

**TITLE 13  
TREES AND VEGETATION**

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CHAPTER 13-01. DEFINITIONS

13-01-01. Definitions. For the purposes of this title and unless the context or subject matter otherwise requires:

1. "Advisory board" means the forestry advisory board.
2. "Board" means the board of city commissioners.
3. "Boulevard" is that part of a street or highway lying between the property line and that portion of the street or highway used for vehicular traffic.
4. "City weed board" means members of the board of city commissioners, acting as such.
5. "Commercial tree trimming" means the spraying,

fertilization, trimming, removal, cutting above ground, treating or otherwise preserving of trees or shrubs for another person for hire or other valuable consideration.

6. "Control" means to prevent the spread of any noxious weeds, designated by the weed control officer, by seed or any other propagating part.

7. "Control authority" means the weed control officer and his assistants, and the board of city commissioners.

8. "Eradicate or eradication" means to destroy a plant so that it is not viable.

9. "Forestry department" is the designated department of the City of Bismarck under whose Jurisdiction the trees on street rights-of-way and on other public places fall.

10. "Landowner" means any owner of federal, state, municipal or private land, under statutory authority or otherwise, but does not include a lessee, renter, tenant, operator or an owner of any easement or right-of-way.

11. "Noxious weed" means any plant propagated by either seed or vegetative parts which is determined by the weed control officer after consulting with the state cooperative extension service, or the city weed board after consulting with the county extension agent, to be injurious to public health, land or other property.

12. "Operator" means the person chiefly responsible for or in possession of the land, whether for self-benefit, or for the benefit of the landowner or another.

13. "Person" means any individual, partnership, firm, corporation, company, society, association, the state, or any department, agency or subdivision thereof, or any other entity.

14. "Property line" shall mean the outer edge of a street right-of-way.

15. "Property owner" shall mean the person owning such property pursuant to state law, and is shown by the Burleigh County, North Dakota Register of Deeds.

16. "Public nuisance" means any dangerous or unsafe trees or portions thereof; any trees encroaching on public sidewalks or impeding vehicular travel on the streets in violation of standards set by the City Forester pursuant to

Section 13-02-01(3); any trees located in the sight triangle in violation of Section 14-03-05(3); and any tree 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, or treated with proper arboricultural procedure.

17. "Public property" shall include all other grounds owned by the City of Bismarck and the Bismarck Park District.

18. "Street or highway" means the entire width of every public way or right-of-way when any part thereof is open to the use of the public, as a matter of right, for purposes of vehicular and pedestrian traffic.

19. "Trees" shall mean all shade and ornamental trees and all shrubs and all other beautification or landscape plantings on any public or private property.

*(Ord. 5143, 11-27-01)*

#### CHAPTER 13-02. CITY FORESTER; TREES; REGULATIONS

##### 13-02-01. City Forester.

1. There is created the position of city forester who shall be appointed in accordance with the personnel practices of the City of Bismarck and the Bismarck Park District who shall function in that capacity for both the City of Bismarck and the Bismarck Park District.

2. The city forester shall direct, regulate and control the planting, maintenance, protection and removal of all trees on any street or other public place in the City of Bismarck and shall enforce this chapter.

3. The authority and Jurisdiction of the city forester is as follows:

a. The city forester has the authority and Jurisdiction, through the board, to regulate the planting, maintenance, protection and removal of all trees on streets and other public places to ensure safety or preserve the esthetics of streets and public places.

b. The city forester has the authority to promulgate, with the approval of the advisory board, the rules and regulations of the arboricultural specifications and standards of practice governing the planting, maintenance, protection and removal of trees, as specified on the streets and public areas of the City of Bismarck.

c. The city forester has the authority to supervise all work done under any permit, license or certificate issued in accord with the terms of this article.

d. The city forester has the authority to establish reasonable conditions to the granting of permits, licenses and certificates in accord with the terms of this article.

e. The city forester has the authority to provide advice and information regarding trees located on private property and to charge a fee for providing those services.

*(Ord. 4962, 01-26-99)*

13-02-02. Forestry Department. There is authorized a forestry department for the City of Bismarck which consists of the city forester and such assistants as may be further authorized by the board in order to accomplish the objectives of this chapter.

13-02-03. Funding. Forestry department costs for planting, maintenance, protection and removal of trees shall be borne out of a fund established for that purpose and all monies received through assessments, or from the City of Bismarck, or from the Bismarck Park District, or from other sources for the planting, maintenance, protection and removal of trees, shall be credited to that fund.

13-02-04. Forestry Advisory Board.

1. There is created a commission to be known and designated as the forestry advisory board which is composed of one member of the board of city commissioners appointed by the mayor, one member of the park district board appointed by the president of that body and eight citizens who shall reside in or own property in the City of Bismarck and shall be appointed from at large by the mayor, for a term of four years. Ex officio members of the forestry advisory board shall be the director of parks and recreation and the city forester.

2. The duties of the forestry advisory board are:

a. To advise and assist the city forester in the selection, planting, maintenance, protection and removal of trees on streets, in parks and on other public property in the City.

b. To advise and assist the city forester in the enforcement of this chapter.

c. To make recommendations from time to time to the city forester as to desirable legislation concerning the selection, planting, maintenance, protection and removal of trees on streets, in parks and on other public places in the City of Bismarck and the Bismarck Park District, North Dakota.

*(Ord. 4128, 2-24-87; Ord. 5182, 05-28-02)*

13-02-05. Commercial Arborist's License Required.

1. It is unlawful for any person to do commercial tree pruning or removal within the City without a commercial license to do so, except if such person is part of a crew or group working under the direct and immediate supervision of the holder of a commercial license.

2. A license to do commercial tree pruning shall be issued by the city forester to each applicant who can demonstrate competence in the form of an arborist's certificate issued by the city forester or the International Society of Arboriculture, and who has in effect at the time of the application and for the duration of the license general liability insurance in the amounts of \$500,000.00 property damage and bodily injury for one person, and \$1,000,000.00 aggregate for each occurrence. The license shall expire at the end of the calendar year, or at such time as the required liability insurance shall cease to be in effect, or if the arborist's certificate is revoked, and may be renewed subject to the above conditions.

3. The city forester, with the approval of the advisory board, shall set the annual fee for a commercial arborist's license, which shall be paid when the license is issued.

*(Ord. 4962, 01-26-99; Ord. 5238, 04-08-03)*

13-02-06. Arborist's Certificate.

1. An arborist's certificate shall be issued to each applicant who shall first pass such arboricultural tests and examinations as are deemed necessary and advisable by the city forester to satisfactorily demonstrate a reasonable level of competence in this area or who has a valid arborist's certificate issued by the International Society of Arboriculture, and who is not currently under penalty for the violation of provisions of this chapter. The arborist's certificate shall be effective indefinitely unless revoked by the city forester.

a. The city forester, with the approval of the advisory board, shall establish and charge a reasonable fee for testing.

b. If an applicant for an arborist's certificate fails the test, he or she may not retake the test for a period of 90 days and upon re-testing the applicant must again pay the testing fee.

2. The arborist's certificate may be revoked by the city forester should the holder of an arborist's certificate be found to have violated the provisions of this chapter. Revocation shall be for a period of one year in the first instance, two years in the second instance, and in the third instance revocation shall be permanent.

3. At any time a certificate is revoked by the city forester, notice of the proposed action and notification of a right to a hearing before the board of city commissioners shall be served on the person holding the certificate. Any person served with notice shall have the right to a hearing before the board of city commissioners upon written request filed within five days as provided by section 13-02-13.

*(Ord. 4355, 1-15-91; Ord. 4962, 01-26-99)*

#### 13-02-07. Permits Required.

1. No person may plant or spray, fertilize, preserve, prune, remove, cut above or below ground or otherwise disturb in any major way any tree on any street; in any park or on any public property without first filing an application and procuring a permit from the city forester. The person receiving the permit shall abide by the arboricultural specifications and standards of practices adopted by the city forester. Applications for permits must be made at the office of the city forester not less than 48 hours in advance of the time the work is to be done.

2. The city forester shall issue the permit if in his judgment the proposed work is desirable and the proposed method and workmanship thereof are of a satisfactory nature. Any permit issued shall contain a definite date of expiration and the work shall be completed in the time allowed on the permit and in the manner as therein described. Notice of completion must be given within five days to the city forester for his inspection.

3. The permit application shall, if applicable, state the number of trees to be set out, location, the grade, the species, cultivar, or variety of each tree, the method of planting, and such other information as the city forester shall find reasonably necessary to a fair

determination of whether a permit should be issued.

4. The permit application shall, if applicable, state the number and kinds of trees to be sprayed, fertilized, pruned or otherwise preserved, the kind of treatment to be administered, the composition of the spray material to be applied and other such information as the city forester shall find reasonably necessary to a fair determination of whether a permit should be issued.

13-02-08. Removal, Planting and Replacement. The following provisions govern the removal, replanting and replacement of trees within the city:

1. If any tree is planted or set out in conflict with the provisions of this chapter, the city forester shall remove or cause to be removed the offending tree and the cost thereof shall be assessed to the property in the manner provided for special assessments.

2. If it is necessary for the city to remove a tree or trees from a boulevard in connection with improvements of the portion of street or highway used for vehicular traffic, the City shall replant the trees or replace them, provided that conditions permit. If conditions prevent planting on the boulevards, this requirement will be satisfied if any equivalent number of trees are planted in an attractive manner on the adjoining property.

3. No person may remove a tree from the boulevard for the purpose of construction, or for any other reason, other than removal of an immediate hazardous or dangerous condition, without first filing an application and procuring a permit from the city forester, and without replacing the removed tree in accordance with the adopted arboricultural specifications and standards of practice. The replacements shall meet the standards of size, species and replacement as provided for in the permit issued by the city forester. The cost of removal and replacement shall be borne by the property owner.

4. If any part or the whole of any tree on private premises is found after proper investigation to be dangerous or unsafe, or otherwise constitute a public nuisance, the city forester shall declare the tree or portion thereof a public nuisance and cause the nuisance to be abated pursuant to Section 13-02-14.

*(Ord. 4962, 01-26-99)*

13-02-09. Abuse or Mutilation of Trees. Unless specifically authorized by the city forester, no person may intentionally damage, cut, carve, transplant, or remove any tree within any right-of-way or other public property, attach any rope, wire,

nails, advertising posters or other contrivance to any tree, allow any gaseous liquid or solid substance which is harmful to trees to come in contact with them, or set fire or permit any fire to burn when the fire or the heat thereof will injure any portion of any tree.

13-02-10. Deadwood; firewood. No person, unless authorized by the City forester, may take or remove any firewood or any part of a dead or dying tree from any public property.

13-02-11. Protection of Trees During Construction. All trees on any right-of-way or on any other public property near any excavation or construction of any building, structure, or street work must be guarded with a good substantial fence, frame or box not less than four feet high and eight feet square or at a distance in feet from the trunk of the tree equal to the diameter of the trunk in inches at four feet from ground level, whichever is greater, and all building material, soil and other debris shall be kept outside the barrier except where otherwise specified by the city forester in writing. No person may excavate any ditches, tunnels, or trenches within a radius of one foot for each diameter inch of the trunk at four feet above ground line from any tree within any right-of-way or public property without first obtaining written permission from the city forester. No person shall excavate or install a driveway within 10 feet from any tree within any right-of-way or public property without first obtaining written permission from the city forester.

*(Ord. 4962, 01-26-99)*

13-02-12. Prohibited Trees. No person may plant on private premises any of those selections and species of the Genus Populus producing the pistillate flowers and bearing the "cotton" filled seed capsules, with the exception of aspen (*Populus tremuloides*) or any *Ulmis pumila* or Siberian Elms, not including cultivars or crosses, which shall be considered a public nuisance and are hereby declared unlawful.

*(Ord. 4962, 01-26-99)*

13-02-13. Street Tree Maintenance and Planting. All tree planting and maintenance upon street rights-of-way shall be signed in accordance with Title 12.

13-02-14. Enforcement.

1. Whenever the city forester determines a tree to be a public nuisance or in violation of this chapter, he shall give written notification in person or by certified mail to the owner and order that it be abated within ten days of receipt of notice and order, provided, however, that if the tree is an imminent danger to the traveling public or property of others, the city forester may proceed according to subsection 5.

2. All notices and orders issued pursuant to this chapter are subject to appeal to the board of city commissioners upon written notice of appeal filed within ten days of issuance of the notice and order. If an appeal is not filed within ten days, the order of the city forester shall be final. An appeal stays an order issued pursuant to subsection 1.

3. Upon receipt of the notice of appeal the board shall set a date for a hearing within twenty days of receipt of the notice of appeal. Notice of time and place for the hearing must be served upon the owner by certified mail or in person not less than five days prior to the hearing. The decision of the board is final.

4. Any person who fails to comply with a final order of the city forester or the board is guilty of an ordinance violation. The city forester is authorized to abate the public nuisance at the cities' expense, and have the costs assessed against the property, if any person fails to comply with an order of the city forester or board of city commissioners.

5. Whenever the city forester determines a tree to be public nuisance or in violation of this chapter and an imminent danger to life or property, he shall give written notification in person or by certified mail to the owner and order that it be abated within twenty-four hours of the notice and order. If the owner fails to comply within the required time, the city forester is authorized to abate the public nuisance pursuant to subsection 4. The owner may file a written notice of appeal protesting the assessment of costs within ten days of issuance of the order, and the board shall set a date for a hearing pursuant to subsection 3. Upon determination by the board that a tree was a public nuisance or in violation of this chapter and an imminent danger to life or property, the costs to abate the nuisance may be assessed to the owner; otherwise, the costs shall be borne by the city. Whenever it is impractical to notify a property owner pursuant to this subsection, the city forester is authorized to immediately cause a public nuisance or violation of this chapter which is an imminent danger to life or property to be abated at the expense of the city without notice.

6. Whenever necessary for efficient snow removal operations or other necessary maintenance and repair of public rights-of-way, the city forester may immediately cause a public nuisance or violation of this chapter to be abated at the expense of the city without notice.

*(Ord. 4146, 4-28-87; Ord. 4190, 1-05-88)*

CHAPTER 13-03 (WEED CONTROL)

13-03-01. Authority.

1. The City Forester shall have the duties and authority as provided by this section.

2. All weeds, tall grasses exceeding (8) eight inches in height, and unhealthy vegetation exceeding eight (8) inches in height growing within the limits of the city are hereby declared to be a public nuisance. It shall be the duty of every person owning, occupying, or in charge of any premises, lot or parcel of land in the city to keep that premises, parcel or lot, including the adjacent rights-of-way, berms and boulevards free from all weeds, long grasses and unhealthy vegetation by cutting or destroying them at all times during the growing season. Medians separating street sections shall not be included in the requirements of this section.

3. "Weeds" as used in this chapter shall include all weeds contained in North Dakota Administrative Code Section 7-06-01-02 as it defines "noxious weeds."

4. "Tall grasses" shall mean all weeds not contained in North Dakota Administrative Code Section 7-06-01-02 in excess of eight (8) inches in height and all grasses in excess of eight (8) inches in height. Tall grasses may be used for ornamental plantings subject to the following conditions:

a. Tall grasses may not be used as lawn cover.

b. Tall grasses may not be planted on the public right-of-way without the written permission of the city traffic engineer.

c. Tall grasses may not be planted or maintained within a sight triangle, as defined by Section 14-02-03, in excess of thirty-six (36) inches in height above the adjacent curb level.

d. Plantings of tall grasses must be maintained in a weed free condition.

5. "Unhealthy vegetation" shall include, but not be limited to the following:

a. Volunteer trees capable of being cut with mowing equipment.

b. Ornamental plantings overgrown with weeds.

*(Ord. 5487, 03-14-06; Ord. 5715, 04-28-09); (Ord. 6039, 04-08-14; Ord. 6156, 10-13-15; Ord. 6202, 04-26-16)*

13-03-02. Control/Duty. It is the duty of every person owning, occupying or in charge of any premises, lot or parcel of land to cut, eradicate or control any weeds, tall grasses exceeding (8) eight inches in height, and unhealthy vegetation exceeding eight (8) inches in height, to prevent them from becoming a public nuisance.  
(Ord. 6039, 04-08-14)

13-03-03. Notice by Publication of Ordinance. It shall be the duty of the City Forester to cause a notice of the contents of this chapter to be published in the official newspaper of the City once within three days of May 1 and May 15 and once again within three days of June 15 and July 1. These publications shall serve as notice to all landowners, occupants or persons in charge of land of the requirements of this chapter. These publications shall also serve as the official notice to property owners to cut weeds, tall grass and unhealthy vegetation. Other methods of notification, such as the media and City of Bismarck's website may also be used to notify landowner, occupants or persons in charge to control weeds, tall grass and unhealthy vegetation.  
(Ord. 5487, 03-14-06); (Ord. 6039, 04-08-14; Ord. 6156, 10-13-15; Ord. 6202, 04-26-16)

13-03-04. Eradication, Cutting or Control of Weeds, Tall Grasses and Unhealthy Vegetation by the City Forester. At a minimum, all property shall be mowed by June 1, mowed again by July 1, mowed again by August 1 and, if necessary, mowed again by September 1 of each year to comply with the provisions of this chapter. The City Forester may order more frequent cuttings, eradications or controlling of weeds, tall grass and unhealthy vegetation if necessary for compliance with this chapter and such notice may be given in person, via telephone or by letter.

1. Whenever any person, firm or corporation owning, occupying or in charge of any premises, lot, or parcel of land within the city, shall fail, neglect or refuse to mow the property at least once by June 1, again by July 1 and again by August 1 of each year in accordance with the provisions of this section or shall fail to eradicate, cut or control weeds, tall grasses or unhealthy vegetation within 7 days of receipt of notice from the City Forester, the City Forester shall order the nuisance to be abated by eradicating, cutting or controlling the weeds, tall grasses or unhealthy vegetation in a manner as specified by the City Forester, if the City Forester has first complied with the notice requirements of this Section and Section 13-03-03.

A person, firm or corporation notified of impending City action may cause the eradication, cutting or control of the weeds, tall grasses or unhealthy vegetation at any

time before the City eradicates, cuts or controls the weeds, tall grasses or unhealthy vegetation located on the property or may appeal the order of the City Forester in writing to the Office of City Administration within five (5) days of receipt of notice or posting of notice from the City Forester to eradicate, cut or control the weeds, tall grasses or unhealthy vegetation. The appeal shall be heard by the Board of City Commissioners at their next scheduled meeting.

*(Ord. 5487, 03-14-06); (Ord. 6039, 04-08-14; Ord. 6156, 10-13-15; Ord. 6202, 04-26-16)*

13-03-04.1. Exemptions From Cutting or Mowing.. A property may be exempt from the cutting or mowing requirements listed in this Chapter if such exemption is approved by the City Forester based upon his/her conclusion that an exemption is warranted due to safety concerns, environmental concerns, aesthetic benefits or economic efficiency. Conditions or situations in which such an exemption may be granted shall include but not be limited to property that:

1. Cannot be safely mowed.
2. Is highly erodible.
3. Is undevelopable.
4. Is located in an undisturbed natural area.
5. Is densely wooded.
6. Is too wet to mow, such as marsh, wetland or storm water drainage, pond, or feature, either natural or man-made.
7. Is zoned agricultural or is legally used for bona-fide agricultural practices.

*(Ord. 6039, 04-08-14; Ord. 6156, 10-13-15; Ord. 6202, 04-26-16)*

13-03-05. Costs Assessed Against Property. When the City has affected the eradication, cutting or control of weeds, tall grasses or unhealthy vegetation, or has contracted for and paid for the eradication, cutting or control of the weeds, tall grasses or unhealthy vegetation, the actual cost thereof, including an administrative fee as approved by the city commission, must be charged and assessed against the property upon which the weeds, tall grasses or unhealthy vegetation were eradicated, cut or controlled. An assessment list showing the costs against each lot or tracts to be assessed shall be prepared as are other special assessment lists and shall be approved by the Board of City Commissioners. All procedures under state law for certification, appeal, payment and collection of special assessments shall apply.

*(Ord. 6039, 04-08-14; Ord. 6374, 04-09-19)*

13-03-06. Cooperation. Nothing in this chapter shall in any way affect the City's ability to levy for weed and tall grass control nor prevent the City from contracting with or cooperating with any other board or jurisdiction for the control of weeds, tall grasses or unhealthy vegetation. The City Forester may delegate all or some of the duties required under this section to a member or members of the Public Works staff.

*Source: Home Rule Charter for the City of Bismarck, Article 3 and NDCC Chapter 63-01.1; (Ord. 6039, 04-08-14; Ord. 6156, 10-13-15; Ord. 6202, 04-26-16)*