



DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Planning Division

m e m o r a n d u m

TO: Laurel Lunt Prussing, Mayor

FROM: Elizabeth H. Tyler, FAICP, Community Development Director
William R. Gray, Public Works Director

DATE: April 11, 2013

SUBJECT: Amended Legacy Tree Program - Ordinance No. 2013-04-027

At their April 8, 2013 meeting, the Committee of the Whole reviewed the draft Legacy Tree Ordinance and asked staff to revise certain sections. Staff is now presenting a revised ordinance for City Council review and approval. Amendments to the draft ordinance are underlined and listed below.

Definitions.

“Property Owner” shall mean the person or persons in whose name or names the property is held according to the last recorded deed of record in the Office of the Champaign County Recorder. “Property Owner” shall also mean the City of Urbana in connection with property it owns in fee simple absolute or which has been impliedly or expressly dedicated as a public right-of-way for current or future use for vehicular or pedestrian traffic purposes. “Property Owner” shall not include any unit of state, federal or local government which owns property within the City of Urbana corporate limits unless such unit of government has entered into an inter-governmental agreement with the City of Urbana whereby such unit of government has agreed to participate in the Legacy Tree program.

“Legacy Tree”. A tree or a group of trees designated by the Urbana Tree Commission pursuant to this ordinance as meeting one or more Legacy Tree Standards as defined in Section 11 of this Ordinance.

Section 4. Nomination. Nomination of each Tree to be considered for Legacy Tree designation may be made by any resident of the City of Urbana, including an individual member of the Urbana Tree Commission. Any Tree located on a Property Owner’s property may be nominated. The nominator shall submit a completed Nomination Form to the City Arborist. In the case of any Property Owner who is receiving or who has applied to receive financial or other assistance from the City in connection with the redevelopment of

the property or demolition of any structure located on such property shall be deemed, by reason of such receipt or application, to authorize the City Arborist to inspect the trees located on such property in order to determine whether any Tree located thereon qualifies for Legacy Tree status. The Property Owner of the property for which redevelopment or demolition assistance is being received or for which such assistance has been sought shall be encouraged but not required to cooperate with the City's efforts to preserve and protect those Trees located on the said property which would otherwise qualify for Legacy Tree status.

Section 5. Consent. On receiving a nomination, the City Arborist shall contact, in writing, the Property Owner on which the nominated Tree is located to inform the said Property Owner of the nomination and request the Property Owner's consent to evaluate and potentially designate the Property Owner's Tree as a Legacy Tree. If the nominated Tree is on property owned by the City of Urbana, the City Arborist shall inform the Director of Public Works of the nomination and request consent from the said Director to evaluate and potentially designate the Tree as a Legacy Tree. If the City Arborist identifies a tree on property for which the owner has received or applied for redevelopment or demolition financial or other assistance from the City, the City Arborist shall notify the said property owner that one or more trees on the said owner's property may qualify for designation as a Legacy Tree. Any consent to participate in the Legacy Tree Program by a Property Owner shall be in writing and signed by the said Property Owner. If there is more than one Property Owner on which the nominated Tree is located, the written and signed consent of a majority of all Property Owners shall be required. Participation in the program is voluntary.

Prior to the execution of any written request for consent, the City Arborist shall provide a written notice in the form of a brochure or other writing to the Property Owner on which the nominated Tree is located which explains:

- The benefits available to the Property Owner should such nominated Tree be designated as a Legacy Tree;
- The process for the voluntary "designation" and "de-listing" of a Legacy Tree (as hereinafter set forth);
- Any recommended best practices to ensure long-term health of designated Legacy Trees.
- Any detriments which might occur from following voluntary Tree care best practices.
- Any detriments which might reasonably be expected to arise in connection with a Tree being designated as a Legacy Tree.

In the event, after the provision of the aforesaid written notice, the Property Owner elects

not to sign the consent form, the Legacy Tree nomination process shall cease and no further action regarding that Tree shall be undertaken during the next twelve (12) consecutive months.

