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ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF SIOUX FALLS, SD, AMENDING CHAPTERS 11 AND 42 OF THE REVISED ORDINANCES OF THE CITY BY CHANGING THE ENFORCEMENT AGENCY FOR NUISANCE VEGETATION FROM PARKS AND RECREATION TO PLANNING AND BUILDING SERVICES.

BE IT ORDAINED BY THE CITY OF SIOUX FALLS, SD:

*Section 1. That Section 11-76 of the Revised Ordinances of Sioux Falls, SD, is hereby amended by adding subsections to read as follows:*

**113.1 Special assessment.** The code official shall cause an account to be kept, against each lot or parcel, of the cost to the city for the correction and control of any vegetation nuisance during the growing season of each year, for the cost of demolition and removal where the owner fails to comply with a demolition order, the abatement of an unsafe condition which the owner fails to comply, and the costs of emergency repairs. The costs shall be certified to the city finance director on or before August 1 of each year.

**113.2 Estimate of assessment.** The finance director shall prepare an estimate of the assessment against each lot or parcel, for the correction and control of any vegetation nuisance for the preceding growing season, demolition, abatement of unsafe conditions and emergency repairs, including therein the expense of levying such special assessment against each lot or parcel. Such estimates shall be submitted to the city council.

**113.3 Assessment hearing.** Upon the filing of the assessment roll with the finance director, the city council shall fix a time and place of hearing upon the assessment, not less than 20 days from the date of filing thereof. The finance director shall thereupon publish a notice of the time and place of hearing in the official newspaper, one week prior to the date set for the hearing. The notice shall in general terms describe the improvement for which the special assessment is levied, the date of filing of the assessment roll, the time and place of the hearing thereon, and that the roll will be open for public inspection at the office of the city finance director, and shall refer to the special assessment roll for further particulars.

In addition to the publication of the notice of hearing, the finance director shall mail a copy of the notice, by first-class mail, addressed to the owner of any property to be assessed for the improvements, at the address as shown by the records of the finance director. The mailings shall be at least one week prior to the date set for the hearing.

The owner of any lot or parcel of land against which a special assessment is to be so levied, or its occupant or person in charge, may appear before the council at such meeting to protest such assessment and to give reasons why such assessment should not be levied.

Upon the day so named, the council shall meet, and if they find the estimate correct and the actions of the code official resulting in the estimate to be in accordance with the provisions of this article, they shall approve the assessment by resolution and file such assessment roll with the finance director; or, if not correct, they shall correct or modify the estimate, and approve the assessment as corrected or modified, and file such assessment roll with the finance director; or, if not in accordance with the provisions of this article, shall disapprove such assessment.

From the date of the approval and filing of such assessment roll with the finance director, the assessment shall be and become a special lien against the various pieces of property described in the assessment roll and shall be collected in a like manner as special assessments for public improvements.

*Section 2. That Section 11-76 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:*

**302.4 Weeds.** All premises and exterior property shall be maintained free from all actively growing plants declared to be statewide noxious weeds by the state weed and pest control commission, all actively growing weeds declared by the county to be locally noxious, and all other nonwoody plants growing in the city to a greater height than 8 inches, are noxious, dangerous and unhealthful, and are hereby declared to be a nuisance.

This does not apply to vegetation which is being grown as a crop, livestock pasture, wildflower display gardens, right-of-way of rural section roads, if the vegetation has been designated by the director of the Sioux Falls parks and recreation department as a natural area or native planting, or unimproved developments except for a 25-foot mowed buffer adjacent to the right-of-way, or adjacent to a developed residential lot.

*Section 3. That Section 11-76 of the Revised Ordinances of Sioux Falls, SD, is hereby amended by adding subsection 302.4.1 to read as follows:*

**302.4.1 Duty to correct.** The occupant, person in charge, or owner of any lot or parcel of land in the city shall keep such lot, to include any abutting city right-of-way except as provided herein, free of such nuisance vegetation by cutting, spraying, or removal, as may be appropriate.

The code official has the authority to require compliance with this article on all property. The code official shall cause public notice to be given requiring all lots or parcels of land in the city to be kept free from all vegetation declared by Section 302.4 to be a nuisance.

Upon failure of the owner or agent having charge of a property to cut and destroy weeds after service of a notice, the owner or agent shall be subject to administrative citations in accordance with Article XI of Chapter 2 of the Revised Ordinance of Sioux Falls.

