

ARTICLE IX. FORESTRY DEPARTMENT***Sec. 2-70. Administration.**

(a) *Authorized; organization.* There is hereby authorized a forestry department for the city. This shall consist of the city forester and such 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) *Shade tree committee; created; composition; terms; duties.* A shade tree 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 of the North Dakota State University.

One (1) member of the public works committee.

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 shade tree committee shall be to advise and aid in the coordination of the tree care programs of the city.
(Ord. No. 967, 6-6-88; Ord. No. 1136, 4-7-97)

**Editor's note*—Ordinance No. 967, adopted June 6, 1988, amended former Art. IX in its entirety to read as set out in §§ 2-70—2-87. Formerly Art. IX contained §§ 2-70—2-84, which pertained to similar provisions and derived from Ord. No. 839.

Sec. 2-71. Nuisances—Declared.

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

- (1) 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*.
- (2) Any tree or part thereof, 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.
- (3) Any tree or shrub, or part thereof, growing upon public property or upon private property which is diseased or overaged and is clearly deteriorating which, in the opinion of the city forester, constitutes a hazard to life or property.
- (4) Any tree outlined in section 2-83 as being unlawful for planting on the boulevards of the city.
- (5) Any tree or shrub, or any part of such, which is obstructing or shading street lights, obstructing the passage of pedestrians on sidewalks, obstructing the view of traffic signs, or obstructing the view of any street or alley intersection.

(Ord. No. 967, 6-6-88)

Cross references—Motor vehicles and traffic, Ch. 21; streets and sidewalks, Ch. 25.

Sec. 2-72. Same—Abatement generally.

It is unlawful for any person to willfully permit a public nuisance, as defined in section 2-71, to remain on any premises owned or controlled by him within the city. Such nuisance may be abated in the manner prescribed by this article.

(Ord. No. 967, 6-6-88)

Sec. 2-73. Same—Inspection and investigation.

(a) The city forester or his employees or agents shall inspect all premises and places within the city as often as practicable and at least once per year to determine whether any condition described in section 2-71 exists therein.

(b) The city forester or his employees, upon notification, may enter upon private premises at any reasonable time for the purpose of carrying out any of the duties assigned to them under this article.

(c) The city forester, upon finding a suspect Dutch Elm diseased tree, shall immediately contact the property owner of such nuisance and inform such 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. If no sample is taken, the property owner or persons responsible must sign a Dutch Elm disease 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 shall be taken until positive diagnosis of the disease has been made.

(d) The inspection shall determine all hazards 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.

(Ord. No. 967, 6-6-88)

Sec. 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. Such abatement procedures shall be carried out in accordance with the

latest technical and expert methods and plans as may be designated by the state forest service. The city forester shall establish specifications for tree removal and disposal methods consistent therewith.

(b) In abating nuisances, as defined in section 2-71(c) and (e), on public property, the city forester shall cause such hazards 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 such 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. (Ord. No. 967, 6-6-88)

Sec. 2-75. Same—Abatement on private property.

(a) Whenever the city forester has a reasonable belief, in accordance with section 2-73(c), that Dutch Elm disease exists in any tree or wood located on private property, outside of any public way in the city, he shall immediately notify in writing the owner or person in control of such property on which the nuisance is found. If a sample is taken and examined by a regularly accepted test and positive identification of the Dutch Elm disease fungus is indicated, the city forester shall notify the owner or person in control of such property on which the nuisance is found 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 such notice. If such owner cannot be found, a copy of the notice shall be posted upon the infected tree. If said tree is not so removed and/or treated as specified within thirty (30) days after posting of the notice, the city forester shall remove and/or treat said tree.

The owner or person in charge 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.

(b) 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. (Ord. No. 967, 6-6-88)

Sec. 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, he may cause all potentially affected trees within a fifteen-hundred-foot radius to be treated with an effective insect or disease organism destroying concentrate as recommended by the state entomologist or state pathologist.

(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 such 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 such treating operations.

(d) When trees on private property are to be treated, the city forester shall notify the owner of such property and proceed in accordance with the requirements of this article. (Ord. No. 967, 6-6-88)

Sec. 2-77. 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 city forester. The city forester shall grant such permit only when the purpose of this article shall be served thereby. (Ord. No. 967, 6-6-88)

Sec. 2-78. Interference prohibited.

It shall be unlawful for any person to prevent, delay, or interfere with the city forester, his employees, or agents while they are engaged in the performance of duties imposed by this article. (Ord. No. 967, 6-6-88)

Sec. 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 private 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.

The cost of tree planting for replacement of diseased trees on private property will be borne by the private owner. (Ord. No. 967, 6-6-88)

Sec. 2-80. Tree care by public utilities.

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

(b) All wires belonging to public utilities, city or individual, shall be securely fastened and maintained so as to safeguard the trees against any damage therefrom. 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 such 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.

(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 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. (Ord. No. 967, 6-6-88)

Cross references—Streets and sidewalks generally. Obstructions of sidewalks, § 25-3; water and sewers, Ch. 31.

Sec. 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. (Ord. No. 967, 6-6-88)

Sec. 2-82. Tree planting on boulevards.

(a) Any property owner or person who desires to plant trees on the boulevard between the curb line and the property line may do so provided, however, that they shall first make application to the city forester for permission to plant trees on public street right-of-way. Such application shall state the location of the planting, the name of the applicant, the name of the person who is to do such work, the width of the boulevard, the species of tree to be planted, the number of trees, the planting method, the presence of overhead and underground utilities, and the applicants willingness that such tree planting be performed in accordance with the regulations of the office of the city forester. Upon complying with the above requirements, a permit will be issued for such planting. The city forester shall keep a record of such permits in his 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-five (25) feet, medium trees, thirty-five (35) feet, and large trees, forty (40) feet, except in special plantings designed or approved by the city forester or a licensed landscape architect.

✓(c) No tree shall be planted closer than five (5) feet to any driveway or alley, nor shall it be planted in such 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 less than four (4) feet in width exists between the curb and the abutting private property line, no trees or woody plants shall be planted or allowed to grow wild on the public area so involved.

✓ (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. (Ord. No. 967, 6-6-88)

Cross references—Curbs, gutters and boulevards, § 25-34; injury to trees, flowers, etc., § 25-39.

✓ **Sec. 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 of the cottonwoods or poplars), *Ulmus* species (any of the elm species), *Salix* species (any of the willows), *Picea* species (any of the spruce), any weeping or pendulous type tree, any tree with bushy growth habit which cannot be maintained to a single leader or trunk, any shrub or hedge growth which by its habit of growth 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.
(Ord. No. 967, 6-6-88)

Sec. 2-84. Arborist authorization.

All personnel involved in the care and maintenance of trees in the city 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.
(Ord. No. 967, 6-6-88)

Sec. 2-84.1. License—How obtained.

Notwithstanding section 2-84 of the Code of the City of Jamestown, any person or entity in the business or occupation 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 make application on forms supplied by 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 calendar year 2003 who does not have such certification, may be issued a conditional license for the 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.

(Ord. No. 1258, 3-1-04)

Sec. 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, such license fee being due on a calendar year basis.

(Ord. No. 1258, 3-1-04)

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

No arborist's license shall be issued until the applicant shall first file with the city auditor a bond, in such 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. Such bond shall be approved as to legality and form by the city attorney and as to sufficiency by the city auditor. Such bond 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 such bond. Such bond shall be renewed each and every year, and the term of such 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.

(Ord. No. 1258, 3-1-04)

Sec. 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 such 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, his employees or agents or their equipment shall be placed in whole or in part upon any sidewalks, streets, alley, or right-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.

(Ord. No. 1258, 3-1-04)

Sec. 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 or his designee, 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 hereunder.

(Ord. No. 1258, 3-1-04)

Sec. 2-84.6. Public utilities and entities otherwise authorized to trim trees.

(a) Public utilities 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 such utility performing work authorized by section 2-80 shall, at least annually, have received training relative to technical and safety measures related to such duties.

(b) Other entities authorized to trim 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 [Ordinance No. 1258] to provide annual training to its personnel involved in such tree trimming and to provide consultation services to such entity relative to the authorized tree trimming or pruning.

(Ord. No. 1258, 3-1-04)

Sec. 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 shade tree committees or city forester.

(b) Removal or destruction of any tree approved by the shade tree committee or 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 which removes or destroys any tree on public property without the permission of the shade tree committee or 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 formula established by the International Society of Arboriculture (ISA). The cross-sectional area (in square inches) at the base of the tree at a distance of four and one-half (4½) feet above the ground is multiplied by the current dollar value per square inch

of diameter estimated by the ISA. This one-hundred-percent valuation is then multiplied by the desirability class percentage and then multiplied by the percentage determined by the condition of the tree. Current values, desirability classes, and condition classes will be available from the office of the city forester. (Ord. No. 967, 6-6-88)

Sec. 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 such 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) No person, whether the owner or tenant of any property along the public streets and avenues of the city, shall permit any shade tree to project over the sidewalk or street, the lower limbs or branches of which shall be less than eight (8) feet in height from such sidewalk and thirteen (13) feet in height from such street. Those streets and avenues which are subject to truck traffic shall have a minimum height of sixteen (16) feet between the roadway and the lowest limb.

It shall be the duty of all persons, whether owners or tenants, to remove all 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 with visibility of any traffic-control device or sign.

(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 such 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.

(Ord. No. 967, 6-6-88)

Cross reference—Posting handbills, § 3-2.

Sec. 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, such property may be specifically assessed.

(Ord. No. 967, 6-6-88)