

ORDINANCE NO. 197  
CHAPTER 7 "TREES AND SHRUBS"

An ordinance relating to the removal of unsound and diseased trees, the trimming and care of trees, the planting of trees and providing for the abatement thereof: and providing penalties for violation thereof:

Section 1. Definitions.

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

- A. "Person" means any person, firm, partnership, association, corporation, company, or organization of any kind.
- B. "Streets" 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.
- C. "Boulevard" means the space between the sidewalk, or the normal location of the sidewalk and the curb line or curb.
- D. "Width of Boulevard" means the distance between the sidewalk, or the normal location of the sidewalk and the curb line or curb.
- E. "Property Lines" means the outer boundaries of any lot or parcel of land.
- F. "Property Owner" shall mean the person owning such property as is shown by the Foster County, North Dakota, Register of Deeds.
- G. "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.
- H. "Responsibility of Property Owners" means it shall be the duty and responsibility of all property owners and/or tenants to maintain the boulevards, grounds, and trees adjacent to their property.

## **Section 2. Mayor to Appoint Tree Board; and Set Duties.**

The City Tree Board and/or Council shall have the power and control over all public trees of the City and shall have the power to determine the kind and location of such trees, shrubs, and plants.

### **A. Tree Board Appointments.**

The Mayor to appoint a seven (7) member Tree Control Board consisting of one (1) council person, city's Public Works Director, City Auditor, Community Forestry Specialist, and one (1) City Park District representative, and two (2) city residents.

### **B. Duties - Objectives - Purpose.**

It shall be the duty of the Tree Board and they shall have authority within the limits of the funds at its disposal to act in an advisory capacity to the Mayor and City Council to plan, establish and implement a forestry program. The purpose of the Tree Board is to:

- 1) Promote and provide for immediate and long range resource planning;
- 2) Establish and provide for rules and regulations relating to planting, maintenance and removal of greenery in the community;
- 3) Provide education and support for the public and private sectors of the community;
- 4) Establish and provide for a beautification program for the community;
- 5) Establish and provide for the protection of wildlife and urban resource; and
- 6) Develop and recommend for staffing and funding for forestry in the community.

## **Section 3. Protection of Public Trees.**

### **A. Actions prohibited.**

No person shall intentionally damage, cut, or carve any public tree; attach any rope, wire or nails, advertising posters or other contrivance to any tree; allow any gaseous liquid, or solid substance which is harmful to such trees to come in contact with them; or set fire to or permit any fire to burn when such fire or heat from the fire will inure any portion of the tree.

### **B. Actions required by city ordinance or authorized by the city's Tree Board.**

Unless specifically authorized by written and/or verbal authorization from the city Public Works Director and/or Tree Board, no person shall plant any tree on any street or in any public place.

No person shall excavate any ditches, trenches or lay a drive within a radius of twelve (12) feet from any public tree without specific authorization from the city's Public Works Director and/or Tree Board.

#### C. Planting Requirements.

Authorization to plant trees or shrubs shall be made with the Public Works Director and/or Tree Board in advance of the planting(s).

All trees, shrubs and hedges planted on private property must be set back a minimum of three (3) feet from all property lines and no tree shall be planted closer than four (4) feet to any sidewalk or the normal location of the sidewalk from the curb.

1) The boulevard to be planted has been brought to the final grade and is not less than six (6) feet in width.

2) In new plantings, the trees will be planted no closer than three (3) feet to the curb line or closer than two (2) feet to any sidewalk or the normal location of the sidewalk from the curb line, nor closer than three (3) feet from property line. In old planting's, the trees shall be planted in line with the existing planting's on the block.

3) Trees shall be planted at least fifteen (15) feet from curb line at street intersections and at least fifteen (15) feet from driveways and alleys.

4) The trees being planted will not be less than thirty (30) feet apart. Smaller species may be planted with less distance between trees with the approval of the Public Works Director and/or Tree Board.

5) Unless otherwise allowed for specific reasons, all trees shall have comparatively straight trunks, well developed leaders and that all trees must be free of insects, diseases, and other objectionable features at the time of planting.

#### D. Tree Topping.

It shall be unlawful as a normal practice for any person, firm, or city department to top any street tree, park tree, or other trees on public property or dedicated utility easements. 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.