The notice shall provide that all vegetation determined to be a nuisance and left uncorrected shall be cut, sprayed, or removed by the city, and the cost thereof shall be billed to the property owner. If the bill is left unpaid, the cost will be assessed against that property, to include the cost of levying such special assessment.

The notice shall be by general public notice, published in the official newspaper once a week for two consecutive weeks, and shall be deemed sufficient to allow those actions authorized by this Chapter, including Section 302.4.2 and Section 113.

*Section 4. That Section 11-76 of the Revised Ordinances of Sioux Falls, SD, is hereby amended by adding 302.4.2 to read as follows:*

**302.4.2 Correction by city.** If the occupant, person in charge, or owner of any lot or parcel of land fails to correct any such vegetation nuisance as required within two days of the last publication of the general notice as set forth in Section 302.4.1, the code official shall cause such vegetation to be cut, sprayed, or removed, and for such purpose, the person allowed to do the work shall be allowed to enter upon any lot or parcel of land.

No person shall intentionally interfere or attempt to interfere with the cutting, spraying, or removal of such vegetation.

*Section 5. That the title of Chapter 42 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:*

## **Chapter 42 FORESTRY**

*Section 6. That Section 42-1 of Article I, Chapter 42 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:*

### **Sec. 42-1. Definitions.**

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

*Board* means parks and recreation board established by city ordinance.

*Director* means the director of parks and recreation.

*Parking strip* means the area along the public streets and avenues between the curbline and the sidewalk line.

*Street* means any type of motor vehicle transportation system including but not limited to: street, avenue, road, drive, circle, court, lane, trail, place, or alley.

*Street tree* means a tree in any public parking strip.

*Topping* is the indiscriminate cutting of tree branches to stubs or lateral branches that are not large enough to assume the terminal role.

*Section 7. That the title of Article II of Chapter 42 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:*

## **Article II. Trees on Private Property**

*Section 8. That Section 42-17 of Article II, Chapter 42 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:*

### **Sec. 42-17. Nuisance tree declared.**

Dead, diseased, or insect-infested trees or other woody plants identified by the director shall be declared dangerous and a nuisance.

*Section 9. That Section 42-35 of Article III, Chapter 42 of the Revised Ordinances of Sioux Falls, SD, is hereby renumbered and amended to read as follows:*

### **Sec. 42-18. Control on private property.**

The director shall have the authority to regulate and control nuisance trees and other woody plants upon private property only when such action is demonstrably necessary for public safety or to prevent the spread of disease or insects to public trees and places.

*Section 10. That Section 42-18 of Article II, Chapter 42 of the Revised Ordinances of Sioux Falls, SD, is hereby renumbered and amended to read as follows:*

### **Sec. 42-19. Duty to correct.**

The occupant, person in charge, or owner of any lot or parcel of land in the city shall keep such property free of such nuisance trees and other woody plants by treating or removing, as may be appropriate and approved by the director.

*Section 11. That Section 42-19 of Article II, Chapter 42 of the Revised Ordinances of Sioux Falls, SD, is hereby repealed.*

*Section 12. That Section 42-20 of Article II, Chapter 42 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:*

### **Sec. 42-20. Reserved.**

*Section 13. That Section 42-21 of Article II, Chapter 42 of the Revised Ordinances of Sioux Falls, SD, is hereby repealed.*

*Section 14. That Section 42-22 of Article II, Chapter 42 of the Revised Ordinances of Sioux Falls, SD, is hereby renumbered and amended to read as follows:*

**Sec. 42-21. Nuisance tree removal fund.**

The city council may provide in the annual appropriation ordinance for a fund, to be expended under the direction of the director for the correction and control of nuisances trees or other woody plants, as provided for in this article. All monies collected for expense of correction and control of nuisance trees pursuant to the provisions of this article shall be credited to such fund.

*Section 15. That Sections 42-23–42-32 of Article II, Chapter 42 of the Revised Ordinances of Sioux Falls, SD, are hereby renumbered to read as follows:*

**Secs. 42-22–42-32. Reserved.**

*Section 16. That the title of Article III of Chapter 42 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:*

**Article III. Trees in Public Places**

*Section 17. That Section 42-33 of Article III, Chapter 42 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:*

**Sec. 42-33. General supervision.**

The director shall have exclusive jurisdiction and supervision over all trees and other woody plants growing in public places.

*Section 18. That Section 42-34 of Article III, Chapter 42 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:*

**Sec. 42-34. Director's authority generally.**

The director shall have authority to regulate and control the planting, trimming, spraying, preservation, and removal of trees and other woody plants in public places to ensure safety or preserve the symmetry and beauty of such public places.

*Section 19. That Section 42-36 of Article III, Chapter 42 of the Revised Ordinances of Sioux Falls, SD, is hereby renumbered to read as follows:*

**Sec. 42-35. Supervision of work.**

The director shall regulate, control, and supervise all work done under a permit issued in accordance with the terms of this article.

*Section 20. That Section 42-37 of Article III, Chapter 42 of the Revised Ordinances of Sioux Falls, SD, is hereby renumbered to read as follows:*

**Sec. 42-36. Rules and regulations; permit fees.**

The director shall adopt and enforce rules and regulations to carry out the purposes of this article. Such rules and regulations shall set forth the amount to be charged for the various permits required under this article.

*Section 21. That Section 42-38 of Article III, Chapter 42 of the Revised Ordinances of Sioux Falls, SD, is hereby renumbered to read as follows:*

**Sec. 42-37. Disposition of fees.**

All fees collected under the provisions of this article shall be turned over to the finance department.

*Section 22. That Section 42-39 of Article III, Chapter 42 of the Revised Ordinances of Sioux Falls, SD, is hereby renumbered and amended to read as follows:*

**Sec. 42-38. Permit to remove—Required.**

- (a) No person shall remove trees in public places without first procuring a permit from the director.
- (b) Any permitted tree removal requires treatment of the residual tree stump by grinding the stump and major flare roots to a depth of 6 to 8 inches below grade.

*Section 23. That Section 42-40 of Article III, Chapter 42 of the Revised Ordinances of Sioux Falls, SD, is hereby renumbered to read as follows:*

**Sec. 42-39. Same—Application data.**

The permit to remove a tree in public places in the city shall state the number and species of trees to be removed; and such other information as the director shall find reasonably necessary to a fair determination of whether a permit should be issued under this article.

*Section 24. That Section 42-47 of Article III, Chapter 42 of the Revised Ordinances of Sioux Falls, SD, is hereby renumbered to read as follows:*

**Sec. 42-40. Street trees permitted.**

- (a) The director shall maintain a list of approved street trees.
- (b) The director may approve species other than from the approved list when the planting of such species is of equal or greater benefit to the city.

*Section 25. That Section 42-48 of Article III, Chapter 42 of the Revised Ordinances of Sioux Falls, SD, is hereby renumbered and amended to read as follows:*

**Sec. 42-41. Planting in public right-of-ways.**

The director shall establish rules and regulations for the planting of trees in the public parking strip, including but not limited to:

- (1) Only approved trees may be planted in the parking strip.
- (2) No tree shall be planted where the clear space between the curb and the sidewalk is less than 5 feet.
- (3) No tree shall be planted closer than 3 feet from the curb.
- (4) Trees must be 1 inch in diameter or larger measured 6 inches above the ground.
- (5) Trees shall not be planted under power lines unless approved by the director.
- (6) Trees shall be planted at least 40 feet apart except where otherwise permitted by the director.
- (7) Trees shall be placed at least 10 feet from a fire hydrant.
- (8) Trees shall be placed at least 10 feet from a driveway.
- (9) Trees shall be placed at least 15 feet from a streetlight.
- (10) Trees on a corner lot shall be planted at least 30 feet back from the corner.
- (11) Trees shall be placed at least 20 feet back from stop/yield sign or traffic signal.

The established rules and regulations shall be available on the city's website.

*Section 26. That Section 42-57 of Article III, Chapter 42 of the Revised Ordinances of Sioux Falls, SD, is hereby renumbered and amended to read as follows:*

**Sec. 42-42. Abuse or mutilation of trees.**

No person shall:

- (1) Practice topping of any street tree or other tree on public property.
- (2) Use climbing spurs to trim, spray, repair, inspect, or preserve street trees.
- (3) Damage or destroy trees due to negligence or noncompliance.
  - a. If found at fault, the person(s) responsible shall be required to pay for the necessary cost of repairs, removals, and replacements.

