

## DIVISION 2. - TREES ON PUBLIC ~~PROPERTY~~<sup>PROPERTY</sup> <sup>[4]</sup>



### Footnotes:

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**Cross reference**— Streets, sidewalks and other public places, ch. 74.

### **Sec. 62-126. - Purpose of control.**

It is declared to be the policy of the city to regulate and control the planting, transplanting, removal, maintenance and protection of public trees and shrubs in the city in order to eliminate and guard against dangerous conditions which may result in injury to persons using the streets, alleys, sidewalks or property of the city, to promote and enhance the beauty and general welfare of the city, and to prevent damage to any public sewer or water main, street, sidewalk or other public area from undesirable and unsafe planting, removal and maintenance practices.  
(Code 1996, § 26-40)

### **Sec. 62-127. - Definitions.**

The following words, terms and phrases, when used in this division, shall have the meanings provided in this section, except where the context clearly indicates a different meaning:

**Boulevard** ~~means~~ - the land between the normal location of the street curbing and sidewalk.

**Public trees and shrubs** ~~- means~~ all trees or shrubs planted or to be planted on any park, playground or other property which is owned or controlled by the city, or on any public street, alley, sidewalk or highway within the public right-of-way, but shall not include trees and shrubs located at school sites.

(Code 1996, § 26-41)

**Cross reference**— Definitions generally, [§ 1-2](#).

### **Sec. 62-128. - Enforcement of division provisions.**

The park, recreation and forestry department shall be responsible for the enforcement of this division.  
(Code 1996, § 26-42)

### **Sec. 62-129. - Interference.**

No person may prevent, delay or interfere with the park and recreation advisory board, or its agents or employees while they are performing any work or activities.  
(Code 1996, § 26-43)

### **Sec. 62-130. - Street tree plan adopted.**

The park and recreation advisory board is directed to design and establish a plan for the orderly development of boulevards along the city streets to reduce conflicts with other public uses of the boulevard and streets, to facilitate care of the city's trees, and to make this city a more attractive one in which to live. The plan shall designate the species of trees for each street and shall take into consideration the mature size and requirements of the species, the width of the boulevard, the depth of setback of

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buildings, location of streetlights, safety signals and signs, existing desirable trees and any other site factors.

(Code 1996, § 26-45)

**Sec. 62-131. - Clearance for traffic.**

All large established trees shall be trimmed to sufficient height to allow free passage of pedestrians and vehicular traffic and in such a manner to allow ten feet clearance over sidewalks and 12 feet clearance over all streets; provided, however, that trees along arterial and collector streets shall be trimmed to allow clearance of at least 16 feet.

(Code 1996, § 26-46)

**Sec. 62-132. - Tree planting.**

Should any owner of adjacent property desire to plant a tree on any boulevard, permission shall first be obtained from the department of parks, recreation and forestry for the species, size of tree and proposed planting location.

(Code 1996, § 26-48)

**Sec. 62-133. - Permission required.**

(a)

No person, except upon order of the park and recreation advisory board may plant, transplant, move, spray, brace, trim, prune, cut above or below the ground, disturb, alter or do surgery on any public tree or shrub within the city or cause such acts to be done by others without first obtaining permission for such work from the director of parks, recreation and forestry. This section shall not apply to city employees or their agents.

A.

(b)

If the director of parks, recreation and forestry determines that the proposed work or planting described in any application is necessary and in accord with the purposes of this division, permission shall be granted.

(Code 1996, § 26-49)

**Sec. 62-134. - Regulation of public utilities.**

The department of parks, recreation and forestry staff shall meet as necessary with a representative designated by Brookings Municipal Utilities to discuss clearance practices, and particularly concerning any existing practices the board determines require improvement.

(Code 1996, § 26-50)

**Sec. 62-135. - Order to preserve or remove.**

(a)

**Authority:** The park and recreation advisory board shall have the authority to order the trimming, preservation and removal of trees or plants upon private property when it shall find such action necessary for public safety or to prevent the spread of disease or insects to public trees.

A.

(b)

**Procedure:** If the director of parks, recreation and forestry finds it necessary to order the trimming, preservation or removal of trees or plants upon private property, a written order to correct the hazardous condition shall be provided to the owner, operator, occupant or other person responsible for its existence. Such order may be provided to any or all of such persons.

B.

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~~C.~~ <sup>(e)</sup>

**Time for compliance:** The order to preserve or remove hazardous trees or plants shall set forth a time limit for compliance, dependent upon the hazardous condition. In cases of extreme danger to persons or public property, the director of parks, recreation and forestry shall have the authority to require compliance immediately upon service of the order to correct the hazardous condition.

