

## CHAPTER XVIII

### PARKS AND BOULEVARDS

#### ARTICLE I. PUBLIC PARKS

18-101. CREATION OF PARK DISTRICT OF THE CITY OF GWINNER. The City Council of the City of Gwinner has heretofore created a Park District of the City of Gwinner in accordance with and under the provisions of the appropriate laws of the State of North Dakota then in existence, the said laws now being embodied in Chapter 40-49 of the North Dakota Century Code.

#### ARTICLE II. PLANTING AND PRESERVATION OF TREES

18-201. CITY COUNCIL TO CONTROL PLANTING OF TREES AND SHRUBS. The City Council shall have the power and control over all trees, shrubs, and plants planted in the streets of the City of Gwinner, and shall have the power to determine the kind and location of such trees, shrubs and plants.

18-202. DEFINITION OF TREES. The word "tree" as used in this article shall not be construed to include shrubs that do not grow higher than 12 feet.

18-203. DEFINITION OF STREETS. The word "streets" shall include in addition to the traffic roadway all boulevards or berms adjoining such streets.

18-204. SHADE TREES: PRESCRIBED HEIGHT OVER STREETS AND SIDEWALKS. No person or persons, corporation or otherwise, whether owners or tenants, of any property along the public streets and avenues of the City of Gwinner, shall permit any shade trees to project over the sidewalk, streets, and avenues of said City less than 8 feet in height from such sidewalks, streets, and avenues.

18-205. DUTY TO TRIM TREES. It shall be the duty of all persons, whether owners or tenants, to keep the shade trees along the public streets and avenues adjoining such property trimmed in such manner that such trees shall not interfere with travel on said streets and avenues aforesaid.

18-206. PERMIT REQUIRED BEFORE PLANTING TREES IN STREETS. No person, firm or corporation shall hereafter plant or cause to be planted any tree, shrub or other vegetable growth within the limits of any street, alley, boulevard, or other public way of the City of Gwinner without first having obtained therefore a written permit from the Street Commissioner.

18-207. APPLICATION FOR AND GRANTING OF PERMIT. Any person, firm, or corporation desiring to plant any tree, shrub or other vegetable growth within the limits of any street, alley, boulevard or other public way of the City must first apply to the

Street Commissioner for a written permit therefor. After the receipt of such application the Street Commissioner shall investigate the locality where the tree, shrub or other vegetable growth is to be placed, and shall grant a permit therefor only if the location is such as to allow the normal growth and development of such tree, shrub or other vegetable growth and is consistent with the public safety and welfare. The permit shall be in writing and shall specify the location, the variety of trees, shrub, or vegetable growth and the method of planting. The permit shall be in writing and shall be good only for the season stated on the same in the year issued, and no charge shall be made for such permit.

18-208. SIZE REQUIREMENT OF TREES: OTHER RESTRICTIONS. No tree shall be planted or located on any street, alley, boulevard, or other public way of the City measuring less than 1 1/2 inches in diameter of trunk, 1 foot above the ground. The trunk of each tree shall be without branches 8 feet from the ground and the lowest branch shall not be over 9 1/2, feet from the ground. In issuing permits for the planting or location of trees, shrubs, or other vegetable growth the Street Commissioner may in the furtherance of uniformity, convenience and public safety designate the variety, the location and the method of planting such tree, shrub, or other vegetable growth, and may prohibit the planting of trees, shrubs, or other vegetable growths which are carriers or transmitters of plant disease, including smut and rust. In the issuance of such permit for the location or planting of any tree, shrub or other vegetable growth upon the streets, alleys, boulevards or other public ways of the City, the Street Commissioner shall be guided by the necessity of preserving an unrestricted view at intersections for the safe and convenient passage of street, alley, and other public way traffic.

18-209. PERMIT REQUIRED TO REMOVE, DESTROY, CUT, DEFACE, TRIM, ETC., TREES AND SHRUBS. No person, firm, or corporation shall remove, destroy, cut, deface, trim or in any way injure or interfere with any tree, shrub or other vegetable growth located upon any street, alley, boulevard or other public way of the City without first obtaining a written permit from the Street Commissioner.

