

ORDINANCE NO. 1913

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF UPLAND, CALIFORNIA, ADDING CHAPTER 12.26 OF TITLE 12 OF THE UPLAND MUNICIPAL CODE ADDING A TREE CARE ORDINANCE.

THE CITY COUNCIL OF THE CITY OF UPLAND DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Findings.

A. The City Council desires to establish policy to safeguard the City's urban forest and the heritage trees within the City's right of way; and

B. The Street Tree Advisory Committee has developed the herein ordinance for City Council consideration; and

C. The ordinance includes guidelines for tree care maintenance, removals, replacements, and liability assessment that will assist in safeguarding the urban forest; and

D. The ordinance also establishes the scope of duties of the street tree advisory committee, citizen appeals, and other items in compliance with Tree City USA standards.

Section 2. The City Council finds that above Findings are true and correct.

Section 3. Chapter 12.26 of Title 12 of the Upland Municipal Code is hereby added as follows:

12.26 Tree Care Ordinance

12.26.010 - Purpose and Intent

The purpose and intent of this Ordinance is to safeguard the City's urban forest by providing performance standards and regulations for the operations, planting, proper maintenance, removals, preservation, and protection of heritage trees in the City's right of way. The collection of those trees are referred to as the City's Urban Forest.

12.26.020 - Definitions

- A. "ANSI" means American National Standards Institute.
- B. "City manager" means the city manager and such representative as he or she may designate in writing.
- C. "Hazard" or "hazardous" means a tree, or part of a tree, that has a high potential for failure and falling on a nearby object because of dead or dying branches, roots or trunk. For the purpose of this chapter, a hazard may also refer to an impairment to mobility or access of a public sidewalk or path.
- D. "Heritage Tree" means a tree of historical significance or located in a historic district. A heritage tree is typically a large, individual tree with unique value, such as age, rarity, and size, as well as aesthetic, botanical, ecological, and historical value.
- E. "ISA" means International Society of Arboriculture.
- F. "Maintain" or "maintenance" means pruning, trimming, spraying, fertilizing, watering, treating for disease or injury or any other similar act which promotes growth, health, beauty and life of trees.
- G. "Parkway" means an area adjacent to the edge of the roadway.
- H. "Property owner" means the person listed as the owner in fee simple of a lot or parcel with the office of San Bernardino County recorder or lawfully exercising the power of the property owner with respect to said lot or parcel.

- I. "Pruning" means the removal of dead, dying, diseased, live interfering, and weak branches according to the most recent standards of the International Society of Arboriculture.
- J. "Public tree" means a tree located in a place or area within the public right of way or under control of the city including but without limitation streets, parkways, open space, parkland and including city owned property under the operational control of another entity by virtue of a lease, license, operating or other agreement.
- K. "Public Works Director" shall mean the staff person responsible for public infrastructure planning, maintenance, and operations.
- L. "Street" means any public right of way regardless of whether it is described as a street, avenue, road, boulevard, drive, lane, court, place, alley, or by any other such designation.
- M. "Street tree" means any public tree whose trunk is located primarily within the public right of way or on property under control of the city by easement, license, fee title or other permissive grant of use.
- N. "Street Tree Advisory Committee" means the committee of residents who advise city council on issues related to street tree care.
- O. "Tree" means a woody plant that has a single main trunk with clear apical dominance (i.e., one primary stem is significantly larger than the secondary stem/s).
- P. "Urban Forest" means a collection of public trees planted in public rights of way that is the responsibility of the City to maintain.

12.26.030: Street Tree Advisory Committee; Terms of Office

The Street Tree Advisory Committee serves as a link to the citizens of Upland and to the Upland City Council, advising the City Council on policy decisions relating to street and parkway tree care, maintenance, necessary improvements, areas for urban forest renewal and for the overall protection of the City's trees. The committee shall enhance appreciation of trees and encourage citizen participation in preserving the City's urban forest.

Appointment to the committee and term of office shall be set by resolution of the City Council.

12.26.035 Urban Forest Management Plan

The Street Tree Advisory Committee shall review the Urban Forest Management Plan and recommend updates to the document to reflect current industry best management practices approximately every five years. Revisions to the plan shall be adopted by resolution of the City Council. The Plan shall provide for a sustained forest canopy through properly phased tree plantings and removals. It shall include the specifications for tree care, the latest species list of desirable and undesirable tree species, ANSI planting and spacing requirements, and current ISA proper pruning practices.

12.26.040 Landmark and Heritage Trees

The City is committed to promoting the health, safety and welfare of present and future residents of the City by providing for the identification and preservation of landmark and historical trees existing within the City. Heritage and landmark trees are trees which by the nature of their physical, social or environmental significance or contribution to the identity of neighborhoods, merit community recognition and protection. Identification of these trees shall further be defined as having a species rarity, an association with historical events or persons, a scenic enhancement or a remarkable abnormality. The Committee shall have the location, and identification of all trees, including any trees which qualify as landmark or heritage trees. An official register of heritage and landmark trees shall be developed and maintained by the City. The register shall contain information specifying the location, size,

and species and shall identify findings in the street tree inventory for each resource designation.

12.26.050 - Tree care maintenance, responsibility for

The public works director, or the City Council's designee shall be responsible for the operational activities associated with the planting, removal, long term care, maintenance, selection of trees, protection and preservation of heritage trees and street trees within the City boundaries as provided in Section 12.24.110 of the herein Code.

