

TITLE III.

PARKS AND BOULEVARDS

CHAPTERS:

- 3-01. Parks.
- 3-02. Boulevards.
- 3-03. Trees, Shrubs, and Other Plants.

CHAPTER 3-01

PARKS

SECTIONS:

- 3-0101. Acceptance by City of Provisions of State Law.
- 3-0102. Compensation of Park Board Members.

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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 Mapleton, Fargo, it being the intent of the City to have a Park District of the City of Mapleton 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.

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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. **FAULURE 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, SHRUBS, AND OTHER PLANTS

SECTIONS:

- 3-0301. Title and Purpose
- 3-0302. Definitions
- 3-0303. Creation and Establishment of Tree Board
- 3-0304. Powers and Duties
- 3-0305. Nuisance, Hazard, Disease, Insects
- 3-0306. Emergencies
- 3-0307. Public Properties
- 3-0308. Administration, Enforcement, Penalties, Appeals
- 3-0309. Legal Status

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**3-0301. TITLE AND PURPOSE**

- 1. Title - This ordinance shall be known as the "City of Mapleton Tree Ordinance."
- 2. Purpose - It's purpose is to promote and protect the public health, safety and general welfare by providing for the regulation of the planting, maintenance, and removal of trees, shrubs, and other plants within the City of Mapleton.

**3-0302. DEFINITIONS**

- 1. "Street Trees" are herein defined as trees, shrubs, bushes and all other woody vegetation on land lying between property lines on either side of the streets, avenues or ways within the City.
- 2. "Park Trees" are herein defined as trees, shrubs, bushes and all other woody vegetation in public parks having individual names, and all areas owned by the City, or to which the public has free access to.
- 3. "Private Trees" are herein defined as trees, shrubs, bushes and all other woody vegetation located on private property.
- 4. "Nuisance and/or Hazard" includes any street, park or private tree that is dead or diseased and constitutes a potential threat to public health, safety and general welfare of persons and vegetation.
- 5. "Tree Master Plan" official City of Mapleton comprehensive annual forestry work plan.

### **3-0303. CREATION AND ESTABLISHMENT OF TREE BOARD.**

1. There is hereby created and established a City Tree Board for the City of Mapleton which shall consist of five (5) members, citizens and residents of the City, who shall be appointed by the Mayor and Council and shall service without compensation. The five (5) member City Tree Board will consist of one (1) member of the City Council, one (1) member of the Park Board, one (1) member of the Planning and Zoning commission and two (2) citizens at large.
  - A. Initial appointees to the City Tree Board shall have terms as follows: one member for one year; two members for three years; two members for four years; and thereafter upon the expiration of such initial terms, successor shall be appointed for a term of four years by the Mayor and Council. Vacancies caused by death, resignation, or otherwise shall be filled for the unexpired term by appointment of the Mayor and Council.
2. The City Tree Board shall choose its own officers, make its own rules and regulations, establish meeting dates, and keep minutes of its proceedings. A majority of the total members shall be a quorum for transaction of business.

### **3-0304. POWERS AND DUTIES**

1. Power - The City Tree Board or its official designee will have the authority and powers over:
  - A. Street Trees and Park Trees.
  - B. Private Trees that are deemed a nuisance by process established in 3-0305.
2. Duties - The City Tree Board will have the following duties:
  - A. To study, and make recommendations to the Mayor and Council regarding the planting, maintenance and protection of trees on public property; or when requested by the Mayor and Council, shall consider, investigate, make findings, report and recommend upon any special matter or question coming within the scope of its work.
  - B. To prepare or update, annually a written city-wide "Tree Master Plan" that guides the care,

preservation, pruning, planting, replanting, removal, or disposition of trees on public lands; such plan shall consider existing and future utility locations and environmental factors in relation to existing and future tree species on public lands or on private lands, as provided in this ordinance or other ordinances; within the City; such plan shall be recommended to the Mayor and Council and upon their Acceptance and Approval shall be implemented as the "Tree Master Plan."

### **3-0305. NUISANCE, HAZARD, DISEASE, INSECTS AND ABATEMENT**

1. Nuisance/Hazard: The City Tree Board or its official designee shall have the power to enter upon any public or private lands in the City to investigate for a potential Nuisance and/or Hazard.
2. Disease/Insects: The City Tree Board or its official designee shall have the power to enter upon any public or private lands in the City and to spray or otherwise treat, or cause or order to be sprayed or otherwise treated, any Street, Park or Private trees infected or infested by any parasite, insect or pest, when it shall be necessary in the City Tree Board's opinion to do so, to prevent the breeding or scattering of any parasite, insect or pest and to prevent danger therefrom to persons or property or to trees planted on the public lands or other private lands.
3. Abatement of Nuisance, Hazard, Disease, Insects: Prior to exercising the authority conferred by this section, the City Tree Board shall give the owner or occupant an opportunity to correct the condition by ordering that corrective action be taken. The order shall be in writing to the owner or occupant of the property in question and shall be acted upon within ten (10) days from the date of receipt of the order. If, after ten (10) days, the owner or occupant has not corrected the condition or undertaken action that would lead to a timely correction of the condition, then the City Tree Board or its official designee shall send notice to the violator of a hearing to be held by the City Council to determine whether or not City officials should be directed to abate the nuisance. The violator must be given five (5) days written notice of the time of the hearing. If at that hearing the Council determines that City officials should abate the nuisance, the Council shall direct employees of the city to do so, and direct that all costs and expenses incurred in that abatement shall be assessed against the property concerned by the City Auditor. Provided, however, if the City official determines that the

nuisance presents a clear and present danger of injury or death to a person in Mapleton, that official can direct City officials to abate the nuisance immediately without the need for Council action.

**3-0306. EMERGENCIES:** In the case of emergencies such as windstorms, ice storms, fire, or other disasters, the requirements of this Ordinance may be waived by the City during the emergency period so that they would in no way hamper private or public work to restore order in the City. This shall not be interpreted to be a license to circumvent the intent of this Ordinance.

**3-0307. PUBLIC PROPERTIES**

1. Permit: No person shall plant, remove, destroy, cut above the ground, or disturb any Street tree or Park tree without first receiving approval from the City Tree Board.
  
2. Trees Adjacent to Public Lands: Trees, vines, bushes, shrubbery or flowers, standing in or upon any lot or land adjacent to any public lands and having branches, limbs, trunks, or other parts projecting into the public street or place, shall be kept trimmed by the owner or occupant of the property on which such vines, trees, bushes, shrubbery or flowers are growing, so as not to interfere with the free and safe passage along the public way by pedestrians and vehicular traffic.
  - A. If the owner or occupant of such property does not keep this growth from projecting into or on public land, then the City Tree Board by authority granted in Section 3-305 may order its removal.
  
3. Public/Private Utilities and Developments: All public/private utilities and developments shall acknowledge the City's desire to protect and enhance the viability of trees and shall comply with the City Tree Board's separate Standards and Specifications.

**3-0308. ADMINISTRATION, ENFORCEMENT, PENALTIES, APPEALS**

1. Administration: The provisions of this Ordinance shall be administered by the City Tree Board with general oversight provided by the City Council. Duties shall include issuing permits where applicable and inspecting public lands, and private lands when authorized or deemed necessary, in fulfillment of the requirements of this Ordinance and Standards and Specifications set forth by the City Tree Board.

2. Enforcement and Penalties: The City Tree Board or its official designee shall also be considered the enforcement officer(s) of this Ordinance and shall take the necessary actions to cause enforcement of the provisions of this Ordinance.
  - A. Penalty: A violation of this chapter may be punishable as an infraction as set forth in Section 1-0211 of these ordinances.
  - B. Repair or Replacement of Trees: If, as the result of the violation of any provision of this Ordinance the injury, mutilation, or death of a street or park tree is caused, the cost of the repair or replacement of such tree, shall be born by the party in violation. Replacement value of the tree(s) shall be determined in accordance with the latest revision of A Guide to the Professional Evaluation of Landscaped Trees, Specimen Shrubs, and Evergreens, as published by the International Society of Arboriculture.
  - C. Nuisances: In the event that a nuisance is not abated by the dates specified in notice from the City Tree Board or its official designee, a City Official shall send notice to the violator of a hearing to be held by the City Council to determine whether or not City officials should be directed to abate the nuisance. The violator must be given five (5) days written notice of the time of the hearing. If at that hearing the Council determines that City officials should abate the nuisance, the Council shall direct employees of the city to do so, and direct that all costs and expenses incurred in that abatement shall be assessed against the property concerned by the City Auditor. Provided, however, if the City official determines that the nuisance presents a clear and present danger of injury or death to a person in Mapleton, that official can direct City officials to abate the nuisance immediately without the need for Council action. Once each year, after written notice to all violators, the City Council shall review all such assessments and approve the assessments as finally determined by the City Council. Such special assessments shall then be certified to the County Auditor and be placed upon the tax roll for that year and to be collected as other taxes. The decision of the City Council or City official to abate the nuisance in no way relieves the violator or prosecution under this chapter.

3. Appeals: The decisions of the City Tree Board may be appealed to the City Council. Such appeal shall be taken within fifteen (15) days of notification, by filing with the City Auditor a written notice of appeal specifying the grounds thereof. The City Council after a public hearing shall determine to confirm or reject the decision of the City Tree Board. The decision of the City Council may be appealed to Cass County District Court under the laws of North Dakota.

### **3-0309 LEGAL STATUS**

1. Conflict with Other Laws: Whenever the provisions of any other statute require more restrictive standards than are required by this Ordinance, the provision of such statute shall govern.
2. Severability: Should any section or provision of this Ordinance be declared by the courts to be unconstitutional or invalid such declaration shall not affect the validity of the Ordinance as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.