**Section 4. Requirements for Contracted Tree Trimming and Yard Maintenance; and Removal of Illegal Planting's.**

A. Contractor License and Bond.

1) It shall be unlawful for any person or firm to engage in the business or occupation of trimming, pruning, treating, or removing street or park trees within the City without first applying for and procuring a minimum of a North Dakota State Class "D" Contractors license and City License. The City License fee is \$25.00 annually; however, no license shall be required of any public service company or city employee doing such work in the pursuit of their public service endeavors.

2) Before any license shall be issued, each applicant shall first file evidence of liability insurance with the City of Carrington in compliance with North Dakota State Class "D" Contractors License requirements.

B. Removal of Illegal Planting's.

In addition to all other remedies provided, the city's Public Works Director and/or Tree Board, is hereby empowered to order the removal of any trees or shrubs planted in violation of this ordinance. Stumps of all removed trees shall be cut to at least three (3) inches below the ground, and the soil replaced, and the area leveled.

**Section 5. Public Safety and Protection of Property.**

A. Hazards defined and prohibited.

All trees and shrubs within the City shall be pruned or removed when such trees or shrubs constitute a hazard to life and property, or harbor insects and disease which constitute a threat to other trees and shrubs within the city. Such hazards include, but are not limited to:

1) Any tree, shrub, or hedge, or any part of such, which is diseased or overaged and is clearly deteriorating;

2) Any living or standing elm tree (*Ulmus spp.*), or part of any tree, infected to any degree with Dutch Elm Disease Fungus (*Ceratocystis Ulmi*), or which harbors any of the elm bark beetles capable of transmitting this fungus (*Scolytus Multistriatus* or *Hylurgopinus Rufipes*);

3) Any dead tree or part of any diseased tree or shrub, including logs, branches, stumps, firewood or other material from which the bark has not been removed and properly disposed of;

4) No person, whether the owner or tenant of any property along the public streets and avenues of the city, shall permit any shade trees 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 twelve (12) feet in height from such street. It shall be the duty of all persons, whether owners or tenants, to keep the shade trees along the public streets and avenues adjoining such property owned or occupied by them trimmed at all times in such manner that such trees shall not interfere with travel, or obstructing the view of any street or alley intersection, upon such streets and avenues in conformity with the foregoing requirements.

#### **Section 6. Notice to Remove Such Hazards.**

1) The City Tree Board shall inspect all property within the City as often as practicable to determine whether any condition described within this ordinance exists in non-compliance.

2) The Public Works Director and/or Tree Board may enter upon private property at any reasonable time for the purpose of carrying out any of the duties assigned to them under this ordinance.

3) The Public Works Director and/or Tree Board, upon finding a suspect diseased tree, immediately shall take and send appropriate specimens of samples to a qualified plant disease diagnostician, of which costs incurred for the diagnoses will be borne by the city. No action to remove suspect trees or wood shall be taken until positive diagnosis of the disease has been made.

4) 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 Public Works Director of the result by registered mail.

5) An annual citywide survey shall be made by the City Tree Board.

6) The inspection shall determine all hazards as specified in Section 5-A. (4). The owner shall be notified in writing of the existence of the nuisance and given a reasonable time for its removal.

#### **Section 7. Action of City Upon Noncompliance, Enforcement, and Costs.**

1) Whenever the Public Works Director and/or Tree Board determines a tree to be a public nuisance or in violation of this chapter, he/she shall give written notification in person or by certified mail to the owner and order that it be abated within ten (10) days of receipt of the notice and order, provided however, that if the tree is an imminent danger to the traveling public or property of others, the Public Works Director and/or Tree Board may proceed according to Subsection 5.

2) All notices and orders issued pursuant to this chapter are subject to appeal to the City Council upon written notice of appeal filed within ten (10) days of issuance of the notice and order. If an appeal is not filed within ten (10) days, the order of the Public Works Director and/or Tree Board 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 (20) 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 (5) days prior to the hearing. The decision of the City Council is final.

