

Chapter 37 URBAN FORESTRY

Last updated October 2007

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Articles 37.10 Urban Forestry Program

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Sections 37.10.010 Definitions

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Boulevard: That strip of land in a right of way the streets of the city, lying between the outside edge of the street or alley surface and the adjacent private property and grassed areas between lanes on divided streets.

Commercial Tree Trimming: A service whereby an individual or business accepts money for the trimming, pruning, or removal of trees and shrubs.

City: The city of Dickinson, North Dakota. and all City owned property inside and outside the City limits such as walking trails, airports, landfills and lagoons.

Easement: A grant by a property owner of the use of a strip of land for such public use as constructing and maintaining utilities, including, but not limited to, sanitary sewers, water mains, electric lines, telephone lines, television, or v.m. transmission lines, storm sewer or storm drainage ways, gas lines and roadways.

Forester: The person or persons assigned day to day responsibility for the operation and maintenance of the City's Urban Forestry Program as directed by Supervisor.

Park District: The Dickinson Parks and Recreation District.

Private Property: Property owned by a non-government entity as shown in the records held by the Stark County Register, and the owner thereof.

Property Lines: The outer boundaries of any lot or parcel of land, including boulevards.

Property Owner: The person owning such property as is shown by the county register of deeds.

Public Property: "Public property" shall be construed to include rights-of-way, boulevards and all property owned and maintained by the city or park district.

Public Trees: All shade and ornamental trees now or hereafter growing on any public right-of-way or in any public place or park.

Right of Way: The area between property lines of every way or place of whatsoever nature, when any part thereof is open to the use of the public as a matter of right-of-way for the purpose of vehicular and pedestrian traffic, which is commonly referred to as a street or alley.

Tree Topping: The severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown, to such a degree so as to remove the normal canopy and disfigure the tree. (Ord. No. 1262 § 3)

Sections 37.10.020 Urban Forestry Committee

The City hereby establishes an Urban Forestry Committee to assist with programming and implementation of various urban forestry programs and projects. (Ord. No. 1262 § 3; Ord. No. 1336 § 1.)

Sections 37.10.030 Authority, responsibilities and jurisdiction of city foresters or designated city employees

City foresters shall be responsible for the urban forestry program activities for both the City and the Park District and shall perform all the duties prescribed by law and the ordinances of the City, as directed by their supervisor.

The authority and jurisdiction of city foresters shall be as follows:

- (a) City foresters shall be responsible for the care and maintenance of all trees located on the right of ways, City property, and Park District property and the enforcement of all laws, ordinances and regulations relating to the Urban Forestry Program. They shall also take appropriate steps to safeguard the future health and well-being of the City's urban forest.
- (b) City foresters shall follow the standards of practice governing the planting, maintenance, protection and removal of trees on the right of ways and public areas of the city.
- (c) City foresters may supervise work done under any permit or contract, issued in accord with the terms of this chapter if so directed by supervisor. (Ord. No. 1262 § 3)

Sections 37.10.040 Interference with officers or employees

It shall be unlawful for any person, firm or corporation to prevent, delay or interfere with a city forester or designated city employees while they are engaged in the performance of duties imposed by this chapter. (Ord. No. 1262 § 3)

Sections 37.10.050 Permits for tree planting on public property

Property owners shall obtain a permit from the city prior to planting of any tree or shrub on public property. Failure to comply may result in the immediate removal of the tree or bush. All costs associated with the removal shall be the offending property owner's responsibility. (Ord. No. 1262 § 3)

Sections 37.10.060 Tree topping

It shall be unlawful for any person to top any tree on public property or within dedicated utility easements. (Ord. No. 1262 § 3)

Sections 37.10.070 Commercial arborists - License required

It shall be unlawful to do commercial tree trimming in the city without a Commercial Arborist license issued by the City. The applicant must pass a test approved by the City through which the applicant demonstrates knowledge and ability as an arborist and furnishes to the City evidence of liability insurance as required by the City fee schedule. (Ord. No. 1262 § 3)

Sections 37.10.080 Commercial chemical and biological treatment applicator - Certification required

Any person providing commercial tree chemical and/or biological treatment within the city shall be required to obtain commercial certification under the North Dakota State Pesticide Certification Program in the category of ornamental and turf certification. Failure to comply with this section shall be considered a violation of City code and subject the offender to penalties as described in this chapter. (Ord. No. 1262 § 3)

Articles 37.20 Urban Forestry Related Nuisances

Sections:

- 37.20.010 Nuisances--Defined**
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- 37.20.030 Inspections and investigation of nuisances on private property**
- 37.20.040 Abatement of nuisance on public property**
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- 37.20.090 Nuisance abatement notice and appeal procedures**

Sections 37.20.010 Nuisances--Defined

The following conditions shall be declared to be public nuisances whenever found to exist in the City:

1. Any living or standing tree or part thereof infected to any degree with any disease or insect which is, in the judgment of a city forester, harmful to said tree and/or other trees.
2. Any dead tree or part thereof, including logs, branches, stumps, firewood or any portion of any diseased tree that has not been disposed of in accordance with the regulations of the City.
3. 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 in the City which, in the opinion of a city forester, endangers the life, health, safety or property of the public.
4. Planting of trees which are on the city's prohibited tree list, as determined from time to time by the board of city commissioners shall be prohibited for the purpose of preventing diseases or infestations.
5. Transporting or keeping any bark bearing elm wood within the city. (Ord. No. 1262 § 3; Ord. No. 1336 § 3.)

