within the City of Watford City:

- (a) Any living or standing elm tree or part thereof infected to any degree with the Dutch Elm disease fungus, *Ceratocystis ulmi*, and which harbors any of the elm bark beetle, *Scolytus multistriatus* or *hylurgopinus rufipes*, or other tree species infected by a disease or pest determined a nuisance by the Pest Control Board.
- (b) Any dead elm tree or part thereof, including logs, branch, stumps, firewood or other elm material from which the bark has not been removed or chipped and buried in the City Landfill during that part of the year, April 1st to October 15th, each year.
- (c) Any tree, shrub or hedge, or part thereof, growing upon public property or upon private property but overhanging or interfering with the use of any public walk, street or highway, park or public place within the City of Watford City, which in the opinion of the majority of the Pest Control Board, endangers the life, health, safety or property of the public, shall be declared a public nuisance.

4-1507 - Abatement

- (a) It is unlawful for any person to willfully permit any public nuisance as defined in Section 4-1506 to remain on any premises owned or controlled by him within the City. Such nuisance may be abated in the manner prescribed by this ordinance.

4-1508 - Inspection and Investigation

- (a) The Forester, under the direction of the Pest Control Board, shall inspect all premises and places within the City annually, and at other necessary times, to determine whether any condition described in Section 4-1506 exists therein.
- (b) The inspection shall determine all hazards as specified in Section 4-1506. The owner shall be notified in writing of the existence of the nuisance and given a reasonable time for its removal.

- (c) The Pest Control Board or City Forester may enter upon private premises at any reasonable time for the purpose of carrying out any of the duties assigned to it under this ordinance.
- (d) It shall be in the discretion of the Pest Control Board or City Forester to determine if a laboratory diagnosis of a suspect Dutch elm disease tree or other diseased, infected, infested, or genetic term tree is necessary. A field evaluation will usually be adequate unless there is some question about the tree or if the landowner requests that a sample be sent into the lab. If the landowner requests a laboratory diagnosis, the landowner shall pay all costs incurred therein.
- (e) If the Pest Control Board or City Forester, upon finding a suspect Dutch elm disease or other nuisance tree, decides to send appropriate specimens or samples to a qualified plant diagnostician, no action to remove suspect trees or wood shall be taken until positive diagnosis of the disease has been made.
- (f) Within five days of receipt of the diagnosis, the owner of the property from which the specimen was obtained shall be notified by the City Forester of the result by mail.

4-1509 - Abatement of Nuisance in the City of Watford City

- (a) In abating the nuisance on public streets, alleys, boulevards, public ways and private property as defined in Section 4-1506 (a) and (b), the City of Watford City shall cause the infected or infested tree or wood to be removed or otherwise effectively treated so as to destroy and prevent as fully as possible the spread of the invasive pest. Such abatement procedures shall be carried out in accordance with the latest technical and expert methods and plans as may be designated by the Commissioner of Agriculture of the State of North Dakota. The Pest Control Board shall establish specifications for tree removal and disposal methods consistent therewith.
- (b) In abating tree hazards on public property as defined in Section 4-1506 (c), the City Forester shall cause such hazards to be removed and disposed in accordance with tree care specifications which the Board shall accept, the cost to be assessed as defined in Section 4-1514.

4-1510 - Abatement of Nuisance on Private Property

- (a) Whenever the Pest Control Board or City Forester finds with reasonable certainty that the Dutch Elm or other pest defined in Section 4-1506 (a) exists in any tree or wood located on private property, outside of any public way in the City, he shall notify the owner or person in control of such property of which the nuisance is found by mail within ten days of receipt of the diagnosis. The Pest Control Board shall direct that the diseased tree be removed and effectively treated in a manner approved by the Board within ten (10) days after receipt of such notice. If such owner cannot be found, a copy of said notice shall be posted upon said infected tree. If said tree is not so removed and/or treated as specified within ten (10) days after actual receipt or posting of the notice, the City of Watford City shall remove and/or treat said tree. The owner or person in charge may be charged with a

violation of this ordinance for maintaining a nuisance and that the City may abate the nuisance, the cost to be assessed as defined in Section 4-1514.

- (b) The nuisance as defined in Section 4-1506 (c) shall be abated by the owner following notification of the existing nuisance. If not corrected or removed within the time allotted, the Pest Control Board shall authorize the removal or correction to be done in accordance with recommended procedures, the property owner to bear the cost.

