

|   |          |
|---|----------|
| <b>TITLE 14. TREE ORDINANCE .....</b>                           | <b>2</b> |
| <b>Chapter 14.1 Definitions. ....</b>                           | <b>2</b> |
| <b>Chapter 14.2 Intent. ....</b>                                | <b>3</b> |
| <b>Chapter 14.3 Planting. ....</b>                              | <b>3</b> |
| Section 14.3.1. Responsibility. ....                            | 3        |
| Section 14.3.2. Desirability. ....                              | 3        |
| Section 14.3.3. Spacing. ....                                   | 3        |
| Section 14.3.4. Distance from Curb to Sidewalks.....            | 3        |
| Section 14.3.5. Distance from Street Corners and Fireplugs..... | 3        |
| Section 14.3.6. Utilities.....                                  | 3        |
| Section 14.3.7. Tree Care. ....                                 | 3        |
| Section 14.3.8. Tree Removal. ....                              | 4        |
| Section 14.3.9. Abatement. ....                                 | 5        |
| Section 14.3.10. Interference with City.....                    | 5        |
| Section 14.3.11. Appeal. ....                                   | 5        |
| Section 14.3.12. Penalty. ....                                  | 6        |
| Section 14.3.13. Desirable Tree Species.....                    | 6        |
| <b>Chapter 14.4 Shade Tree Disease. ....</b>                    | <b>6</b> |
| Section 14.4.1. Declaration of Policy.....                      | 6        |
| Section 14.4.2. Shade Tree Disease Program. ....                | 6        |
| Section 14.4.3. Nuisances Declared.....                         | 7        |
| Section 14.4.4. Street Superintendent. ....                     | 7        |
| Section 14.4.5. Inspection and Investigation.....               | 7        |
| Section 14.4.6. Abatement of Shade Tree Disease Nuisances. .... | 8        |
| Section 14.4.7. Action by the City. ....                        | 9        |
| Section 14.4.8. Duties of the Public.....                       | 9        |

## TITLE 14. TREE ORDINANCE

### Chapter 14.1 Definitions. (Ordinance 538)

- a. “*Street Trees*” - Trees, shrubs, bushes and all other woody vegetation on boulevards.
- b. “*Boulevard*” - Is all land lying between the sidewalk line and the curb line of streets, avenues, or right-of-ways within the City. In the absence of a sidewalk and curb line, the boulevard shall consist of all land between the street line and the border of the right-of-way.
- c. “*Park Trees*” - Trees, shrubs, bushes and all other woody vegetation in public parks having individual names, and all areas owned by the City, or to which the public has free access as a park.
- d. “*Private Trees*” - All trees and other woody vegetation on private lots and residences within the City.
- e. “*Small Trees*” - Trees less than twenty feet (20') tall at maturity.
- f. “*Medium Trees*” - Trees between twenty to forty feet (20' – 40') tall at maturity.
- g. “*Large Trees*” - Trees larger than forty feet (40') tall at maturity.
- h. “*Pests*” - An insect or disease agent that attacks a tree or woody vegetation.
- i. “*Parks*” - Public parks having individual names.
- j. “*Property Owner*” - The person owning such property as shown by the records on file at the Flandreau City Office or the Moody County Register of Deeds.
- k. “*Trees and Shrubs*” - All woody vegetation now or hereafter growing on any public or private property.
- l. “*Plants*” - All ‘non-woody’ vegetation now or hereafter growing on any public or private property.
- m. “*City*” - The elected and/or designated official, authorized agent, or employees of the City of Flandreau lying within the County of Moody, State of South Dakota, assigned to carry out the enforcement of this ordinance.
- n. “*Tree Removal*” – The removal of all branches, vegetation, and trunk from small, medium, and large trees, but not including the grinding or removal of tree stumps, the restoration of soil elevation, or repairs to sidewalks.
- o. “*Tree Stump*” – That portion of the tree from eighteen inches (18”) above the soil down to the root system of the tree.

## **Chapter 14.2 Intent.**

The intent of this ordinance is to protect and preserve the trees, plants, and shrubs of Flandreau, thereby enhancing the aesthetic and property value, safety and general welfare of the citizens of Flandreau. It will define responsibilities of the property owner, the City and the administrators of this ordinance.

## **Chapter 14.3 Planting.**

### **Section 14.3.1. Responsibility.**

The City is herein responsible for tree planting in all City parks, Union Cemetery and establishing control of street tree planting on boulevards. Private planting of trees is not subject to City control but the City should encourage desirable species and planting practices.

### **Section 14.3.2. Desirability.**

The City will issue a desirable species list for tree planting in the City. The list will contain a minimum of ten (10) species in order to provide a diversity of tree types.

### **Section 14.3.3. Spacing.**

No street trees may be planted closer together than the following: small trees, twenty (20'); medium trees thirty-five (35'); except in special plantings designed or approved by the City.

### **Section 14.3.4. Distance from Curb to Sidewalks.**

No trees shall be planted where the distance between the curb and sidewalk is less than four feet (4'). No trees may be planted closer to any curb or sidewalk than the following: small trees, two feet (2') and medium trees, three feet (3').

### **Section 14.3.5. Distance from Street Corners and Fireplugs.**

No street tree shall be planted closer than twenty feet (20') of any property corner adjacent to an intersection. No street trees shall be planted closer than ten (10') feet of any fireplug.

### **Section 14.3.6. Utilities.**

No street trees, except small trees may be planted under or within ten feet (10') of overhead utility wires. No trees shall be planted over or within five feet (5') of any underground water, sewer or other service line.

### **Section 14.3.7. Tree Care. (Ordinance 538)**

**Article 14.3.7.1** The City will herein be responsible for the maintenance, trimming, and care of all park and street trees.

**Article 14.3.7.2** The landowner will be responsible for the maintenance, trimming, and care of all private trees situated upon their property, but said maintenance, trimming, and care shall be subject to City requirements regarding pest control or trimming when such actions are necessary to prevent hazards to life and property.

**Article 14.3.7.3** Overhanging Branches

- a. Every owner of a tree which overhangs any sidewalk within the City shall trim such tree to a minimum of ten feet (10') above the surface of the sidewalk.
- b. Every owner of a tree which overhangs any municipal arterial street or right-of-way within the City shall trim such tree to a minimum of twelve feet (12') above the surface of the street or right-of-way.
- c. Every owner of a tree which overhangs any county road or portion of the state trunk highway within the City shall trim such tree to a minimum of sixteen feet (16') above the surface of county road or state highway.

**Article 14.3.7.4** The only accepted method of tree trimming within the City shall be the drop crotch method. Topping or dehorning is prohibited.

**Section 14.3.8. Tree Removal.** (Ordinance 538)

**Article 14.3.8.1** Tree removal will be the responsibility of the City for park and street trees. The City shall have the right to cause the removal of any dead or diseased private trees on private property within the City. The landowner will be responsible for removing private trees that constitute a hazard, to life and property, or harbor insects or disease, which constitute a potential threat to other trees within the City. The City will notify in writing or in person the owners of such trees.

**Article 14.3.8.2** Dead trees shall be removed. Trees will also be removed if they cannot be returned to an acceptable condition after treatment for disease or sustaining storm damage as determined by the City or any of its authorized agents. Trees harboring contagious pests for which there is not established control shall be removed.

**Article 14.3.8.3** The City or authority acting will make determination of a pest problem. If the pest cannot be determined at the site with reasonable certainty by the City or other authority, sample will be taken for diagnosis to determine the pest.

**Article 14.3.8.4** Confirmed arrangements for removal shall be made within thirty (30) days from date of notification for trees found to be harboring a contagious disease and thirty (30) days for a dead or substantially dead tree from the time declaring the tree a hazard or dead.

**Article 14.3.8.5** Wood from dead, substantially dead or infected trees may be used as firewood as long as that wood does not harbor a contagious pest or can be treated to prevent harboring contagious pests.

**Article 14.3.8.6** Private landowners may request the City's removal of a living and healthy street tree from the boulevard immediately neighboring the landowner's property, but such removal is subject to the City's permission and all costs associated with the removal will be at the landowner's expense.

### **Section 14.3.9. Abatement.**

**Article 14.3.9.1** The failure of owners to comply with planting, spacing minimum distance, utilities, trimming and tree removal provisions of this ordinance shall constitute a nuisance and the City shall have the authority to abate the nuisance which may include removal of it.

