

ORDINANCE 1313

AN ORDINANCE AMENDING TITLE IX GENERAL REGULATIONS CHAPTER 90 TREES, PLANTS AND SHRUBS SECTIONS 90.70 – 90.73, 90.77 – 90.83 AND 90.85 OF THE REVISED ORDINANCES OF THE CITY OF VERMILLION, SOUTH DAKOTA, TO ADD AND AMEND THE DEFINITIONS, TREE BOARD, PLANTINGS, SPACING, UTILITIES, TREE CARE, CLEARANCE, TREE TOPPING, TREE REMOVAL, REMOVAL OF STUMPS, ABATEMENT AND REVIEW BY CITY COUNCIL AS IT APPLIES TO TREES, PLANTS AND SHRUBS WITHIN THE CITY OF VERMILLION.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF VERMILLION, SOUTH DAKOTA that Title IX, Sections 90.70 (B), (C); 90.71; 92.72 (A), (B), (D), (E); 90.73 (B), (C), (D), (E), (F), (G); 90.74 through 90.80; 90.81 (A),(B); 90.82; 90.83; and 90.85 be added and amended as follows:

§ 90.70 PURPOSE.

- (A) The preservation of existing urban trees and the encouragement of the planting of additional trees is an important public purpose.
- (B) The City can play an important role in urban forestry through providing advice, expert information and recommendations to the citizens of Vermillion.
- (C) It is the intent of the Governing Body that this chapter provides guidelines and assistance to the citizens of the City and to initiate a general policy for the planting of trees on the public property.

§ 90.71 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CITY. The City of Vermillion, South Dakota, and collectively, the elected and or designated official, authorized agent, or employees of the City of Vermillion assigned to carry out the enforcement of this subchapter.

CITY TREE SPECIALIST. An employee designated by the City Manager that is educated in the care of trees and other woody plants. This individual will serve as the primary contact for the public.

CITY TREE BOARD. An advisory board consisting of five (5) members who are citizens and residents of Vermillion, who shall be responsible for the development of a long term plan that will encourage the growth of a healthy tree canopy throughout the City's boulevards, City's parks and any other areas of the City.

MAINTAINED TREE. A tree or woody plant that has been properly trimmed to remove any dead or hazardous branches. It has also been watered, fertilized, and treated for disease or insects as needed.

NUISANCE TREE. Any tree that is not valued where it is growing and is usually of vigorous growth; especially one that tends to overgrow or choke out more desirable plants.

PARKS. All public parks within the City having individual names.

PERSON. Any person, firm, partnership, association, corporation, company, organization, or political subdivision of any kind.

PESTS. An insect or disease that attacks a tree or woody vegetation.

PLANTS. Any growing “non-woody” vegetation.

PROPERTY OWNER. The person owning the property as shown by the records on file at the office of the Register of Deeds of Clay County, South Dakota.

PUBLIC PLACES. All property and grounds owned by the City lying within the County of Clay, State of South Dakota, or under its control or supervision whether owned, leased or under contract of the City.

TREES.

- (1) **LARGE TREES.** Trees larger than forty (40) feet tall at maturity.
- (2) **MEDIUM TREES.** Trees that are twenty (20) to forty (40) feet tall at maturity.
- (3) **SMALL TREES.** Trees less than twenty (20) feet tall at maturity.
- (4) **PARK TREES.** Trees, shrubs, and all other woody vegetation in public parks and all areas owned by the City or to which the public has access as a public park.
- (5) **PRIVATE TREES.** Those trees and all other woody vegetation on privately owned lots and residences within the City.
- (6) **PUBLIC TREES.** All trees now or hereafter growing along any street or in any park, or public areas of the City.
- (7) **STREET TREES.** Trees on boulevards or in parkways which are those parking areas lying between the established curb line and any right-of-way line within the City.

TOPPING. 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.

TREE SUPPORT AND BRACING. Supplement support in the form of cabling or bracing.

- (1) **BRACING.** The use of steel rod(s) to support a trees structure.
- (2) **CABLING.** The use of cable, chain, rope, or anything to support limbs of a tree, excluding small trees.

§ 90.72 CITY TREE BOARD.

- (A) There is hereby created and established an advisory board to be known as the City Tree Board of the City of Vermillion. There shall be five (5) members of the City Tree Board in which board members are citizens and residents of Vermillion. They shall be appointed by the Mayor with the approval of the City Council. The Parks and Recreations Director shall recommend one (1) member to the board from staff; the Street Superintendent shall recommend one (1) member to the board from staff; one (1) member shall be currently serving on the City Council; and two (2) members shall be selected by the governing body from the residents of the City of Vermillion.
- (B) The term of the five (5) persons to be appointed shall be two (2) years except the terms of those representing the City Council and City employed staff shall expire at the expiration of their terms of office or employment. In the event that a vacancy shall occur during the

term of any member, his or her successor shall be appointed for the unexpired portion of the term.

- (C) Members of the City Tree Board shall serve without compensation.
- (D) Subject to the control of the Governing Body of the City.
- (E) The City Tree Board shall choose its own officers and keep a journal of its proceedings. A majority of the members shall be a quorum for the transactions of business. Its purpose shall be to review, from time to time, conditions relating to tree and plant growth in the City and to recommend procedures and policies calculated to maintain and improve a healthy forestation program for the City.

§ 90.73 PLANTING.

- (A) The permit requirements of this subchapter shall not apply to the planting of grass, annual flowers, or similar non-woody vegetation.
- (B) The City is herein responsible for tree planting in all City parks however, non-allowable species are prohibited from being planted on private property.
- (C) No person shall plant or set out any tree or plant on a boulevard, parkway, or other public place without first filing an application and procuring a permit from the City. The application required herein shall state the number of trees or plants to be planted or set out, the location and variety of each tree or plant, and the other information as the City shall find reasonably necessary to a fair determination of whether a permit should be issued hereunder.
- (D) The City shall issue the permit for the planting of a tree or plant on a boulevard or other public place if it is found that the proposed planting is of a type and species which reasonably conforms to the established plan and existing practices within the City as determined by resolution of the Governing Body.
- (E) The City may designate agents to accept applications and issue permits for the planting of trees covered under this subchapter.
- (F) The City will issue an allowable species list for tree planting in the public places and a non-allowable tree list for planting on private property.
- (G) No hedges, conifer trees, or shrubs may be planted in the boulevard or public right-of-way, except in the planters in the Central Business District.

§ 90.74 SPACING.

The spacing for all street tree plantings will be in accordance with specifications more particularly set forth in the allowed species list; provided that, in general, no small trees shall be planted less than twenty (20) feet apart, no medium trees shall be planted less than thirty (30) feet apart, and no larger trees shall be planted less than thirty-five (35) feet apart.

- (A) Trees shall be placed at least ten (10) feet from a driveway.
- (B) Trees shall be centered between the curb and sidewalk.

§ 90.75 DISTANCE FROM CURB AND SIDEWALK.

No tree shall be planted in a parking where the distance between the curb and sidewalk is less than seven (7) feet.

§ 90.76 DISTANCE FROM STREET CORNERS AND FIREPLUGS.

Street trees shall be planted no closer than thirty-five (35) feet of any street corner, measured from the point of nearest intersecting curbs or curblines. No street tree shall be planted closer than ten (10) feet of any fireplug.

§ 90.77 UTILITIES.

No shall be planted under or within fifteen (15) feet of overhead utility wires, traffic signals, or street lights. No trees shall be planted within ten (10) feet of any water, sewer, or other service valves and within a fifteen (15) foot radius from a utility cabinet.

§ 90.78 TREE CARE.

- (A) The City will herein be responsible for all tree care of park trees and will make recommendations or give advice to adjoining property owners for care of street trees.
- (B) For any trees or shrubs now situated on or hereafter planted in the public right-of-way, it shall be the duty of the abutting property owner to maintain trees in a safe and healthy condition and in every way in compliance with the provisions of this subchapter for the life of the tree.
- (C) Trees severely damaged by storms or other causes, aged trees, or certain trees under utility wires or other obstructions must be removed.
- (D) The City shall have the right to plant, trim, prune, and remove trees, plants, and shrubs within the City right-of-way and public grounds as may be necessary to ensure public safety and City utility services.
- (E) The City Tree Specialist shall have the authority to regulate and control nuisance trees and other woody plants upon private property only when an action is demonstrably necessary to maintain City utilities, to prevent the damage of public right-of-ways, or to prevent the spread of disease or insects to public trees and places.

§ 90.79 CLEARANCE.

Any tree overhanging any street or right-of-way within the City shall have the branches trimmed so that the branches will not block or otherwise inhibit street and sidewalk traffic and signs controlling the traffic. All large established trees shall be trimmed in such a manner so as to allow eight (8) feet clearance over sidewalks and sixteen (16) feet clearance over all streets. The City shall have the right to prune any tree or shrub on public or private property that obstructs the view of any street intersection, street lighting or visibility of any traffic-control device or sign.

§ 90.80 TREE TOPPING.

Tree topping is not an allowed practice for any person, firm, or City department of any street tree, park tree or other tree on public property, except when determined necessary by the City.

§ 90.81 TREE REMOVAL.

- (A) The City will be responsible for the removal of dead, hazardous, or diseased park and street trees. For removal of street trees, whether they are dead, hazardous, or diseased, or not dead, hazardous, or diseased, any private landowner or resident must obtain permission from the City.
- (B) Determination of a pest problem will be made by the City.
- (C) Wood from dead, substantially dead, or infected trees may be used as firewood as long as that wood does not harbor a contagious pest or can be treated to prevent harboring contagious pests.

§ 90.82 REMOVAL OF STUMPS.

All stumps of street and park trees shall be removed eight (8) inches below the surface of the ground. The City shall be responsible only for the removal of those stumps of trees of which were removed by the City.

§ 90.83 ABATEMENT.

- (A) The City shall have the authority to trim or remove trees not conforming to the provisions of this subchapter and to assess the cost of removal to the abutting owner of the property on which the same were improperly located.
- (B) The occupant, person in charge or owner of any lot or parcel of land in the City shall keep the property free of nuisance trees and other woody plants by treating or removing, as may be appropriate and approved by the City tree specialist.
- (C) Trees, plants and shrubs not conforming to this ordinance and subchapters are hereby declared a public nuisance.

§ 90.84 INTERFERENCE WITH CITY.

It shall be unlawful for any person to prevent, delay, or interfere with the City while engaging in the inspection, planting, pruning, or removal of any street trees or park trees, as authorized in this subchapter.

§ 90.85 REVIEW BY CITY COUNCIL.

Any abutting property owner aggrieved by the action of any agent or officer of the City designated to enforce this subchapter or to carry out its purpose may appeal from any such action to the City Council who may hear the matter and make final decision.

§ 90.99 PENALTY.

Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99.

Dated at Vermillion, South Dakota this 5th day of May, 2014.

THE GOVERNING BODY OF THE CITY
OF VERMILLION, SOUTH DAKOTA

By John E. Powell
John E. (Jack) Powell, Mayor

ATTEST:

By Michael D. Carlson
Michael D. Carlson, Finance Officer

First Reading: April 21, 2014
Second Reading: May 5, 2014
Publish: May 16, 2014
Effective Date: June 3, 2014