4-1511 - Certification as Special Assessment

- (a) The City Auditor shall keep in the City office a book called "Nuisance Abatement, Special Assessment Book" and shall enter the cost of the abatement of a nuisance as declared by the City Council therein as a special assessment against the lot or parcel of land from which the nuisance was abated, with the name of the owner.
- (b) At the regular meeting of the City Council in October of each year, the City Council shall review all such assessments and hear all complaints against the same and approve the same finally adjusted, and the City Auditor shall certify to the County Auditor a list of the lots and parcels of land specially assessed for such purpose, and the sum shall be collected as other city taxes are collected.

4-1512 - Transporting Elm Wood Prohibited

- (a) It shall be unlawful for any person to transport within the City any elm wood bearing bark between April 1 and October 15. Wood containing EAB shall not be transported. Any other wood harboring potential invasive pests shall not be transported, without having obtained a permit from the City Forester. The Forester shall grant such permits only when the purpose of this ordinance shall be served thereby.

4-1513 - Interference Prohibited

- (a) It shall be unlawful for any person to prevent, delay or interfere with the Pest Control Board or City Forester while it is engaged in the performance of duties imposed by this ordinance.

4-1514 - Costs

The costs for abating of the public nuisances as defined in Section 4-1506 shall be borne as follows:

- (a) For abatement of the nuisance as defined in Section 4-1506(a) and with the nuisance occurring on public trees, the cost will be borne by the City of Watford City, and the cost for Park District land shall be borne by the Watford City Park Board. For abatement of the nuisance as defined in Section 4-1506(a) and with the nuisance occurring on private land or on any street, alley, boulevard, or other public way adjoining the private property, the cost shall be borne by the private owner.
- (b) For abatement of the nuisance as defined in Section 4-1506(b) the costs shall be borne as defined in Section 4-1514(a).
- (c) For abatement of the nuisance as defined in Section 4-1506(c) and the nuisance occurring on public trees, the cost will be borne by the City of Watford City, and the

cost for Park District land shall be borne by the Watford City Park Board. When the nuisance occurs on any street, alley, boulevard or any other public way, the cost shall be borne by the property owner adjoining the street, alley, boulevard, or public way.

- (d) The cost of tree planting for replacement of diseased trees on public property will be borne by the respective City Council owning the property.
- (e) All permits relating to this ordinance will be issued at no cost fee.
- (f) The cost of the diagnostic test stated in Section 4-1508 (d) shall be borne by the property owner unless tests are deemed necessary by the City Forester.

4-1515 - Tree Planting

- (a) The office of the City Forester shall issue permits to plant trees on public right of ways, boulevards, berms, and alleys in accordance with Section 4-1503(b).

4-1516 - Tree Topping

- (a) 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 to remove the normal canopy and disfigure the tree.

4-1517 - Pruning, Corner Clearance

- (a) Every owner of any tree overhanging any street, alley, or right-of-way within the City shall prune the branches so that such branches shall not obstruct the light from any streetlamp 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 sidewalk and twelve (12') feet above the street, alley, or right-of-way.

4-1518 - Savings and Repeal.

All ordinances or parts of ordinances in conflict with this Ordinance are repealed to the extent of such conflict.

4-1519 - Separability

- (a) In case any section of this Article is held invalid by a Court of competent jurisdiction, the invalidity shall extend only to the section affected and other sections of this ordinance shall continue in full force and effect.

4-1520 - Penalty

- (a) In the event that any person, firm or corporation violates any provision of the above Article sections they will be subject to revocation of their license and a fine not to exceed \$500.00.

Devlin moved the adoption of the foregoing Ordinance. The motion was seconded by Sanford. On roll call vote of the Council members, the following Council members

voted "AYE": Sanford, Liebel, Devlin, Renville, and Bulzomi, and the following Council members voted "NAY": None. Absent and not voting: Beard.

WHEREUPON, the motion was passed and the Ordinance declared adopted this 6th day of September, 2022.

Mayor Philip K. Riely
City of Watford City

ATTEST:

Peni Peterson, City Auditor

First Reading: 08/01/2022

Second Reading: 09/06/2022

Published: 09/21/2022