

ORDINANCE 26.a.

AN ORDINANCE PROVIDING FOR THE CONTROL AND PREVENTION OF DUTCH ELM DISEASE, THE PLANTING OF TREES, AND THE REMOVAL OF UNSOUND, DISEASED TREES; DEFINING NUISANCE, AND PROVIDING FOR THE ABATEMENT THEREOF.

Section 1.

Definitions. For the purposes of this ordinance, the following terms, phrases, words, and their deviations shall have the meaning given herein:

- 1.) "**City**" is the City of Park River, State of North Dakota, and shall include all parks, airport, landfill, and lagoon.
- 2.) "**Person**" means any person, firm, partnership, association, corporation, company, or organization of any kind.
- 3.) "**Street**" 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.
- 4.) "**Boulevard**" means the space between the sidewalk, or the normal location of the sidewalk and the curb line or curb.
- 5.) "**Width of Boulevard**" means the distance between the sidewalk, or the normal location of the sidewalk and the curb line or curb.
- 6.) "**Property line**" means the outer boundaries of any lot or parcel of land.
- 7.) "**Property owner**" shall mean the person owning such property as is shown by the Walsh County, North Dakota, Register of Deeds.
- 8.) "**Public trees**" are all shade and ornamental trees now or hereafter growing on any public right-of-way or in any public place or park.

Section 2.

Administration.

- 1.) A tree committee is hereby created and shall be composed of two (2) members of the Park River City Council appointed by the Mayor and one (1) member of the Park River Park Board to be appointed by that body. The terms of all members shall be two (2) years.

2.) The duties of the Tree Committee shall be to advise and to aid in the coordination of the tree care programs in the City of Park River on properties controlled by the City of Park River.

3.) The members of the Tree Committee shall serve without compensation.

Section 3.

Authority and Jurisdiction of the Tree Committee. The authority and jurisdiction of the Tree Committee shall be as follows:

- 1.) The Tree Committee shall have the authority and jurisdiction to regulate the planting, maintenance, protection, and removal of all trees on streets and other public places, to ensure safety, or preserve the aesthetics of such streets and public places.
- 2.) The Tree Committee shall make known 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 Park River.
- 3.) The Tree Committee shall have the authority to supervise all work done under any permit, issued in accordance with the terms of this ordinance.

Section 4.

Nuisance Declared. The following conditions are public nuisances whenever they may be found within the City of Park River.

- 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*, or other tree species infected by a disease determined a nuisance by the City Tree Committee.
- 2.) Any dead or diseased elm tree or part thereof, including logs, branches, stumps, firewood, or other elm material from which the bark has not been removed or chipped and buried in a city landfill between April 1 and October 15 of each year.

Section 5.

Abatement. It is unlawful for any person to willfully permit any public nuisance as defined in Section 4. to remain on any premises owned or controlled by him within the City. Such nuisance shall be abated in the manner prescribed by this ordinance.

Section 6.

Inspection and Investigation.

1.) The Tree Committee or its designate, shall inspect all premises and places within the City as required to determine whether any condition described in Section 4. exists therein.

2.) The inspection shall determine all hazards as specified in Section 4. The owner shall be notified in writing of the existence of the nuisance and given a reasonable time for its removal.

3.) The Tree Committee or its agents or employees may enter upon private premises at any reasonable time for the purpose of carrying out any of the duties assigned to it under this ordinance.

4.) It shall be up to the Tree Committee to determine if a laboratory diagnosis of a suspect Dutch Elm diseased tree or other diseased tree is necessary. A field evaluation will usually be adequate unless there is some question about the tree being diseased or if the landowner requests that a sample be sent into the lab. In such case, the cost of the diagnostic test shall be borne by the property owner.

5.) The Tree Committee, upon finding a suspect Dutch Elm diseased tree, immediately shall take and send appropriate specimens or samples to a qualified plant disease diagnostician. No action to remove suspect trees or wood shall be taken until positive diagnosis of the disease has been made.

6.) Within five (5) days of receipt of the diagnosis, the owner of the property from which the specimen was obtained shall be notified by the Tree Committee of the result by mail.

Section 7.

Abatement of Nuisance in the City of Park River. In abating the nuisance on public streets, alleys, boulevards, public ways, and private property as defined in Section 4. , the City of Park River 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 Dutch Elm disease fungus and elm bark beetles. Such abatement procedures shall be carried out in accordance with the latest technical and expert methods and plans as may be designated by the Commissioner of Agriculture of the State of North Dakota. The Tree Committee shall establish specifications for tree removal and disposal methods consistent therewith.

Section 8.

Abatement of Nuisance on Private Property. Whenever the Tree Committee finds with reasonable certainty that the Dutch Elm or other disease defined in Section 4.1.) exists in any tree or wood located on private property, outside of any public way in the City, it shall notify the owner or person in control of such property on which the nuisance is found by mail within five (5) days of receipt of the diagnosis . The Tree Committee shall direct that the diseased tree be removed and effectively treated in a manner approved by the committee within ten (10) days after receipt of such notice. If such owner cannot be found, a copy of said notice shall be posted upon said infected tree. If said tree is not so removed and/or treated as specified within ten (10) days after posting of the notice, the City of Park River shall remove and/ or treat said tree. The owner or person in charge may be charged with a violation of this ordinance of maintaining a nuisance and the City may abate the nuisance. Any costs incurred in abating said nuisance are to be borne by the property owner and if not sooner paid, shall be assessed against the property and certified to the County Auditor for collection.

Section 9.

Spraying.

1.) Whenever the Tree Committee determines that any elm tree or part thereof is infected with Dutch Elm disease fungus and is in a weakened condition, it may cause all elm trees within a 1,000 foot radius thereof to be treated with an effective elm bark beetle destroying concentrate as recommended by the State entomologist.

2.) Whenever the Tree Committee determines that other diseases or insects pose a problem, it may cause all trees to be treated with control materials as recommended by the State entomologist.

3.) In order to facilitate the work and minimize the inconvenience to the public of any treating operations conducted under this ordinance, the Tree Committee shall cause to be given advance public notice of such operations by newspaper, radio, 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.

4.) When appropriate warning notices have been given and posted in accordance with subsection 3.) of this section, the City shall not allow any claim for damages to any vehicle damaged by such treating operations.

5.) When trees on private property are to be treated, the Tree Committee shall notify the owner of such property and proceed in accordance with the requirements of this ordinance.

Section 10.

Interference Prohibited. It shall be unlawful for any person to prevent, delay, or interfere with the Tree Committee while it is engaged in the performance or duties imposed by this ordinance.

Section 11.

Tree Planting.

1.) The Tree Committee shall issue permits to plant trees on public parkways and berms and alleys in accordance with Section 3.2.).

2.) It shall be in violation of this ordinance to replace a removed elm tree, or to make a new planting of any tree or shrub which cannot be trimmed to a height of eight (8) feet from ground level on any boulevard within the city limits of Park River.

3.) Boulevards shall be planted only to single stem or trunked species. Recommended boulevard plantings shall include, but not be limited to, the following:

Green Ash

Soft Maple

Linden or Basswood

Hackberry

Fruit trees or other flowering species --- only if started trees, with branches eight (8) feet or higher from ground level when planted.

Oak

4.) The planting on private premises within the City of Park River of those selections and species of the Genus Populus producing the pistillate flowers and

bearing the "cotton" filled seed capsules shall be considered a public nuisance and is hereby declared unlawful.

5.) It shall be in violation of this ordinance for any private individual to plant any elm species within the city limits of Park River.

Section 12.

Tree topping. It shall be unlawful as a normal practice for any persons, 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.