**Article 14.3.9.2** The City shall keep a record of the costs of abatements done under this ordinance and shall report monthly to the Finance Officer all work done for which billings and assessments are to be made. The report shall state and certify the description of the land, lots, parcels involved and the amount chargeable to each.

**Article 14.3.9.3** The payment of monies to the City for the abatement of nuisances from private property shall be handled in accordance with the provisions contained in Title 5 - Nuisances.

### **Section 14.3.10. Interference with City.**

It shall be unlawful for any person to prevent, delay or interfere with the City while engaging in the inspection or removal of any street trees, parks trees or private trees, as authorized in this ordinance.

### **Section 14.3.11. Appeal.**

Any individual who receives an order or is denied permission to plant, care for, or remove a tree shall have the right to appeal within seven days to the City Council.

### **Section 14.3.12. Penalty.**

Any person violating any provision of this ordinance shall be, upon conviction or a plea of guilty, subject to a fine not to exceed one hundred dollars (\$100.00).

### **Section 14.3.13. Desirable Tree Species.**

#### **Article 14.3.13.1 Street.**

- a. Small trees: Flowering Crabapple, Canada Red Cherry, Serviceberry, Showy Mountain Ash;
- b. Medium trees: Ohio Buckeye, European Mountain Ash, Littleleaf Linden, Greenspire;

#### **Article 14.3.13.2 Park and other Areas.**

- a. Small trees: Hawthorn, Russian Olive, Apricot, Apple, Plum, Pear;
- b. Medium trees: Amur Cork Trees, May Day Tree, Black Cherry, Horse Chestnut;
- c. Large trees: Northern Catalpa, Black Walnut, Kentucky Coffee Tree, European Larch, Ponderosa Pine, Blue Spruce, Black Hill Spruce, Scotch Pine and Austrian Pine.

## **Chapter 14.4 Shade Tree Disease.**

### **Section 14.4.1. Declaration of Policy.**

The governing body of the City of Flandreau recognizes that loss of established public and private trees through contagious diseases would substantially depreciate the value of property within the City and impair the safety, good order, general welfare and convenience of the public. It is declared to be the intention of the governing body to control and prevent the spread of all contagious diseases and this ordinance is enacted for that purpose.

### **Section 14.4.2. Shade Tree Disease Program.**

It is the intention of the governing body of the City of Flandreau to conduct a program of plant pest control pursuant to the authority granted by ***South Dakota Codified Laws as amended, Chapters 38-24, 38-24A and 41-21.*** This program is directed specifically at the control and elimination of Dutch elm disease fungus and elm bark beetles but may be applied to other contagious diseases that threaten public and private trees within the City of Flandreau and Flandreau City Park.

### **Section 14.4.3. Nuisances Declared.**

The following things as set forth in the subdivisions are public nuisances whenever they may be found within this municipality:

- a. Any living or standing elm tree or part thereof, infected to any degree with the Dutch elm disease fungus Ceratocystis Ulmi (Buisman) Moreau.
- b. Any elm tree or part thereof, suffering from dieback, or any other disease or harmful condition, which, in the opinion of the City Coordinator, or his agents renders that tree or any parts thereof possible breeding or harboring sites of the elm bark beetles Scolytus Multistriatus (Eichh.) or Hylurgipinus Rufipes (Marsh).
- c. Any dead elm tree or part thereof, including logs, branches, stumps, firewood or other elm material from which the bark has not been removed. Termed Hazardous Wood.
- d. Any other tree suffering from any contagious diseases that pose a threat to other established trees.

### **Section 14.4.4. Street Superintendent.**

**Article 14.4.4.1** The powers and duties of the Street Superintendent as set forth herein and hereinafter defined.

**Article 14.4.4.2** It is the duty of the Street Superintendent to coordinate, under the direction and control of the governing body, all activities of the municipality relating to the control and prevention of shade tree diseases. He shall recommend to the governing body the details of the program for the control of Dutch elm disease, and perform the duties incident to such a program adopted by the governing body.

### **Section 14.4.5. Inspection and Investigation.**

**Article 14.4.5.1** The Street Superintendent shall inspect all premises and places within the corporate limits of this municipality as often as practicable, but at least annually, to determine whether any condition described herein under nuisances of this ordinance exist thereon. He shall investigate all reported incidents of infestation of Dutch elm fungus and elm bark beetles or other contagious diseases.

**Article 14.4.5.2** The Street Superintendent or duly authorized agents may enter upon private premises at any reasonable time

for the purpose of carrying out any of the duties assigned under this ordinance.

**Article 14.4.5.3** The Street Superintendent shall, upon finding conditions indicating Dutch elm infestation or other contagious diseases, immediately send appropriate specimens or samples to the Department of Agriculture or SDSU at Brookings for analysis, or take such other steps for diagnosis as may be recommended by the governing body.

#### **Section 14.4.6. Abatement of Shade Tree Disease Nuisances.**

In abating contagious shade tree disease nuisances, the Street Superintendent shall cause the infected tree or wood to be sprayed, removed, burned or otherwise effectively treated so as to destroy and prevent as fully as possible the spread of contagious shade tree diseases. Such abatement procedures shall be carried out in accordance with current technical and expert opinions and plans as may be designed by the governing body. Whenever the Street Superintendent finds with reasonable certainty that a contagious disease infestation exists in any tree or wood in any public or private place in this municipality, the procedures shall be as set forth in the subdivisions which follow.

**Article 14.4.6.1** If any tree, or any parts thereof, determined to be a nuisance is discovered on public or private property within the municipal limits of the City, it shall be condemned, removed and disposed of or rendered incapable of spreading the disease. This shall hereby be termed proper disposal.

**Article 14.4.6.2** For shade tree disease infected trees and portions thereof found on private property, the property owner shall be given no more than seven (7) days for proper disposal from the date of notification. Notification shall be given in the form of a written notice to be presented personally or by mail by the Street Superintendent.

**Article 14.4.6.3** Failure to abate the nuisance (or properly dispose of the infected trees or portions thereof) by property owner within the time limit stated shall authorize the Street Superintendent to have the nuisance abated. The Street Superintendent may then charge all costs of the abatement to the property owner and bill him directly or have the monies due assessed to his taxes.

**Article 14.4.6.4** The Street Superintendent shall keep a record of the costs of abatement done under this section and shall report monthly to the Finance Officer all work done for which billings and assessments are to be made stating and certifying the description of the land, lots, parcels involved and the amount chargeable to each.

**Article 14.4.6.5** The payment of monies to the City for the abatement of nuisances from private property shall be handled in accordance with the provisions contained in **Title 5 - Nuisances**.

**Article 14.4.6.6** The City also has the option of collecting the assessment through Small Claims Court.

#### **Section 14.4.7. Action by the City.**

**Article 14.4.7.1** The governing body recognizing the problem of the spread of shade tree disease from infected trees to adjacent, healthy trees through root systems and common natural connections intends to the best of its ability, to control and prevent this means of spread of the disease.

**Article 14.4.7.2** If any damage or distortion to the property is caused when placing barriers to control the spread of the disease, the City shall be responsible for the reasonable restoration of the property to the condition that existed before the placement of the barrier.

**Article 14.4.7.3** The governing body, recognizing the potential of therapeutic pruning (the “amputation” of infected branches) as a possible tool in the control of shade tree disease authorizes the Street Superintendent to enter upon private property and carry out this procedure on private trees for the protection of public trees.

**Article 14.4.7.4** The governing body, recognizing the value of chemically treating trees either with approved fungicides or insecticides as a possible tool in the management of shade tree disease, and recognizing that the treatment of a private tree may help to protect other private and public trees, authorizes the Street Superintendent to enter upon private property and chemically treat the private tree.

#### **Section 14.4.8. Duties of the Public.**

**Article 14.4.8.1** Elm wood must be covered with plastic from April 1 until the first snowfall to prevent the spread of disease by beetles. Woodpiles should be small enough to cover with one piece of plastic with an excess of twelve (12) to eighteen (18) inches of plastic around the bottom of the pile which has been securely sealed with dirt, sand, rock or bricks. All bark should be stripped from the wood.

**Article 14.4.8.2** It is unlawful for any person to prevent, delay or interfere with the Street Superintendent or his agents while they

are engaged in the performance of duties imposed by this ordinance.

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