12.26.060 - Tree Removal and Replacement Program

The public works director, with the approval of the City Manager pursuant to Section 12.24.100 of the herein Code, or the City Council's designee and the city's contract certified arborist have the authority to approve tree removal requests only if the tree is dead, diseased, hazardous, or an emergency condition exists which is a threat to public safety. The public works director or the city contractor for street tree care and maintenance shall inform the adjacent homeowners of all live and/or declining trees intended for removal a minimum of 3 days prior to their removal whenever possible. Those homeowners shall have reasonable time to appeal that decision to the Street Tree Advisory Committee.

A tree that is determined to be causing chronic and persistent damage to curbs, gutters, sidewalks or other hardscape and/or structures may be removed so improvements to the city's infrastructure can be made.

Reasons that will not be considered for tree removal: No healthy city tree shall be removed because of leaves, pine cones, pine needles, fruit, or seed debris or any other perceived annoyance. No healthy tree shall be removed because roots from the tree have grown into a compromised sewer lateral. Maintenance of sewers laterals are the responsibility of the property owner.

12.26.070 Work on City Street Trees

Routine tree care and maintenance is assigned to the public works director. All street trees shall be cared for and maintained by the City's designated street tree care and maintenance contractor. No permits will be issued to any person or entity for pruning or removal of public trees, and all pruning and removal of public trees shall be undertaken by City staff or the contractor hired by the City.

12.26.080 - Sidewalk and street repair

Should the repair of sidewalks, curbs, gutters or streets create a need to prune tree roots to the extent that the tree may be damaged or become unstable, the City Manager, or his or her designee, whose decision shall be final, shall give consideration to the following in lieu of action that may damage, destabilize or cause the removal of a tree:

- A. To not make such improvements;
- B. To displace the sidewalk laterally away from the tree trunk, either locally for each tree, or uniformly along length of the street if there is enough room in the existing right of way;
- C. To displace the curb and gutter laterally into the paved roadway of the street, either locally, or uniformly along a length of the street, which in some cases may necessitate the prohibiting of street parking of vehicles at all times, provided such displacement does not create traffic hazard, or conditions adverse to proper care, repair and maintenance;

- D. To repair to eliminate hazard;
- E. To widen the parkway;
- F. To relocate the sidewalk or curb;
- H. To raise the sidewalk.

12.26.090 - Interference with planting, maintenance, and removal unlawful

No person, firm or corporation shall interfere with the city manager or persons acting under his or her authority while engaged in planting, mulching, pruning, or removing any tree, shrub or plant in any street, or public place within the city.

12.26.100 - City Disclaims Liability

Nothing in this ordinance shall be deemed to impose any liability for damages or a duty of care and maintenance upon the City or upon any of its officers or employees. The person in possession of public property or the owner of any private property shall have a duty to keep the trees upon the property and under their control in a safe, healthy condition. Any person who feels a tree located on property possessed, owned or controlled by them is a danger to the safety of themselves, others or structural improvements on-site or off-site shall have an obligation to secure the area around the tree or support the tree, as appropriate to safeguard both persons and improvements from any harm including bodily injury or death, as well as damage to real or personal property, and shall immediately notify the City's Public Works Department of their perceived danger posed by the tree.

12.26.110 - Citizen Appeals

The Street Tree Advisory Committee shall hear and decide citizen appeals pertaining to tree matters. The decision on appeal shall be by majority vote of the voting members of the Committee hearing the appeal. The Street Tree Advisory Committee's decision may be appealed to the City Manager. The City Manager's decision shall be the final determination of the matter on appeal.

The city's risk management division will evaluate any and all claims involving trees, or anything that may involve a City tree, or items potentially related to involving trees, or any part thereof.

12.26 .120 - Penalty for Violation

Non-compliance with Section 12.26 shall be subject to Upland Municipal Code Chapter 1.10 Administrative Fines.

12.26.130 - Enforcement

Any peace officer, code enforcement officer, or any other person designated by the city manager or his/her designee may issue an administrative citation to a person to remedy any violation of this ordinance.

12.26.150 - Severability

Should any part or provision of this ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of the ordinance as a whole or any part thereof other than the part held to be invalid.

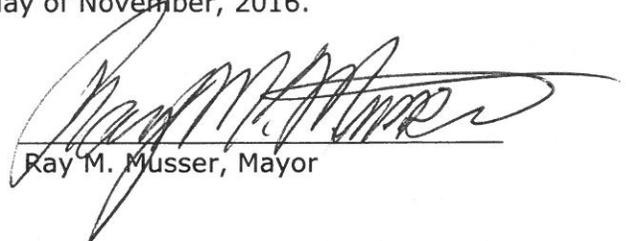
Section 5. Compliance with California Environmental Quality Act. The City Council finds that this Ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the State CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly. Further, if the activity is deemed a project this City Council finds that this Ordinance is exempt pursuant to Section 15061(b) (3) of the State CEQA Guidelines in that the Ordinance is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. It can be seen with certainty that there is no possibility that this Ordinance will have a significant effect on the environment and therefore the activity is not subject to CEQA.

Section 6. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The City Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof.

Section 7. Effective Date. This Ordinance shall become effective thirty (30) days from its adoption.

Section 8. Publication. The City Clerk shall certify to the adoption of this Ordinance and cause it, or a summary of it, to be published in a newspaper of general circulation printed and published within the City of Upland, pursuant to all legal requirements.

PASSED, APPROVED, AND ADOPTED this 14th day of November, 2016.



Ray M. Musser, Mayor

I, Jeannette Vagnozzi, City Clerk of the City of Upland, California, do hereby certify that the foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Upland held on the 24th day of October, 2016, and was adopted at a regular meeting of the City Council of the City of Upland on the 14th day of November, 2016, by the following roll call vote:

AYES: Mayor Musser, Councilmembers Bozar, Filippi, Stone, Timm
NOES: None
ABSENT: None
ABSTAINED: None

ATTEST:



Jeannette Vagnozzi, City Clerk