4) Any person who fails to comply with a final order of the Public Works Director, Tree Board, or City Council is guilty of an ordinance violation. The Public Works Director shall file with the City Auditor the name of the person(s) in violation of the city ordinance, their address, and the actual cost(s) incurred for the removal of trees and/or shrubs. The City Auditor is authorized to abate the public nuisance at the city's expense, and have the costs assessed against the property, if any person fails to comply with an order of the Tree Board or City Council.

5) Whenever the Public Works Director and or Tree Board determines a tree to be a public nuisance or in violation of this chapter and an imminent danger to life or property, he/she shall give written notification in person or by certified mail to the owner and order that it be abated within twenty-four (24) hours of the notice and order. If the owner fails to comply within the required time, the Public Works Director and or Tree Board 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 (10) days of issuance of the order, and the board shall set a date for a hearing pursuant to subsection 3). Upon determination by the City Council that a tree was a public nuisance or in violation of this chapter and an imminent danger to life or property, the costs shall be borne by the city and assessed back to the property owner. Whenever it is impractical to notify a property owner pursuant to this subsection, the P. W. Director and or Tree Board 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 right-of-ways, the Public Works Director and or Tree Board may immediately cause a public nuisance or violation of this chapter to be abated at the expense of the city without notice.

**Section 8. Certification as Special Assessment.**

The City Auditor shall keep in his/her office a book called "Nuisance Abatement, Special Assessment Book" and shall enter the cost of the abatement of a nuisance as declared by the City Council therein as a special assessment against the lot or parcel of land from which the nuisance was abated, with the name of the owner.

At the regular meeting of the City Council in September of each year, the City Council shall review all such assessments and hear all complaints against the same and approve the same as finally adjusted, and the City Auditor shall certify to the lots and parcels of land specially assessed for such purpose, and the sum shall be collected as other city taxes are collected.

**Section 9. Abatement of Nuisance by City on Property Owned by the City.**

Any diseased tree or dead wood on property owned by the City which is a public nuisance as defined in this section shall be promptly removed and burned at the expense of the City, not including boulevard diseased tree(s) or dead wood.

**Section 10. Penalties.**

Any person who shall violate any of the provisions of this ordinance shall, upon conviction thereof, be subject to a fine of not to exceed five hundred dollars (\$500.00), or by imprisonment not to exceed thirty (30) days, or both such fine and imprisonment in the discretion of the court.

**Section 11. Repeal.**

All ordinance or parts of ordinance in conflict herewith are hereby repealed.

**Section 12. Effective Date.**

This ordinance shall be in full force and effect upon final passage.

**Section 13. Responsibility.**

It is the intention of the City of Carrington, City Council that each separate provision of this ordinance shall be deemed independent of all other provisions herein, and it is further the intention of the City Council that if any provision of this ordinance be declared invalid, all other provisions thereof shall remain valid and enforceable.

**Section 14. Planting's Prohibited.**

The Public Works Director and/or Tree Board 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 Public Works Director. Additionally, 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). Only those Ulmus species (Elm species) as specifically allowed by the Public Works Director. Salix species (any of the willows). Picea species (any of the spruce). Fraxinus species. (any of the ash) And 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 Public Works Director and/or Tree Board 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 Public Works Director and shall comply with the attached tree specifications sheet.

#### **Section 15. Replacement Boulevard Trees.**

City reserves the right, with recommendation(s) by the Tree Board, to replant a tree in replacement of a diseased tree, on boulevards throughout the city at the cost of the city. The maintenance and upkeep of the replaced tree(s) remains the responsibility of the property owners.

#### **Section 16. Public Nuisance.**

The planting of Cottonwood (excluding Seedless Cottonwoods) or Box elder trees on any private premises in the City of Carrington shall be considered a public nuisance and prohibited by this ordinance.

#### **Section 17. Severability.**

Should any part or provision of this ordinance be declared by court of competent jurisdiction to be invalid, the same shall not affect the validity of the ordinance as a whole, or any part thereof, other than the part declared to be invalid.

Approved by the Mayor and City Council of the City of Carrington, North Dakota, this 9th day of December, 2019.

**First Reading:** November 13, 2019  
**Second Reading:** December 9, 2019  
**Advertised:** December 23, 2019  
**Final Passage:** December 9, 2019

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Tom Erdmann, Mayor

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Jennifer Gast, City Auditor



(SEAL)

Attested: