

TITLE FIFTEEN

TREES AND NOXIOUS VEGETATION

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Municipal Tree Regulations
Weeds

CHAPTER 15-1

MUNICIPAL TREE REGULATIONS

15-1-1

TITLE

This chapter shall be known and may be cited as the Municipal Tree Regulations of the City of Hosmer, Edmunds County, South Dakota.

15-1-2

DEFINITIONS

"Street Trees" are herein defined as the trees and all other wood vegetation on land lying between the right of way lines of all streets, avenues, alleys or other public right of way within the City.

"Park Trees" are herein defined as trees and all other wood vegetation in public parks, playgrounds, cemeteries and all other areas owned by the City, or to which the public has free access as a park, playground or cemetery.

Authority:
SDCL § 50-10-1.

15-1-3

GENERAL AUTHORITY OF CITY

The City of Hosmer is to provide for the necessary attention or action insofar as trees, brush, wood, shrubbery or debris infected with dutch elm disease, as well as any other infestations or infectious diseases are concerned.

Authority:
SDCL § 9-45-1.

15-1-4

AUTHORITY ADMINISTRATION; PLANTING, MAINTENANCE AND REMOVAL OF TREES, PUBLIC SAFETY

The Mayor and City Council of the City of Hosmer, through its Finance Officer, will hereafter have authority to administer the provisions of this chapter, unless otherwise specifically provided; that they will have the authority to study the problems and determine the needs of the City of Hosmer, also referred to hereinafter as the Municipality. They shall have the authority to determine the type and kind of trees to be placed upon all municipal public streets

or parts of public streets or in parks. They may assist in the dissemination of news and information regarding the selection, planting and maintenance of trees, shrubs and bushes within the corporate limits or within the area over which the municipal officials have jurisdiction, whether the same be on private or public property. The City Council and Finance Officer shall have the authority and jurisdiction of regulating the planting, maintenance and removal of trees on streets and other publicly owned property to insure safety or preserve the aesthetics of such public sites.

AUTHORITY:
SDCL § 9-45-1.

15-1-5

PRUNING TREES, THE MINIMUM CLEARANCE

It shall be the duty of any person or persons owning or occupying real property bordering on any street or alley upon which property there may be trees, to prune such trees in such manner that they will not obstruct or shade the street lights, obstruct the passage of pedestrians on sidewalks, obstruct vision of traffic signs, or obstruct view of any street or alley intersection, except where such service are provided for by utility firms.

The minimum clearance for any overhanging portion thereof over a sidewalk shall be eight feet whenever practicable, and shall be fourteen (14) feet over all streets except truck thoroughfares when the clearance shall be from fourteen (14) to sixteen (16) feet, unless otherwise designated by the City Council.

Authority:
SDCL §§ 9-45-1.

15-1-6

HARMFUL ACTIVITIES TO TREES PROHIBITED

Unless otherwise specifically authorized by the City Council or Finance Officer, no person shall intentionally damage, cut or carve any tree, attach any rope, wire, nails, advertising posters or other contrivances to any tree; allow any gaseous liquid or solid substance which is harmful to such trees to come in contact with them; or to set fire or permit any fire to burn when such fire or the heat therefrom will injure any portion of any tree.

Authority:
SDCL §§ 22-34-1, 9-45-1.

15-1-7

SAFETY HAZARDS TO THE PUBLIC, TREE DISEASES

No tree shall be allowed to harbor any safety hazard to the general public, whether that tree be public or private, or to harbor any insect, disease or other pest that would be injurious or fatal to any tree in the City. Such trees include those injurious to sewer, water, electrical, telephone or gas lines, and those interfering with traffic and traffic control devices and signs, those obstructing light from any street light and those that are dead or have broken or dead limbs that are unsafe.

Any elm wood or elm tree, living or dead, within the City found to have Dutch elm disease fungus, Ceratocystic Ulmi, or which could harbor the European elm bark beetle, Scolytus Multistratus, and/or the Native elm bark beetle, Hylurgopinus Rufipes, shall be declared a nuisance.

Authority:
SDCL § 9-45-1.

15-1-8**NUISANCES; NOTICE TO OWNERS; NOTICE CONTENT; PREMISE INSPECTIONS**

Any hazard as described in Section 7 shall be declared a nuisance by the City Council and within fifteen (15) days of written notice of said nuisance, the same shall be corrected by the responsible owner or person in possession of said tree.

The Finance Officer of the City Council shall inspect or cause to be inspected all premises and places within the town at least twice each year to determine whether any public nuisance as defined in this section exists thereon, and shall also inspect or cause to be inspected any elm tree reported or suspected to be infected with the Dutch elm disease or any elm bark bearing material reported or suspected to be infested with either species of the above named elm bark beetles. The Finance Officer shall notify owners as to location of the Dutch elm infested trees. The Finance Officer will make inspection after fifteen (15) days to make certain of compliance with this section.

Authority:
SDCL §§ 9-29-31, 34-16-19 and 34-16-20.

15-1-9**REMOVAL COSTS; COLLECTION OF**

The entire cost of any abatement of a public nuisance as defined in this section on trees on any public street, alley, park or other public place, except boulevards, shall be borne by the City. The cost of removing elm trees infected with the Dutch elm disease fungus on private property and on boulevards shall be borne by the property owner.

In the event owner, occupant or person fails to comply with the resolution and order of the City Council of the City of Hosmer to remove said nuisance, the City of Hosmer shall cause said nuisance to be removed and shall either submit the costs incident to said service and removal to the Finance Officer for certification to the Edmunds County Auditor for collection with and in the same manner as general property taxes or shall recover said costs in an action in Magistrate Court.

Authority:
SDCL Ch. 21-10.

15-1-10**ELM WOOD**

On or after November 1, 2002, no elm wood of any kind may be stored in a wood pile or in any other place within the City, and no elm wood may be used as firewood. No elm wood may be hauled into or through the City, except on its way from the City to a designated disposal area, where it must be immediately shredded, buried or burned.

Authority:
SDCL § 9-21-31.

15-1-11**COST ASSESSMENTS; RECORDS**

The Finance Officer shall keep a strict account of all costs of tree removals and other nuisances abated under this chapter in the event assessments are necessary.

Authority:
SDCL Ch. 21-10 generally.

15-1-12**PURPOSE OF**

The contents of this chapter shall be construed to mean any attention or action necessary resulting from the removal of any trees, brush, wood or debris or any part thereof as deemed necessary by the City Council of the City of Hosmer or its designated representatives whomsoever they may be.

Authority:
SDCL §§ 9-29-31, 9-45-1.

15-1-13**INTERFERENCE BY INDIVIDUALS**

It shall be unlawful for any person to hinder, prevent, delay or interfere with the City Council or any member thereof or the Finance Officer or any other representative of said City Council, whomsoever that might be, while engaged in carrying out the execution or enforcement of this chapter, provided, however, that nothing herein shall be construed as an attempt to prohibit the pursuit of any remedy, legal or equitable, in any court of competent jurisdiction for the protection of property rights by the owner of any property within the Municipality.

Authority:
SDCL § 9-29-31.

15-1-14**BUILDING BESIDE TREES**

No person shall deposit, place, store or maintain upon any public place of the Municipality any stone, brick, sand, concrete or other materials which may impede the free passage of water, air, and fertilizer to the roots of any tree growing therein, except by written permit of the City Council or Finance Officer.

Authority:
SDCL § 9-45-1.

CHAPTER 15-2 **NOXIOUS WEEDS**

15-2-1

WEEDS; DUTY OF OWNER

No owner of any lot, place or area within the town or the agent of such owner or the occupant of such lot, place or area, permit on such lot, place or area or upon any sidewalk abutting the same any weeds, grass or deleterious or unhealthful growths or other noxious matter that may be growing, lying or located thereon, and the growing of such weeds or other noxious or unhealthful vegetation is hereby declared to be a nuisance.

Authority:
SDCL §§ 9-32-12, 9-29-13, 9-30-5.

15-2-2

NOTICE TO DESTROY

The chief of police or Finance Officer is hereby authorized and empowered to notify in writing the owner of any such lot, place or area within the town or the agent of such owner or the occupant of such premises, to cut, destroy or remove any such weeds, grass or deleterious or unhealthful growths or other noxious matter found growing, lying or located on such property or upon the sidewalk abutting same. Such notice shall be given by posting the notice on or about a building, structure, or object commonly used or observed, or assumed to be commonly used or observed by the owner thereof. If the property consists of a vacant lot or area with no building, structure, or object located thereon, notice sent by first class mail to the owner's last known address as shown by the records at the County Treasurer's office, shall be sufficient.

Authority:
SDCL §§ 9-32-12, 9-30-5.

15-2-3

ACTION UPON NON-COMPLIANCE

Upon failure, neglect or refusal of any owner, agent or occupant so notified to comply with said notice within five (5) days after the posting or mailing thereof, the Chief of Police or Finance Officer is hereby authorized and empowered to provide for the cutting, destroying, or removal of such weeds, grass or deleterious unhealthful growths or other noxious matter and to defray the cost of the destruction thereof by special assessment against the property.

Authority:
SDCL §§ 9-32-12, 9-30-5.

15-2-4

WEED REMOVAL COSTS

If the owner or occupier of the land fails to cut the weeds and grass, as provided for in the preceding section, the City shall cut the weeds and grass. The cost to the landowner shall be fifty dollars (\$50.00) for the first hour of cutting and twenty-five dollars (\$25.00) for each additional hour of cutting, with a fifty dollar (\$50.00) minimum charge.

Authority:
SDCL §§ 9-32-12, 9-30-5.

15-2-5**COST ASSESSED**

The Chief of Police or Finance Officer shall cause an account to be kept against each lot for the destruction of noxious weeds upon said lot as herein provided and the same certified to the City Finance Officer upon the completion of the work in destroying such weeds and abating said nuisance and the City Finance Officer shall thereupon certify said account showing the amount, the description of the property and the owner thereof to the County Auditor who shall thereupon add such assessment to the general assessment together with the regular assessment to be collected as municipal taxes for general purposes. Said assessment shall be subject to review and equalization the same as assessments or taxes for general purposes.

Authority:
SDCL §§ 9-32-12, 9-30-5.

15-2-6**RECOVERY BY CITY**

In lieu of spreading the cost of the destruction of such noxious weeds and other deleterious matter against said property in the discretion of the City Council, said amount may be recovered in a civil action against the owner or occupant of such property.

Authority:
SDCL §§ 9-32-12, 9-30-5.

15-2-7**NOXIOUS PLANT AND WEEDS DEFINED**

The following plants and weeds shall be deemed to be noxious, dangerous and unhealthy vegetation to wit: All species of rag weed, all species of cockle burrs, all species of tumbleweeds, all species of thistles, dandelions, plantains, sweet clover, wild morning glory, black mustard and pig weed.

Authority:
SDCL §§ 9-32-12, 9-30-5.