*Section 27. That Section 42-49 of Article III, Chapter 42 of the Revised Ordinances of Sioux Falls, SD, is hereby renumbered and amended to read as follows:*

**Sec. 42-43. Injury to trees by moving; trimming.**

No person, whether licensed or not, shall move any building or other structure in such a manner as to interfere with or injure any tree in any public area, except as provided in this section. If in moving any building or structure it is necessary to trim or move any tree, all such work shall be done under the supervision and control of the director and at the expense of the person moving such building or structure. Should injury or death result to any tree because of such trimming or moving, the person moving such building or structure shall, upon direction of the director replace the tree at the expense of the person moving such building or structure.

An arborist licensed by the city is required for any tree trimming that may be necessary to move a building or structure in any public area. In addition, any tree trimming above the established height of branches above a street as established in section 42-40 shall require written permission from the abutting property owner of said tree(s). Such permission will be attached to the building moving application. If permission from the abutting property owner is denied, the moving route will not be approved by the city.

*Section 28. That Section 42-50 of Article III, Chapter 42 of the Revised Ordinances of Sioux Falls, SD, is hereby renumbered and amended to read as follows:*

**Sec. 42-44. Duties of private owners.**

Any person growing a tree within the parking strip or other public place or responsible for trees growing on property abutting on public places supporting trees or woody plants shall:

- (1) Trim trees or woody plants so as not to cause a hazard to public places or interfere with the proper lighting of public streets by the streetlights or interfere with the visibility of any traffic sign. All trees or woody plants shall be trimmed to allow free passage of pedestrians and vehicular traffic and in such manner so as to allow 10 feet clearance over sidewalks and 12 feet clearance over all streets; provided, however, that trees along arterial or collector streets shall be trimmed to allow a clearance of 16 feet.
- (2) Treat or remove any trees or woody plants that are so diseased or insect ridden as to constitute a hazard to public safety or other trees or plants in public places.

*Section 29. That Section 42-56 of Article III, Chapter 42 of the Revised Ordinances of Sioux Falls, SD, is hereby renumbered to read as follows:*

**Sec. 42-45. Assessment for maintenance.**

The city council may, at the time of making its annual tax levy for other purposes, levy for the purpose of maintaining, repairing, planting, and otherwise improving and caring for boulevards a special front foot assessment.



*Section 30. That Sections 42-41–42-46 of the Revised Ordinances of Sioux Falls, SD, are hereby renumbered to read as follows:*

**Secs. 42-46–42-50. Reserved.**

*Section 31. That Section 42-51 of Article III, Chapter 42 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:*

**Sec. 42-51. Order to remove—Procedure.**

When the director determines that the removal trees or other woody plants upon private property is necessary to preserve public health and safety, protect the health of the urban forest, the director may serve a written order to correct the dangerous condition upon the owner, operator, occupant or other person responsible for its existence.

*Section 32. That Section 42-52 of Article III, Chapter 42 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:*

**Sec. 42-52. Same—Time for compliance.**

The order to remove trees or other woody plants shall set forth a time limit for compliance, dependent upon the hazard and danger created by the violation. In cases of extreme danger to persons or public property, the director may require compliance immediately upon service of the order.

*Section 33. That Section 42-53 of Article III, Chapter 42 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:*

**Sec. 42-53. Same—Appeal or order.**

A person to whom an order to remove trees or other woody plants is directed may, within three days of the service of such order, appeal to the board who shall set a day for hearing thereon and give notice thereof to the person appealing. Upon such hearing and review the board may affirm, modify or revoke the order of the director. 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 within five days after an appeal shall have been determined.

*Section 34. That Section 42-54 of Article III, Chapter 42 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:*

**Sec. 42-54. Same—Failure to comply.**

When a person to whom an order to remove trees or other woody plants is directed fails to comply within the specified time, the director shall remedy the condition or contract with others for such purpose and charge the cost thereof to the person to whom the order is directed. The

person remedying a condition under a contract made under this section may enter the premises for that purpose.

*Section 35. That Section 42-55 of Article III, Chapter 42 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:*

**Sec. 42-55. Same—Special assessment.**

If the cost of remedying a condition for which a written notice of responsibility from the director to remove or trim trees or other woody plants is not paid within 30 days after receipt of a statement, such cost may be levied against the abutting property benefited as a special assessment. The levying of such special assessment shall not affect the liability of the person to whom the written notice of responsibility is directed to fine and imprisonment for the violation of this article.

*Section 36. That Sections 42-58–42-64 of Article III, Chapter 42 of the Revised Ordinances of Sioux Falls, SD, is hereby renumbered to read as follows:*

**Secs. 42-56–42-64. Reserved.**

Date adopted: \_\_\_\_\_.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk