

TITLE III.

PARKS, BOULEVARDS, AND TREES

CHAPTERS:

- 3-01. Parks.
- 3-02. Boulevards.
- 3-03. Trees and Forestry Advisory Committee.

CHAPTER 3-01

PARKS

SECTIONS:

3-0101. Acceptance by City of Provisions of State Law.

3-0102. Compensation of Park Board Members.

3-0101. **ACCEPTANCE BY CITY OF PROVISIONS OF STATE LAW.** The provisions of Chapter 40-49 of the North Dakota Century Code, and any amendments thereto, are accepted by the City Council of the City of Horace, Fargo, it being the intent of the City to have a Park District of the City of Horace with all the powers and responsibilities as set out in Chapter 40-49 of the North Dakota Century Code, and all amendments thereto.

3-0102. **COMPENSATION OF PARK BOARD MEMBERS.** Each duly elected and qualified member of the Board of Park Commissioners shall receive compensation for their services as set by resolution of the City Council.

CHAPTER 3-02

BOULEVARDS

SECTIONS:

- 3-0201. Definitions.
- 3-0202. Prohibited Acts or Encroachments.
- 3-0203. Permits.
- 3-0204. Driving on Sidewalk or Boulevard.
- 3-0205. Care of Boulevard.
- 3-0206. Failure of Landowner to Care for Boulevard.
- 3-0207. Penalty.

3-0201. **DEFINITIONS.**

1. "Boulevard" or "Berm" shall mean that area of ground between the roadway and the sidewalk or, if there be no sidewalk, it is the area of the ground between the roadway and the dedicated limits of the street or avenue.
2. "Roadway" shall mean that portion of the street or avenue improved, designed, or ordinarily used for vehicular travel.

3-0202. **PROHIBITED ACTS OR ENCROACHMENTS.**

1. Parking. No person shall stop, stand, or park a motor vehicle, whether attended or unattended, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic control device, upon a sidewalk or boulevard.
2. Signs. Any sign or signs or billboard, except official or quasi-official signs, standing or erected upon a boulevard is a public nuisance and may be abated by removing the sign.
3. Buildings. No person shall erect or cause to be erected or permit any building or structure to stand upon the boulevard, other than a mailbox.
4. Storage. It is prohibited to store any equipment, building materials, inventory, or any other material upon the boulevard.

3-0203. **PERMITS.** Nothing herein shall prohibit the parking of motor vehicles upon the sidewalk or boulevard, the erection of signs or billboards upon the boulevard, the maintaining of a building or structure upon the boulevard, or the storage of equipment, material or inventory upon the

boulevard if written application is made to the City Council requesting the privilege of parking motor vehicles upon the sidewalk or boulevard, the erection of signs or billboards upon the boulevard, the maintaining of a building or structure upon the boulevard, or the storage of equipment or inventory upon the boulevard, and the City Council grants such permission by resolution.

3-0204. **DRIVING ON SIDEWALK OR BOULEVARD.** No person shall drive any vehicle over, across, or upon any sidewalk, curb, or boulevard except where there are driveway crossings. Provided, however, the owner or occupant or his agents or employees may drive over the same temporarily when necessary to obtain access to the premises if permission to do so is first obtained from the City Auditor. The City Auditor, in granting such permission, may require protective measures to protect the curb, sidewalk, and boulevard, which protective measures must be removed immediately after such temporary use.

3-0205. **CARE OF BOULEVARD.** It shall be the responsibility of the abutting property owner to seed or sod the boulevard. No gravel, pavement, or other hard surface may be placed on the boulevard except for a driveway or sidewalk. No tree, shrub, or other plant or vegetation growth may be planted within the boulevard without permission granted by resolution by the City Council. Any person or entity desiring to place gravel, pavement, or other hard surface, or tree, shrub or other plant or vegetable growth in the boulevard may make written application to the City Council, and the City Council, by resolution, may approve such request when the City determines that it is in the best interests of the City to do so or where there is some other extenuating circumstance which would make the planting or maintaining of grass difficult or inappropriate. In addition, the City Council may place any reasonable conditions (such as relating to the maintenance and/or height) of any material or vegetation placed or planted on the boulevard. Such conditions shall be binding upon the abutting property owner and any of his or her successors in interest.

3-0206. **FAILURE OF LANDOWNER TO CARE FOR BOULEVARD.** If the abutting property owner fails to care for the boulevard in such a manner that the City Council feels has the potential to pose a health or safety hazard, then the City Council may by resolution order the abutting landowner to take such steps as are necessary to rectify the condition. If the abutting landowner fails to comply with the directive of the City Council within 30 days, then the City Council may cause such steps to be done and may assess the costs of the same against the taxes on the abutting landowner's property.

3-0207. **PENALTY.** A violation of this chapter may be punishable as an infraction as set forth in Section 1-0211 of these ordinances.

CHAPTER 3-03

TREES

(Source: Ord. 2018-06)

SECTIONS:

- 3-0301. Establishment of the Forestry Advisory Committee.
- 3-0302. Duties of the Forestry Advisory Committee.
- 3-0303. Compensation.
- 3-0304. Funding.
- 3-0305. Permit Required Before Planting, Pruning, or Removing Trees on Public Property or Public Rights of Way - Application.
- 3-0306. Size and Species of Trees - Other Restrictions.
- 3-0308. Duty to Prune and Maintain Trees.
- 3-0309. Permit Required to Inject, Treat, Remove, Destroy, Cut, Deface, Prune, or Interfere with Trees and Shrubs.
- 3-0310. Liability of City for Removal of Trees or Shrubs.
- 3-0311. Dead or Diseased Tree Removal on Private Property.
- 3-0312. Interference with the Forestry Advisory Committee.
- 3-0313. Review By City Council.
- 3-0314. Penalty.
- 3-0315. Severability.

3-0301. **ESTABLISHMENT OF THE FORESTRY ADVISORY COMMITTEE.** There is hereby created a Forestry Advisory Committee which shall consist of a chair and assistants as may be authorized by the City Council. Members of the Forestry Advisory Committee shall be filled by appointment of the Mayor and confirmation of the City Council. The Forestry Advisory Committee shall consist of citizens, residents, and/or business owners of the City of Horace.

3-0302. **DUTIES OF THE FORESTRY ADVISORY COMMITTEE.** The Forestry Advisory Committee is responsible for studying, investigating, counseling, and developing and administering a written plan to coordinate tree programs in the City of Horace, and shall perform the duties prescribed by law and the ordinances of the City of Horace. The City Council shall determine who will be responsible for the care and maintenance of trees located on the right-of-way of streets, avenues, and public spaces within the City and the enforcement of laws, ordinances, and regulations relating to the care and maintenance of trees. The Forestry Advisory Committee shall take appropriate steps to ensure public safety and safeguard the future health and well being of such trees and shrubs.

3-0303. **COMPENSATION.** Members of the Forestry Advisory Committee will serve without compensation.

3-0304. **FUNDING.** Costs for planting, maintenance, protection, and removal of trees by the Forestry Advisory Committee shall be borne out of a fund established for that purpose and all monies received through assessments, or from the City of Horace, or from the Horace Park District, or from other sources for the planting, maintenance, protection, and removal of trees, shall be credited to that fund.

3-0305. **PERMIT REQUIRED BEFORE PLANTING, PRUNING, OR REMOVING TREES ON PUBLIC PROPERTY OR PUBLIC RIGHTS OF WAY - APPLICATION.** A person, firm, or corporation shall not plant, cause to be planted, remove, destroy, cut, deface, prune, or interfere with trees or shrubs within the limits of any street, alley, boulevard, or other public way of the City without first having obtained a written permit from the Forestry Advisory Committee; provided however, that in the event of emergency repair, the necessity of first obtaining a written permit is waived and such permit may be obtained after the repair work has been accomplished. Application for such permit shall be in writing on forms which shall be provided by the City. After the receipt of such application, the Forestry Advisory Committee shall investigate the location named in such application and shall grant a permit for planting of trees or shrubs only if the location is such as to allow the normal growth and development of such trees or shrubs and shall grant permits for pruning or removing only if such is consistent with the public safety and welfare. The permit shall be in writing and shall specify the location and variety of trees or shrubs to be pruned. The permit shall be good only for the season stated on the same and the year issued, and no charge shall be made for such permit.

3-0306. **SIZE AND SPECIES OF TREES - OTHER RESTRICTIONS.** Street trees are required in new subdivisions as provided in Section 17.8.8(7) of the Revised Ordinances of 2003. No tree measuring less than one and one quarter inch (1 ¼") in diameter of trunk, measured one foot (1') above ground, may be planted on the City boulevard. The lowest branch shall be over nine and one half feet (9 ½') from the ground. The tree must be a single stem trunk and have a straight vertical line. In issuing permits for planting or location of trees or shrubs the City Council may, in the furtherance of uniformity, convenience, and public safety, designate the variety, location, and method of planting such tree or shrub, and may prohibit the planting of trees or shrubs which are carriers of or transmitters of plant disease in accordance with Section 17.8.8 of the Revised Ordinances of 2003.

3-0307. **TOPPING AND UNAUTHORIZED PRUNING METHODS.** It shall be unlawful for any person, firm, or corporation to top trees. Topping is defined as the severe cutting back of branches within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree. This section shall not apply to trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical.

3-0308. **DUTY TO PRUNE AND MAINTAIN TREES.** It shall be the duty of property owners to keep trees, shrubs, and other vegetation, which are located on private property and adjoin public property or public rights of way, pruned so as to avoid interference with travel on streets, avenues, alleys, and sidewalks in accordance with Section 17.8.8(13) of the Revised Ordinances of 2003.

3-0309. PERMIT REQUIRED TO INJECT, TREAT, REMOVE, DESTROY, CUT, DEFACE, PRUNE, OR INTERFERE WITH TREES AND SHRUBS. Any person, firm, or corporation shall not inject, treat, remove, destroy, cut, deface, prune, or in any way injure or interfere with any tree, shrub, or other vegetable growth located upon any street, alley, boulevard, or other public way of the City without first obtaining a written permit from the City.

3-0310. LIABILITY OF CITY FOR REMOVAL OF TREES OR SHRUBS. The City is not liable to any property owner or other individual, firm, or corporation for damages or costs for the removal or destruction of any tree, shrub, or other vegetable growth located on any street, avenue, alley, boulevard, or other public way.

3-0311. DEAD OR DISEASED TREE REMOVAL ON PRIVATE PROPERTY. The City has the right to cause the removal of any dead or diseased trees on private property within the City, when such trees constitute a hazard to life and property, or harbor insects or disease that constitute a potential threat to other trees within the City. The Forestry Advisory Committee will notify, in writing, the owners of such trees. Removal will be done by said owners at their own expense within sixty (60) days after the date of service of notice. In the event of failure of the owners to comply with such provisions, the City will have the authority to remove such trees and charge the cost of removal on the owner's property tax statement.

3-0312. INTERFERENCE WITH THE FORESTRY ADVISORY COMMITTEE. It is unlawful for any person, firm, or corporation to prevent, delay, or interfere with the Forestry Advisory Committee, or any of its agents, while engaging in and about the planting, cultivating, mulching, pruning, spraying, or removing of street trees, park trees, boulevard trees, or trees on private grounds, as authorized in this ordinance.

3-0313. REVIEW BY CITY COUNCIL. The City Council will have the right to review the conduct, acts, and decisions of the Forestry Advisory Committee. Any person, firm, or corporation may appeal from any ruling or order of the Forestry Advisory Committee to the City Council who will hear the matter and make a final decision.

3-0314. PENALTY. A violation of this chapter may be punishable as an infraction as set forth in Section 1-0211 of these ordinances. Each day the violation exists shall be deemed to be a separate infraction.

3-0315. SEVERABILITY. Should any term, part, or provision of this ordinance be declared by a court of competent jurisdiction to be invalid, unenforceable, or illegal, the same will not affect the validity of the ordinance as a whole, or any part thereof, other than the term, part, or provision declared to be invalid, unenforceable, or illegal.