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~~C.~~

~~D.~~ <sup>(d)</sup>

**Appeal of order:** A person to whom an order to preserve or remove trees or plants is directed shall have the right, within three days of receipt of such order, to appeal the order to the city manager, who shall promptly set a date for hearing the appeal and give notice of hearing to the person appealing. Upon such hearing and review, the city manager may affirm, modify or revoke the order of the director of parks, recreation and forestry. Unless the order is revoked or modified, it shall remain in full force and be obeyed by the person to whom directed. No person to whom an order is directed shall fail to comply with such order later than five days following the determination of the appeal.

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~~D.~~

~~E.~~ <sup>(e)</sup>

**Failure to comply:** If a person to whom an order is directed to preserve or remove trees or plants shall fail to comply within the specified time, the director of parks, recreation and forestry may remedy the condition or contract with others for such purpose and charge the cost thereof to the person to whom the order was directed. The person directed to remedy the condition is authorized to enter upon the lot for that purpose.

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~~E.~~

~~F.~~ <sup>(f)</sup>

**Special assessment:** If the cost of remedying a condition for which an order to preserve or remove trees or plants was issued is not paid within 30 days after receipt of a statement therefor, such cost may be collected by civil action or may be levied as a special assessment against the property upon which such condition existed. The levying of a special assessment shall not preclude the city from also proceeding with a complaint for the violation of this division.

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(Code 1996, §§ 26-51—26-56)

Secs. 62-136—62-160. - Reserved.

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**DIVISION 3. - DUTCH ELM DISEASE AND EMERALD ASH BORER DEAD, DYING, DISEASED OR INFESTED TREES**

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~~Sec. 62-161. - Declaration of policy.~~

~~The city council has determined that the health of the urban forest within the city is increasingly threatened by a variety of pests, pathogens, and environmental stressors. The loss of trees growing upon public and private property would significantly depreciate property values and impair the general welfare of the public. It is the policy of the city to control and prevent the spread of harmful tree diseases, infestations, and other conditions that contribute to declining tree health. This division is adopted for that purpose. The city council has determined that the health of the elm and ash trees within the city is threatened by Dutch Elm Disease and the Emerald Ash Borer. It has further determined that the loss of elm and ash trees which are growing upon public and private property would depreciate the value of property within the city and impair the general welfare of the public. It is the policy of the city to control and prevent the spread of these diseases, and this division is adopted for that purpose.~~

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(Code 1996, § 26-60)

~~Sec. 62-162. - Public nuisances declared.~~

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~~—The city council declares the following to be public nuisances:~~

~~A. Any living or standing tree, or part thereof, which is dead, dying, diseased, or infested in a manner that poses a threat to public safety or may contribute to the spread of pests or disease.~~

~~—Any dead tree or part thereof, including logs, branches, stumps, firewood, or other woody material from which bark has not been removed and properly disposed of or treated to mitigate pest or disease risk. The city council declares the following to be public nuisances:~~

~~B.~~

(1)

~~Any living or standing elm tree or ash tree or part thereof infected with the Dutch Elm Disease, Ceratocystis ulmi, or which harbors the European Elm Bark Beetle, Scolytus multistriatus (Eichb.) and/or the American Elm Bark Beetle, Hylurgopinus rufipes (Marsh.) or the Emerald Ash Borer.~~

(2)

~~Any dead elm or ash tree or part thereof including logs, branches, stumps, firewood or other elm or ash material from which the bark has not been removed and burned or sprayed with an effective European Elm Bark Beetle or Emerald Ash Borer insecticide.~~

(Code 1996, § 26-61)

**~~Sec. 62-163. - Nuisances not permitted to remain.~~**

~~No person may permit any public nuisance as defined in this division to remain on the premises owned or controlled by them within the city.~~

(Code 1996, § 26-62)

**~~Sec. 62-164. - Inspection.~~**

~~The director of parks, recreation and forestry or designee is authorized to inspect all premises within the city to determine whether any tree constitutes a public nuisance as defined in this division. Trees may be subject to inspection if reported or suspected to be dead, dying, diseased, or infested, regardless of species. The director of parks, recreation and forestry or designee is authorized to inspect all premises and places within the city at least twice each year to determine whether any public nuisance as defined in this division exists, and shall also inspect any elm and ash tree reported or suspected to be infected with the Dutch Elm Disease or Emerald Ash Borer or any elm or ash bark bearing material reported or suspected to be infected with either species of the Elm Bark Beetles or the Emerald Ash Borer.~~

(Code 1996, § 26-63)

**~~Sec. 62-165. - Abatement of nuisances upon public property.~~**

~~If the director or designee determines with reasonable certainty that a public nuisance exists within the city upon any public street, alley, park or other public place, including the strip of property between the curb and lot line, on private property, the director or designee shall cause it to be removed and burned or shall otherwise abate the nuisance, provide notice to the property owner or occupant to abate such nuisance within a reasonable timeframe. If the director of parks, recreation and forestry or designee determines, upon inspection, that a public nuisance involving Dutch Elm Disease or Emerald Ash Borer exists within the city upon any public street, alley, park or other public place, including the strip of property between curb and lot line, they shall immediately cause it to be removed and burned or shall otherwise abate the nuisance.~~

(Code 1996, § 26-64)

**~~Sec. 62-166. - Abatement of nuisances on private property.~~**

~~If the director or designee determines with reasonable certainty that a public nuisance exists on private property, the director or designee shall provide notice to the property owner or occupant to abate such nuisance within a reasonable timeframe. of parks, recreation and forestry or designee, upon inspection, shall determine with reasonable certainty that a public nuisance involving Dutch Elm Disease or Emerald~~

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Ash Borer exists in or upon private premises within the city, the director shall promptly provide notice, either personally or by first class or certified mail, upon the owner or agent of such owner of such property, if either can be located, or upon the occupant thereof, a notice to abate such nuisance within 15 days of service of the notice.

(Code 1996, § 26-65)

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**Sec. 62-167. - Determination of disease.**

If the director is unable to determine with certainty whether a tree is dead, diseased, or infested, they may collect and submit specimens for professional evaluation. Actions may proceed upon confirmation of a hazardous condition. If the director of parks, recreation and forestry or designee is unable to determine with reasonable certainty whether or not a tree which is located upon private premises is infested with Dutch Elm Disease or Emerald Ash Borer, the director or designee is authorized to remove or cut specimens from the tree, and shall forward such specimens for diagnosis and report to the Plant Pathology Department of South Dakota State University and may proceed as provided in this division upon receipt of a report indicating the existence of disease.

(Code 1996, § 26-66)

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**Sec. 62-168. - Abatement by the city.**

If the owner, agent, or occupant of the property upon which any tree-related nuisance exists—including but not limited to those involving dead, diseased, or infested trees—fails to abate such nuisance within the time specified in the notice to abate, the director of parks, recreation and forestry shall cause the nuisance to be removed or otherwise abated. If the owner, agent or occupant of the property upon which any nuisance exists which involves Dutch Elm Disease or Emerald Ash Borer fails to abate such nuisance within the time specified in the notice to abate, the director of parks, recreation and forestry shall cause the nuisance to be removed or otherwise abated.

(Code 1996, § 26-67)

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**Sec. 62-169. - Effect of abatement.**

Any abatement made under the provisions of this division shall be conducted in a manner that prevents or limits the spread of tree pests, diseases, or infestations, including known and emerging threats. The goal of such abatement shall be to preserve the overall health of the urban forest and safeguard public and environmental well-being. Any abatement made under the provisions of this division shall be made in such manner as to destroy or prevent as fully as possible the spread of Dutch Elm Disease and Emerald Ash Borer or the insect pests or vectors known to carry the disease fungus.

(Code 1996, § 26-68)

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**Sec. 62-170. - Assessment of cost of abatement.**

The cost of abating any public nuisance shall be borne as follows:

(1)

A. The entire cost of any abatement of a public nuisance consisting of diseased trees or any part thereof on any public street, alley, park or other public place, including the strip of property between curb and lot line, shall be borne by the city. If a tree is located on the property line between the public property and private property, the entire cost of abatement shall be borne by the city.

A.

(2)

B. The cost of any abatement of a public nuisance on any private property shall be borne by the owner of the property and shall be collected or assessed against such property as provided in this division or in accordance with other assessment procedures in this Code for collection of costs of

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the abatement of a public nuisance. If any part of a tree constituting a nuisance under this division is located on a property line between two private owners, the owners of the property on either side of such line shall share equally in the cost of abatement.

(Code 1996, § 26-69)

**Sec. 62-171. - Reporting of costs.**

The director of parks, recreation and forestry shall keep accurate records of the cost of work performed under this division for which assessments are to be made, stating the description of the land, lots, parts of lots or parcels of land and the amounts chargeable to each. The director of parks, recreation and forestry shall include in a report to the city manager the aggregate amount chargeable to each lot or parcel, and such amount shall be collected from the property owner or occupant, or levied and assessed against such parcels or lots. In lieu of spreading the cost of the abatement of the nuisance against such property, such amount may also be recovered by a civil action against the owner or occupant of such property.

(Code 1996, § 26-70)

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