

ORDINANCE NO. 1505

AN ORDINANCE TO AMEND AND RE-ENACT CHAPTER 2, ARTICLE IX,
OF THE CODE OF THE CITY OF JAMESTOWN, NORTH DAKOTA,
PERTAINING TO FORESTRY DEPARTMENT

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF JAMESTOWN, NORTH DAKOTA, that Chapter 2, Article IX, of the Code of the City of Jamestown, North Dakota, is hereby amended and re-enacted to read as follows:

ARTICLE IX. - FORESTRY DEPARTMENT

Section 2-70. Definitions.

- (a) "Forestry department" is the department designated by the City of Jamestown to accomplish the objectives of this article
- (b) "City Forestry Committee" refers to the advisory board to the city forester.
- (c) "Property Owner of Record" means the person owning property pursuant to state law, and is shown by the Stutsman County Recorder's Office. Property owner of record is also referred to as owner and property owner in this article.
- (d) "Public property" includes all grounds owned by the City of Jamestown.
- (e) "Nuisance" means any tree, shrub or plant or parts of that pose a hazard to the public or property; encroaches on public rights-of way; impedes sight or flow of traffic; harbors pests of a contagious and fatal nature which pose a serious threat to surrounding trees, shrubs or plants.

Section 2-70.1 Administration.

- (a) *Authorized; organization.* There is hereby authorized a *forestry* department for the city. This shall consist of the city forester and other assistants as may be authorized by the city council to accomplish the objectives of this article.
- (b) *City forester; position created; duties.* The position of city forester is hereby created to be filled by appointment by the mayor and approval of the city council. The duties of the city forester are to enforce this article and to coordinate all tree programs in the city.
- (c) *City Forestry committee; created; composition; terms; duties.* A city forestry committee is hereby created to be filled by appointment by the mayor and approval of the city council. The committee shall consist of the following composition:

One (1) member who is employed by the North Dakota State University system.

One (1) member of the city council.

One (1) member of the chamber of commerce beautification committee.

Three (3) members at large.

Upon initial appointment, two (2) members shall be appointed for a term of one (1) year, two (2) members shall be appointed for a term of two (2) years, and two (2) members shall be appointed for a term of three (3) years. Thereafter all terms shall be for a period of three (3) years.

The duties of the city forestry committee shall be to advise and aid in the coordination of the tree care programs of the city.

Section 2-71. Nuisances—Declared.

The following things are public nuisances whenever they may be found within the city:

- (a) Any living or standing tree, or part of, infected or infested to any degree with an invasive pest as determined by the city forester.
- (b) Any tree or part, including logs, branches, stumps, or firewood harboring insect or disease organisms of a contagious and fatal nature which pose a serious threat to surrounding trees if not immediately removed and disposed of in a manner approved by the city forester.
- (c) Any tree, shrub or part growing upon public property or upon private property which is diseased or compromised and is clearly deteriorating which, in the opinion of the city forester, constitutes a hazard to health, safety, or property.
- (d) Any tree outlined in [section 2-83](#) as being unlawful for planting on the boulevards of the city.
- (e) Any tree, shrub or any part which is obstructing or shading street lights, passage of pedestrians on sidewalks, visibility of traffic signs or signals, or visibility of any street or alley intersection or obstructing flow of traffic on any street or alley.

Section 2-72. Same—Abatement generally.

It is unlawful for any owner of record to permit a public nuisance, as defined in [section 2-71](#), to remain on any premises within the city. Nuisances may be abated in the manner prescribed by this article.

Section 2-73. Same—Inspection and investigation.

(a) The city forester or forestry employees or agents shall inspect all premises and places within the city as often as practicable to determine whether any condition described in [section 2-71](#) exists therein.

(b) The city forester or forestry employees may enter upon private premises for the purpose of carrying out the duties assigned to them under this article.

(c) The city forester, upon finding an invasive species, shall immediately contact the owner of the property and inform the owner of removal procedures as outlined in [section 2-75](#), subsection (a). The property owner may request that an appropriate specimen be taken and examined by a regularly accepted test at the property owner's expense with the results to be mailed directly to the city forester. If no sample is taken, the owner must sign a release form which agrees to indemnify and hold the city and its employees harmless from any loss, claim, damage, or expense arising therefrom. If a sample is taken, no action to remove suspect trees or wood without the permission of the owner shall be taken until positive diagnosis of the disease has been made.

