

ORDINANCE 38

AN ORDINANCE OF THE CITY OF SUMMERSET, SOUTH DAKOTA, ESTABLISHING A URBAN FORESTRY BOARD

BE IT ORDAINED BY THE CITY BOARD OF COMMISSIONERS OF THE CITY OF SUMMERSET, Meade County, South Dakota that the following Ordinance be and hereby is adopted and is to be made City of Summerset Ordinance 38.

- 38.010 Purpose.
- 38.020 Definitions.
- 38.030 Urban Forestry Board—Created—Composition.
- 38.040 Urban Forestry Board—Members—Terms—Vacancies.
- 38.050 Urban Forestry Board—Members—Compensation.
- 38.060 Urban Forestry Board—Officers—Quorum—Recordkeeping.
- 38.070 Urban Forestry Board—Duties.
- 38.080 Street trees.
- 38.090 Trees on public property.
- 38.100 Trees on private property.
- 38.110 Requirement for removal of mountain pine beetle infested trees.
- 38.120 Storage of wood.
- 38.130 Trimming of trees overhanging streets, sidewalks, alleys.
- 38.140 Interference with Parks Department.
- 38.150 Appeals.
- 38.160 Violation—Penalty.
- 38.170 Effective Date

38.010 Purpose.

The city finds and determines that in order to protect existing neighborhoods, promote good design in new areas and provide for sensitive and compatible infill development in existing commercial areas, the Urban Forestry Board shall be created to review and make recommendations on city tree plans developed, created or approved by the Parks Department. The purpose and intent for regulating the planting, removal and maintenance of trees, bushes, shrubs and other woody vegetation on public and private property is threefold:

- A. To protect and increase property rights and values;
- B. To enhance and conserve the city's aesthetic environment and physical characteristics of the land; and
- C. To generally protect and enhance the quality of life and general welfare of the city.

38.020 Definitions.

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

PARK TREES. Trees, shrubs, bushes and all other woody vegetation in any public park or in area owned by the city.

PERSON. Any person, firm, partnership, association, corporation, company or organization.

PEST. Any organism, insect, rodent, fungus, virus, bacteria or other agent that causes any damage, abnormal growth or mortality of any tree, shrub, bush or woody vegetation.

PROPERTY LINE. The outer edge of a street or highway right-of-way and does not pertain to the traveled surface itself.

STREET TREES. Trees, shrubs, bushes and all other woody vegetation on land lying between property lines on either side of all streets, avenues or ways within the city.

URBAN FORESTER. The Urban Forester a consultant of the Parks Department of the city.

38.030 Urban Forestry Board—Created—Composition.

There is created and established an Urban Forestry Board which shall consist of 5 members, citizens and residents of this city, who shall be appointed by the Parks Director. The Urban Forester shall serve as an ex officio member in an advisory capacity of the Urban Forestry Board.

38.040 Urban Forestry Board—Members—Terms—Vacancies.

The terms of the 5 members of the Urban Forestry Board to be appointed by the Parks Director shall be 3 years, except that the term of 2 of the members appointed to the first Board shall be for only 1 year and the term of 1 members of the first Board shall be for 2 years. In the event that a vacancy shall occur during the term of any member, a successor shall be appointed for the unexpired portion of the term. The Parks and Recreation Advisory Board shall after public hearing have authority to remove any member of the Urban Forestry Board for cause, which cause shall be stated in writing and made a part of the record of the hearing.

38.050 Urban Forestry Board—Members—Compensation.

Members of the Board shall serve without compensation.

38.060 Urban Forestry Board—Officers—Quorum—Recordkeeping.

The Board shall choose its own officers and shall keep a journal of its proceedings. Three members shall constitute a quorum.

38.070 Urban Forestry Board—Duties.

A. It shall be the responsibility of the Board to review and make recommendations on city tree plans developed by the city's Planning Department and/or the city's Parks Department.

B. The Board, when requested by the Common Council or the city's Parks Department shall consider, investigate and make findings, reports and recommendations upon any special matter or question coming within the scope of its work.

38.080 Street trees.

A. No street trees shall be planted unless and until the Urban Forester shall have first approved the kind, size, variety and location thereof, and granted a permit therefor. This permit is in addition to any permit required by Chapter 150 of the Summerset Ordinance #1 General Municipal Code (GMC). Trees proposed within 10 feet of any water, sanitary sewer or drainage system component shall be subject to the approval of the Director of Public Works. The permit shall be issued without charge.

B. A Street Tree List and Brochure for Summerset shall be developed by the Urban Forester and approved by the Urban Forestry Board.

C. Maintenance of street trees shall be the responsibility of the owner of the abutting property.

D. It is unlawful for any person to top any street tree or other tree on public property. **TOPPING** is defined as the severe cutting back of limbs to stubs larger than 6 inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree. Trees severely damaged by storms or other causes, or trees under utility wires or other obstructions where other pruning practices are impractical may be topped only with the approval of the Urban Forestry Board.

E. All stumps of street and park trees shall be cut below the surface of the ground so that the top of the stump shall not project above the surface of the ground.

38.090 Trees on public property.

A. The city shall have the right to plant, prune, maintain and remove trees, plants and shrubs within the public right-of-way and on public grounds, as it may determine.

B. The city may remove or cause or order to be removed, any tree or part thereof which is in unsafe condition or which by reason of its nature is injurious to sewers, electric power lines, gas lines, waterlines or other public improvements, or is infested with any pest. This section shall not prohibit the planting of street trees by owners of adjacent property provided that the selection and location of the tree is made in accordance with § 38.080.

38.100 Trees on private property.

A. The city shall have the right to inspect and cause the removal of any tree, or any part thereof, on private property within the city if the tree or any part thereof:

1. Is dead, diseased, or has obvious visible defects; and
2. Either:
 - a. Constitutes a hazard to life or property, or
 - b. Harbors pests which constitute a threat to other trees within the city.

B. The city shall notify the owner(s) of such trees, in writing, to remove or trim the trees within such reasonable time as shall be determined by the Urban Forester. All tree work shall be arranged and completed at the owner's expense. In the event of failure of owners to comply with the provisions, the city shall have the authority to remove the trees and charge the cost of removal to the owners or to assess the costs thereof against the property.

C. Any person claiming an interest in any tree ordered to be removed under subsection B. of this section may appeal the order to the Urban Forestry Board within 7 days of the date of the order.

D. Obvious visible defects include, but are not limited to, dead limbs greater than 6 inches in diameter, an unseasonable lack of leaves, visible decay, lightning damage, and perilously leaning trunks.

E. This provision shall not be construed to relieve from liability any party owning land on which a hazardous tree or any part thereof is located for damages to persons or property caused by the hazardous tree. This provision shall not be construed as imposing upon the city any liability or responsibility resulting from damage caused by any tree located on private property, nor shall the city or its employees be held as assuming any liability or responsibility by reason of an authorized inspection under this section.

38.110 Requirement for removal of mountain pine beetle infested trees.

Trees infested with mountain pine beetle are declared a public nuisance. If a property contains trees infested with mountain pine beetle the city shall notify the owner in writing. Infested trees must be removed by the property owner within 60 days after notification. Upon written request, the Director of Parks or his or her designee may provide an extension not to exceed an additional 30 days. Infested trees identified between June 1 and September 1 of any year shall be removed

as soon as possible. The city's urban forester shall have discretion to impose a time frame for removal that is less than 60 days for infested trees that are discovered between these dates. If the tree(s) are not removed within the timeframe allowed, the trees may be abated or otherwise removed pursuant to state law and/or Chapter 90 of the Summerset Ordinance #1 GMC. The city may defray the cost of abating or removing this nuisance by taxing the cost thereof by special assessment against the real property on which the nuisance occurred. Any person violating this provision may also be subject to the general penalty provision as set forth in § 10.99 of the Summerset Ordinance #1 GMC.

38.120 Storage of wood.

No person shall store or permit the accumulation of any elm wood in the city. No person shall store any tree or part thereof declared to harbor or contain any pest infestation as defined in § 38.020, unless the wood is debarked prior to storage.

38.130 Trimming of trees overhanging streets, sidewalks, and alleys.

All trees overhanging any city sidewalk shall be kept trimmed so that the space between the sidewalk and the lowest branch overhanging the sidewalk is not less than 8 feet. All trees overhanging any street or alley in the city shall be kept trimmed so that the space between the street or alley and the lowest branch overhanging said street or alley is not less than 12 feet.

38.140 Interference with Parks Department.

It is unlawful for any person to prevent, delay or interfere with the Parks Department or any of its agents engaged in the planting, cultivating, mulching, pruning, spraying, inspecting or removing of any street trees, park trees or trees on private grounds, as authorized in this chapter.

38.150 Appeals.

Any decision of the Urban Forestry Board may be appealed to the City Commission within 7 days of the decision.

38.160 Violation—Penalty.

Any person violating a provision of this chapter shall be subject to the general penalty provision of § 10.99 of the Summerset Ordinance #1 GMC.

38.170 Effective Date

This ordinance shall take effect immediately from and after its passage and publication.

Dated: _____, 2015.

ATTEST:

CITY OF SUMMERSET

Catherine Haveman, Finance Officer
(Seal)

George Mandas, Mayor

Vote: Mandas:
Kitzmilller:
Lutz:
Pogany:

First Reading:
Second Reading:
Publication:

Published once at approximate cost of \$_____.