Sections 37.20.020 Maintaining nuisance unlawful

It shall be unlawful for any person to willfully permit any public nuisances as defined in section 37.20.010 hereof to remain on any premises owned or controlled by him/her within the City. (Ord. No. 1262 § 3)

Sections 37.20.030 Inspections and investigation of nuisances on private property

- (a) City Foresters shall inspect all premises and places within the city as often as practicable to determine whether nuisance described in section 37.20.010 exist.
- (b) City employees may enter upon private premises at any reasonable time to investigate the existence of a potential nuisance as defined in 37.20.010.

- (c) When a city forester has reasonable cause to believe that a tree is diseased, said forester or other assigned employee may procure specimens and submit said specimens to a qualified plant diagnostician for diagnosis. No action to remove such nuisance shall be taken until positive diagnosis of the disease has been made. (Ord. No. 1262 § 3)

Sections 37.20.040 Abatement of nuisance on public property

In abating the nuisance on public property or public right of ways as defined in 37.20.010 hereof, the City shall cause the nuisance to be abated so as to destroy and prevent as fully as possible any tree disease or harmful insect in accordance with accepted tree care practices. (Ord. No. 1262 § 3)

Sections 37.20.050 Abatement of nuisance on private property

The procedure for the abatement of tree hazards on private property shall be as follows: The nuisance, as defined in section 37.20.010 hereof, shall be abated by the owner following notification of the existing nuisance. If not corrected or removed within the time allotted, the City shall abate of the nuisance. (Ord. No. 1262 § 3)

Sections 37.20.060 Chemical and/or biological application to abate nuisance

- (a) Whenever a city forester determines that any tree, shrub or part thereof is infected with any tree disease or harmful insect, the City may cause all such trees within a City defined radius thereof to be treated as appropriate.
- (b) In order to facilitate the work and minimize inconvenience to the public of any treating operations conducted under this article, the City may give up to 24 hours advance public notice in a manner deemed appropriate by the City when conditions warrant such notice.
- (c) When appropriate notice has been given and posted in accordance with subsection (b) hereof for any treatment conducted or contracted by the City, the city shall not allow any claim for damages to any vehicle or other property resulting from such treating operations.
- (d) When trees on private property are to be treated, the City shall notify the owner of such property of the need for treatment and proceed in accordance with the requirements of this article regardless whether City or a commercial applicator does the work. (Ord. No. 1262 § 3)

Sections 37.20.070 Assignment of nuisance abatement costs

The costs for abating of the public nuisances as defined in this article shall be borne as follows:

- (a) For abatement where the nuisance occurs on public land or rights of ways, the cost will be borne by the City.
- (b) For abatement where the nuisance occurs on private property, the cost shall be borne by the private owner.

- (c) The cost of treating for abatement of nuisances shall be borne by the City when such nuisances are on public property or right of way and shall be borne by the private owner when such nuisances are on private land.
- (d) The costs of removal of dead or hazardous trees on private property shall be borne by the property owner.
- (e) The cost of planting trees and shrubs on right of ways following the abatement of a nuisance shall be the adjoining property owner's responsibility.
- (f) If it is necessary for the City to remove a tree or trees from a right of way in connection with improvements of the portion of street or highway used for vehicular traffic, the city may replant the trees or replace them, provided that conditions permit, as determined appropriate by the City. (Ord. No. 1262 § 3)

Sections 37.20.080 Certification of nuisance abatement costs as special assessments

If a property owner requests special assessment of nuisance abatement costs or if a property owner is billed by the City for abatement of a nuisance on that property owner's property and said bill is unpaid following a City established time period, the City may special assess the property upon which the nuisance was abated. Said special assessment shall include the cost of the abatement and accumulated late fees. (Ord. No. 1262 § 3)

Sections 37.20.090 Nuisance abatement notice and appeal procedures

- (a) Whenever a city forester determines existence of a public nuisance or hazardous condition on private property in violation of this chapter, he/she shall give written notification to the property owner or person in possession of the property and order that said nuisance be abated within the time allotted by the City, provided, however, that if the nuisance is an imminent danger to the traveling public or property of others, the City may abate the nuisance immediately and allocate costs according to Section 37.20.070.
- (b) All orders issued pursuant to this chapter are subject to appeal to the board of city commissioners upon written notice of appeal postmarked or delivered to City Hall within ten days of the date of the order. If an appeal is not postmarked or delivered to City Hall within ten days of the date of the order, the order of the City shall be final. An appeal meeting the requirements of this subsection will stay an order issued pursuant to subsection (a) until the board of city commissioners have ruled on said order.
- (c) Upon receipt of the notice of appeal meeting the requirements of subsection b, the City Administrator shall set a date for a hearing before the board of City Commissioners. Notice of time and place for the hearing must be served upon the person, who filed the appeal not less than five days prior to the hearing. The decision of the board of city commissioners is final.
- (d) Any person who fails to comply with a final order of the city is guilty of an ordinance violation. (Ord. No. 1262 § 3)

Articles 37.30 Penalties

Sections:

37.30.010 Penalties

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Any violation of this Chapter 37 shall be punishable in municipal court as provided in section 11.12.010 (Ord. No. 1245 § 1). (Ord. No. 1262 § 3; Ord. No. 1336 § 2.)