(d) The inspection shall determine all nuisances as specified in [section 2-71](#)(b), (c), (d), and (e). The owner shall be notified in writing of the existence of the nuisance and given a reasonable time for its removal.

Section 2-74. Same—Abatement on public property.

(a) In abating the nuisances, as defined in [section 2-71](#)(a) and (b), on public streets, alleys, boulevards, or public ways, the city forester shall cause the infected tree or wood to be removed or otherwise effectively treated so as to destroy and prevent, as fully as possible, the spread of an insect or disease organism of a contagious and fatal nature to surrounding trees. Abatement procedures shall be carried out in accordance with the latest technical and expert methods and plans at the direction and discretion of the city forester.

(b) In abating nuisances, as defined in [section 2-71](#)(c) and (e), on public property, the city forester shall cause nuisances to be removed and disposed of in accordance with tree care regulations of the forestry department, the cost to be assessed as defined in [section 2-79](#).

(c) In abating unlawful boulevard trees, as defined in [section 2-83](#), on public property, the city forester shall cause trees to be removed in accordance with tree care regulations of the forestry department, the cost to be assessed as defined in [section 2-79](#).

Section 2-75. Same—abatement on private property.

(a) Whenever the city forester has a reasonable belief, in accordance with [section 2-73](#)(c), an invasive species tree pest infection and/or infestation exists in any tree or wood located on private property, the city forester shall immediately notify in writing the owner of the property on which the nuisance is found. If a sample is taken either by the owner or at the discretion of the city forester and examined by a regularly accepted test and positive identification of an invasive species tree pest infection and/or infestation is indicated, the city forester shall notify the property owner by registered or certified mail within five (5) days of receipt of the diagnosis. The city forester shall direct that the diseased tree be removed and/or effectively treated in a manner approved by the city forester within thirty (30) days after receipt of notice. If after attempting to send notice to the owner, and the owner cannot be found, a copy of the notice shall be posted upon the infected tree. If the tree is not removed and/or treated as specified within seven (7) days after posting of the notice, the city forester shall remove and/or treat the tree.

(b) The property owner may be charged with a violation of this article for maintaining a nuisance and the city, by and through its office of the city forester, may abate the nuisance, the cost to be assessed as defined in [section 2-79](#).

(c) The nuisance as defined in [section 2-71](#)(b), (c), and (e), shall be abated by the owner following notification of the existing nuisance. If not corrected or removed within the time allotted, the city forester shall authorize the removal or correction to be done in accordance with recommended procedures of the office of the city forester, the property owner to bear the cost.

Section 2-76. Spraying.

(a) Whenever the city forester shall determine that any tree or part thereof, including logs, branches, stumps, or firewood, is harboring insect or disease organisms of a contagious and fatal nature which pose a serious threat to surrounding trees if not immediately removed and disposed of, the city forester may cause all potentially affected trees to be treated in accordance with the latest technical and expert methods and plans at the direction and discretion of the city forester.

(b) In order to facilitate the work and minimize the inconvenience to the public of any treating operations conducted under this article, the city forester shall cause advance public notice of operations to be given by newspaper, radio, television 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 twenty-four (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 or other property resulting from treating operations.

(d) When trees on private property are to be treated, the city forester shall notify the property owner and proceed in accordance with the requirements of this article.

Section 2-77. Transporting and storage of wood declared a nuisance prohibited.

It shall be unlawful for any person to transport/and or store within the city any wood that is declared a nuisance by the city forester without having obtained a permit from the city forester. The city forester shall grant a permit only when the purpose of this article shall be served.

Section 2-78. Interference prohibited.

It shall be unlawful for any person to prevent, delay, or interfere with the city forester, forestry employees or agents while they are engaged in the performance of duties imposed by this article.

Section 2-79. Costs for abatement of nuisances.

(a) For abatement of any nuisance, as defined in [section 2-71](#), and with the nuisance occurring on public land, park district lands and Jamestown School district lands, the cost will be borne by the individual entity.

For abatement of any nuisance, as defined in [section 2-71](#), 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 owner.

(b) The cost of spraying for abatement of the nuisances as defined in [section 2-71\(a\)](#) and (b), shall be borne as defined in [Section 2-79\(a\)](#).

(c) The cost of tree planting for replacement of diseased trees on any street, alley, or boulevard will be borne by the owner of the abutting property, or by the individual entity if on public property.

(d) The cost of tree planting for replacement of nuisance trees on private property will be borne by the owner.

Section 2-80. Tree care by public utilities and other franchise holders of the right-of-way.

(a) No trees shall be trimmed by, or under the direction of, any public utility, including other franchise holders of the right-of-way, to afford clearance for wires or any other purpose without an annual license from the city forester and work shall be done in accordance with the regulations of the office of the city forester.

(b) All wires belonging to public utilities, including other franchise holders of the right-of-way, city or individual, shall be securely fastened and maintained so as to safeguard the trees against any damage. Inspection should be made periodically to prevent damage to shade trees or adjustments made whenever requested by the city forester.

(c) Trenching operations on boulevards, or within fifteen (15) feet, shall not be made without notification to the city forester and work shall be done in accordance with the regulations of the office of the city forester.

(d) Exemptions are made to [section 2-80\(a\)](#), (b), and (c), in the event of an emergency condition as determined by the public utilities companies, including other franchise holders of the right-of-way.

(e) Following an emergency condition in which any tree damage occurs, the public utilities companies are required to notify the city forester of the location of the emergency condition and the extent of tree damage.

(f) The public utilities companies, including other franchise holders of the right-of-way, shall be required to submit to the city forester the names of tree care personnel used by the utility company to assure that they have been certified by the office of the city forester.

Section 2-81. Tree replacement.

(a) *On public property.* Replacement of trees on public property, removed to prevent spread of insects or disease of a contagious and fatal nature which pose a serious threat to surrounding trees, will be in accordance with tree planting regulations and programs of the office of the city

forester; however, the adjacent property owner may replace the trees with the written permission of the city forester, and the cost shall be borne as defined in [section 2-79\(c\)](#).

(b) *On private property.* The city will not be liable for the replacement of trees on private property, removed to prevent the spread of insects or disease organisms of a contagious and fatal nature which pose a serious threat to surrounding trees; however, an option will be presented to the private property owner whose tree has been removed in accordance with tree planting regulations and programs of the office of the city forester. This option will allow the private owner to replace the diseased tree under the tree replacement program of the office of the city forester, the cost to be borne by the private property owner.

Section 2-82. Tree planting on boulevards.

(a) Any property owner or other authorized person who desires to plant trees on the boulevard may do so upon issuance of a tree planting permit from the city forester. The tree planting permit will state the location of the planting, the name of the property owner, the name of the person who is planting, the width of the boulevard, the species of tree to be planted, the number of trees, the planting method, and the presence of overhead and underground utilities. The permit holder shall comply with planting specifications in accordance with the office of the city forester. The city forester shall keep a record of permits in the city forestry office.

(b) Unless otherwise authorized by the city forester, all newly planted street trees shall be planted in line with already existing street trees. Where no street trees are growing, newly planted trees shall be planted midway between the property line and the curb and at least twenty (20) feet back from the projected property line at a street intersection. The spacing of street trees will be in accordance with the three (3) species size classes, with the species list being available in the office of the city forester. 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, except in special plantings designed or approved by the city forester.

(c) No tree shall be planted closer than ten (10) feet to any driveway or alley, nor shall it be planted in a manner that eventual growth cannot be reasonably controlled so as to avert interference with or obstruction to any improvements installed for public benefit such as traffic and street signs, traffic lights, fire hydrants, overhead utility wires, street lights, utility poles, etc.

(d) At edges of streets where a space of fewer than four (4) feet in width exists between the curb and the abutting private property line, no trees or plants shall be planted or allowed to grow on the public area.

(e) The distance trees may be planted from the curb lines and sidewalks shall be in accordance with the three (3) species size classes, with the species list being available in the office of the city forester. No trees may be planted closer to any curb or sidewalk than the following: Small trees, two (2) feet, medium trees, three (3) feet, and large trees, four (4) feet. Trees planted in sidewalk pits, as in the downtown business district, are exempt from this subsection.

(f) No street trees other than those species listed as small trees in the species list available in the office of the city forester may be planted under or within ten (10) lateral feet of any overhead

utility wire. No street tree may be planted over or within ten (10) lateral feet of any underground water line, sewer line, transmission line, fire hydrant, or other public utility.

Section 2-83. Tree species list for planting on public property.

The city forester shall prepare and have available a list of acceptable tree species to be used for planting on public property. Any tree not mentioned in the planting list shall not be planted without special written permission from the office of the city forester. The following trees may not be planted on the boulevards, public streets, or public ways of the city: *Populus* species (any type of cottonwoods or poplars), *Ulmus* species (not resistant to Dutch Elm Disease), *Salix* species (any type of willow), *Picea* species (any type of spruce), *Pinus* species (any type of pine), any weeping or pendulous growth habit tree, any tree with multi-trunk growth habit which cannot be maintained to a single leader or trunk, any shrub or plant which would obstruct, restrict, or conflict with necessary and safe use of the public right-of-way. In order to achieve certain landscape effects, the city forester may, at times, use trees not generally recommended. Tree sizes and spacing of trees shall be in accordance with the regulations of the office of the city forester and shall comply with [section 2-82](#) of this Code.

Section 2-84. Arborist authorization.

All licensed tree workers involved in the care and maintenance of trees in the city for compensation must show a degree of proficiency in accordance with the regulations of the office of the city forester and must receive authorization from the city forester before practicing tree care and maintenance. For groups working together, only the job supervisor shall be required to be authorized by the city forester and said job supervisor shall be held responsible for any violation of this article.

Section 2-84.1. License—How obtained.

A person or entity in the business of pruning or removing trees within the City of Jamestown, shall herein after be referred to as an arborist and must procure a license as herein provided. To obtain a license under this chapter, an arborist, as herein before defined, must provide the following information to the city auditor. Conditions precedent to obtaining a license under this chapter shall be that the applicant shall establish to the satisfaction of the city auditor:

- (1) Has workman's compensation coverage in place for all employees.
- (2) Has acquired liability insurance coverage for property damage and personal injury of not less than three hundred thousand dollars (\$300,000.00).
- (3) The arborist and its project supervisors shall have obtained certification from the International Society of Arboriculture or equivalent certification or testing as approved by the city forester prior to the issuance of a license. Any Arborist having performed the acts of an arborist in the City of Jamestown during the previous calendar year 2003 who does not have such certification, may be issued a conditional license for the current calendar year 2004. Renewal of such license

for subsequent years shall require certification as herein provided. A project supervisor is a person an arborist has placed on location relative to any pruning or tree removal contract. Each such location must have an arborist on location, or available for consultation at all times, whenever work is being performed.

- (4) Notwithstanding the above, the city forester may promulgate such regulations, subject to council approval, necessary to implement the above and forgoing. Such regulations may, in part, provide for the removal of trees, which have been cut down or fallen to the ground and which pose a reduced risk or danger of property damage or personal injury, by persons who are not licensed under this ordinance.

Section 2-84.2. Same—Fees.

At the time of making application for an arborist's license as described and required in this chapter, the applicant shall pay to the city auditor a license fee as established, from time to time, by resolution of the city council, license fee being due on a calendar year basis.

Section 2-84.3. Arborist's license; bond required.

No arborist's license shall be issued until the applicant files with the city auditor a bond, in an amount as established from time to time by resolution of the city council, issued by a surety company authorized to transact business in the state. Bonds shall be approved as to legality and form by the city attorney and as to sufficiency by the city auditor. Bonds shall be conditioned to protect, indemnify, and save harmless the city from any and all loss, claims, suits, and damages, direct or consequential, the city may sustain by reason of violation of this Code or any rules or regulations that may be in force from and after the filing of bond. Bonds shall be renewed each and every year, and the term of bond and license shall at all times run concurrently and expire on the same date so that the term of either the bond or license shall not overlap and extend beyond that of the other.

Section 2-84.4. Operational and training requirements.

- (a) An arborist shall place signs an adequate distance from the project sufficient to advise the public of the operations of the arborist any time any city sidewalk, alley, street or right-of-way shall be blocked, in whole or in part. The arborist shall notify the city forester, city police department, fire department and public works department at least twenty-four (24) hours prior to any event.

- (b) An arborist shall place fencing or barricades upon any sidewalk, alley, street or public right-of-way an adequate distance from the project to limit access to the project site when the arborist, the arborist's employees or agents or their equipment shall be placed in whole or in part upon any sidewalks, streets, alleys, or rights-of-way of the city.

- (c) No trees, branches or other debris from the pruning or removal of trees shall be left upon the sidewalks, alleys, streets or rights-of-way of the city at the termination of day-light hours.

- (d) Arborists shall otherwise comply with the provisions of this Article IX in all matters.

Section 2-84.5. Emergency exception.

In the event the mayor has declared an emergency under [Chapter 2](#), Article VII, of the Code of the City of Jamestown, the mayor is authorized under said emergency powers to enter an order suspending the licensing provisions of this section until such time as the city council acts to terminate the authority granted.

Section 2-84.6. Public utilities and other franchise holders of rights-of-way authorized to trim trees.

(a) Public utilities and other franchise holders of right-of-ways, exercising authority granted to them pursuant to [section 2-80](#), Article IX, [Chapter 2](#), of the Code of the City of Jamestown shall have on their staff at least one (1) arborist licensed by the City of Jamestown. All other employees of a utility performing work authorized by [section 2-80](#) shall, at least annually, have received training relative to technical and safety measures related to their duties.

(b) Other entities authorized to prune trees under provisions of this Code, or resolutions adopted there under, shall have on their staff at least one (1) arborist licensed by the City of Jamestown or have contracted with an arborist licensed under this ordinance to provide annual training to their personnel involved in tree trimming and to provide consultation services to the entity relative to the authorized tree pruning.

(c) The city forester or city personnel involved with pruning of boulevard trees or other public trees shall do so in accordance with regulations of the office of the city forester.

Section 2-85. Tree removal on public property.

(a) No person shall destroy or remove any tree on any street, alley, boulevard, or public land without the express written approval of the city forester.

(b) Removal or destruction of any tree approved by the city forester shall be conducted at the expense of the owner of the abutting property or by the individual entity if on public property.

(c) Any person, firm, or corporation who removes or destroys any tree on public property without the permission of the city forester shall be subject to a maximum fine of five hundred dollars (\$500.00) and costs not to exceed the inventory value of the tree as hereinafter defined.

(d) The inventory value of a tree shall be determined by using the current formula established by the International Society of Arboriculture (ISA).

(e) All parts of trees on public property designated by the city forester for removal must be removed, including grinding of stumps. All holes left by stump grinding on public property must be backfilled with soil.

Section 2-86. Tree care and maintenance generally.

(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 a degree so as to remove the normal canopy and disfigure the tree. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical may be exempted at the determination of the city forester.

(b) It shall be the duty of all owners to remove all broken or decayed limbs which constitute a nuisance to the safety of the public. City personnel, in accordance with regulations of the office of the city forester, shall have the right to prune any tree or shrub on private and/or public property when it interferes with the proper spread of light along the street from a street light, or with visibility of any traffic-control device or sign, or any tree limb that obstructs the traffic on streets or alleys.

(c) No person shall intentionally damage or carve on any tree on public land, boulevard, public street, or public way of the city, allow any gaseous liquid or solid substance which is harmful to a tree to come in contact with it, set fire to or permit any fire to burn when ~~such~~ fire or the heat from the fire will injure any portion of the tree, or attach any notice, bill, poster, sign, wire, rope, cord, nail, or other object to or around any tree except for the purpose of cabling, guying, and bracing a tree which is weakened due to planting or structural weakness. All cabling, guying, and bracing must comply with the rules and regulations of the office of the city forester.

Section 2-87. Certification of charges.

The owner of any property assessed charges or fees per this article shall be responsible for same and, if unpaid, the property may be specifically assessed.

ATTEST:

Sarah Hellekson, City Administrator

APPROVED:

Katie Andersen, Mayor

Introduced by Council Member Buchanan

Seconded by Council Member Phillips

First Reading: April 2, 2018

Seconded Reading: May 7, 2018

Final Passage: May 7, 2018

Roll Call No. 5 showed: 4 ayes, 0 nays, 1 absent.