18-210. SIGNS, POSTERS NOT TO BE ATTACHED TO TREES. No person shall attach any sign, card, poster, advertising sign, or any article to any such tree.

18-211. NON-LIABILITY OF CITY. The City of Gwinner shall not in any way be liable for the removal or destruction of any tree, shrub, or other vegetable growth located on any street, alley, boulevard or other public way.

18-212. APPLICATION OF CHAPTER TO PRIVATE PROPERTY. The provisions of this chapter shall likewise apply to any tree, shrub, or other vegetable growth planted or located within private property lines any portion of which tree, shrub or other vegetable growth projects over or upon any such street, alley, boulevard or other public way.

18-213. PERMISSION TO TRAVEL ON LAWNS AND BOULEVARDS. No person shall go upon, cross or otherwise travel upon the grass or turf of any land or lot abutting on a public street within the City of Gwinner where the same is used for lawn or park purposes, without permission from the owner or person in charge.

### ARTICLE III. SHADE TREE COMMITTEE

#### 18-301. ADMINISTRATION.

A Shade Tree Committee is hereby created to be filled by the Gwinner Park Board, one representative of the Street Department, and the City Auditor.

The duties of the Shade Tree Committee shall be to advise and aid in the coordination of the tree care programs in the City of Gwinner.

The members of the committee shall serve without compensation.

18-302. NUISANCE DECLARED. The following conditions are public nuisances whenever they may be found within the City of Gwinner.

- 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 beetles, *Scolytus multistriatus* or *Hylurgopinus rufipes*.
- b. Any dead elm tree or part thereof, including logs, branches, stumps, firewood or other elm material from which the bark has not been removed or chipped and buried in a land fill.
- 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 Gwinner, which in the opinion of the majority of the Shade Tree Committee endangers the life, health, safety or property of the public, shall be declared a public nuisance.

18-303. ABATEMENT. It is unlawful for any person to willfully permit any public nuisance as defined in Section 18-302 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.

#### 18-304. INSPECTION AND INVESTIGATION.

- a. The Shade Tree Committee, its employees or agents shall inspect all premises and places within the City annually to determine whether any condition described in Section 8-302 exists therein.

b. The Shade Tree Committee or its agent may enter upon private premises at any reasonable time for the purpose of carrying out any of the duties assigned to them under this ordinance.

c. The Shade Tree Committee, upon finding a suspect Dutch elm disease tree, shall immediately take and send appropriate specimens or samples to a qualified plant disease diagnostician, unless the committee determines that the tree is unquestionably afflicted with the disease and therefore a laboratory diagnosis is not necessary. Provided, however, that if the landowner requests a diagnosis, a sample or specimen must be sent to a qualified diagnostician regardless of the committee's determination. In all cases, no action to remove suspect trees or wood shall be taken until positive diagnosis of the disease has been made.

d. Within five days of receipt of the diagnosis, the owner of the property from which the specimen was obtained shall be notified by the Shade Tree Committee of the result by registered mail.

e. A major survey shall be made at least once per year.

f. The inspection shall determine all hazards as specified in Section 18-302(c). The owner shall be notified in writing of the existence of the nuisance and given a reasonable time for its removal.

#### 18-305. ABATEMENT OF NUISANCE ON PUBLIC PROPERTY.

a. In abating the nuisance on public streets, alleys, boulevards or public ways as defined in Section 18-302(a) and 18-302(b), the Shade Tree Committee shall cause the infected tree wood to be removed or otherwise effectively treated so as to destroy and prevent as fully as possible the spread of Dutch Elm disease fungus and elm bark beetles. 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 Shade Tree Committee shall establish specifications for tree removal and disposal methods consistent therewith.

b. In abating tree hazards on public property as defined in Section 18-302(c), the City shall cause such hazards to be removed and disposed in accordance with the tree care specifications which the Committee shall accept, the cost to be assessed as defined in Section 18-310.

#### 8-306. ABATEMENT OF NUISANCE ON PRIVATE PROPERTY.

a. Whenever the Shade Tree Committee finds with reasonable certainty that the Dutch elm disease defined in Section 18-302 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 on which the nuisance is found by mail within five days of receipt of the diagnosis. An affidavit of mailing shall be made at the time of mailing the

notification, and shall constitute prima facie proof of said mailing. The Shade Tree Committee shall direct that the diseased tree be removed and effectively treated in a manner approved by the Committee within thirty (30) 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 thirty days after posting of the notice, the Shade Tree Committee 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 the City may abate the nuisance, the cost to be assessed as defined in Section 18-310.

b. ABATEMENT OF TREE HAZARDS ON PRIVATE PROPERTY. The nuisance as defined in Section 8-302(c) shall be abated by the owner following notification of the existing nuisance. If not corrected or removed within the time allotted, the Shade Tree Committee shall authorize the removal or correction to be done in accordance with recommended procedures, the property owner to bear the cost.

#### 18-307. SPRAYING.

a. Whenever the City shall determine that any elm tree or part thereof is infected with Dutch elm disease fungus and is in a weakened condition, he may cause all elm trees within a 1,000 foot radius thereof to be treated with an effective elm bark beetle destroying concentrate as recommended by the State Entomologist.

b. In order to facilitate the work and minimize the inconvenience to the public of any treating operations conducted under this ordinance, the Shade Tree Committee shall cause to be given advance public notice of such operations by newspaper, radio, public service announcements or other effective means and shall also cause the posting of appropriate warning notices in the areas and along the streets where trees are to be treated at least 24 hours in advance.

c. When appropriate warning notices have been given and posted in accordance with subsection b of this section, the City shall not allow any claim for damages to any vehicle damaged by such treating operations.

d. When trees on private property are to be treated, the City shall notify the owner of such property and proceed in accordance with the requirements of this ordinance.

18-308. TRANSPORTING ELM WOOD PROHIBITED. It shall be unlawful for any person to transport within the City any bark bearing elm wood without having obtained a permit from the Shade Tree Committee. The Committee shall grant such permits only when the purpose of this ordinance shall be served thereby.

18-309. INTERFERENCE PROHIBITED. It shall be unlawful for any person to prevent, delay or interfere with the Shade Tree Committee, its employees or agents while they are engaged in the performance of duties imposed by this ordinance.

18-310. COSTS. The cost for abating of the public nuisances as defined in Section 18-302 shall be borne as follows:

a. For abatement of the nuisances as defined in Section 18-302 and with the nuisance occurring on public land and on park district lands, the cost will be borne by the City of Gwinner. For abatement of the nuisance as defined in Section 18-302 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. The cost of tree planting for replacement of diseased trees on public property will be borne by the respective government body owning the property. The cost of tree planting for replacement of diseased trees on private property will be borne by the private owner.

18-311. TYPES OF TREES TO BE PLANTED. The following trees may be used for planting in public parkways and berms: Black Walnut, Green Ash, American Basswood, Linden Bur Oak, Hackberry, Silver Maple; and no tree not herein mentioned shall be planted without special permission from the City. The following trees may NOT be planted on the parkways, berms, or boulevards of the City of Gwinner: Cottonwood and Poplar, Willow, and Box Elder. In order to achieve certain landscape effects, the City may at times, use trees not generally recommended. Tree sizes and spacing of trees shall be in accordance with regulations of the City.

18-312. SEPARABILITY. In case any section of this ordinance 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.

18-313. PENALTY. Any person, firm, or corporation who violates any of the provisions of this ordinance shall upon conviction thereof, forfeit not less than \$10 nor more than \$500, together with the costs of prosecution and in default of payment thereof shall be imprisoned until such costs are paid, but not exceeding 30 days.