Section 11. Legacy Tree Assessment. In the event that the Property Owner on which the nominated Tree is located provides written consent to participate in the Legacy Tree Program, the City Arborist shall conduct a Legacy Tree Assessment which shall include:

- A Locale Assessment of the nominated Tree to ensure the tree is visible from the public-right-of-way and note distance from overhead utilities;
- A Condition Assessment of the nominated Tree to ensure the tree is in good or better condition and assess tree safety.

- A Legacy Standards Assessment to ascertain whether the nominated tree meets one or more of the Legacy Tree standards as specified below:

Size - The tree is in the top one percent of tree sizes of its inventoried species in Urbana.

Rarity - One of a kind type tree due to species type, characteristic and/or a species of less than one percent of all inventoried trees in Urbana.

Historic or Notable event - There is a documented association with a historic event of 75 or more years and/or a more recent event of notable worth.

Age - The tree is more than 100 years old or a minimum of 75 years old when adjacent to a historically designated home.

Special Ecological Value - The tree is shown to provide soil stabilization, important genetic resource, or provides critical habitat for important plant or animal species.

Location – The tree is considered to be of public value as a prominent visual focal point as viewed from public streets and ways.

Aesthetics – The tree has a distinct or unusually appealing visual characteristic.

Illinois or National Register of Big Trees – The tree is included in the Illinois or National register of Big Trees.

By undertaking a Legacy Tree Assessment as defined in Section 11 of this ordinance regarding whether a Tree qualifies for Legacy Tree status, the City will not assess whether or not the location or the condition of the Tree presents any hazard to human life, health or safety or injury to property. Property Owners shall remain responsible for the care and condition of Trees located on their property to assure safety insofar as conditions relating to each Tree.

Section 12. De-listing an unhealthy or declining Legacy Tree. If a Legacy Tree other than on City property needs to be removed due to poor health and decline beyond repair, the Property Owner may remove the Tree following issuance of a Legacy Tree delisting permit by the City Arborist. The Legacy Tree delisting permit shall be issued at no cost to the Property Owner

within seven (7) calendar days of receipt of the application for the Legacy Tree delisting permit. If Tree damage, decline and/or poor health are not obvious, the application shall include a certified arborist's recommendation for removal. Once a Legacy Tree delisting permit is issued, the Legacy Tree shall be removed from the City's database and other public records, as applicable. If the Legacy Tree poses imminent and serious danger to the Property Owner(s) or other persons' and/or their property, the Legacy Tree may be removed prior to issuance of a Legacy Tree delisting permit. Nothing in this Section shall be construed to exempt any person from the requirements of obtaining any additional permits as are required by law.

Section 13. De-listing a healthy designated Legacy Tree. A Property Owner pursuing the removal of a Legacy Tree from the Legacy Tree Program for reasons other than those stated in Section 12 of this Ordinance, may do so at their own discretion, following issuance of a Legacy Tree delisting permit by the City Arborist. The City Arborist shall not issue a Legacy Tree delisting permit until the passage of 45 calendar days following the submittal of a Legacy Tree delisting permit application for de-listing a healthy Legacy Tree. During the 45-day period, the City Arborist shall post a sign on the public right-of-way adjoining the property or the property on which the subject Legacy Tree is located. Said posted sign shall be visible from the public right-of-way and shall be posted for no less than 15 days and no more than 30 days prior to the next regular or special Urbana Tree Commission meeting at which any public comments on removal shall be heard. The required sign shall indicate that a Legacy Tree delisting permit has been requested for the subject Tree. In addition, the sign shall indicate the telephone number of the Public Works Department and the details about the next regular or special Urbana Tree Commission meeting at which any public comments on the removal shall be heard. Said sign should be removed no later than ten (10) calendar days after the completion of the said Urbana Tree Commission Meeting.

The Legacy Tree delisting permit application shall be included as an agenda item on the said Urbana Tree Commission meeting agenda. Any individual wishing to speak on the pending Legacy Tree delisting permit application shall have the opportunity to do so during the public input section of the Urbana Tree Commission meeting. All public comments received on the Legacy Tree delisting permit application will be advisory for the applicant and such comments shall be communicated in writing to the applicant by the City Arborist. Following the 45-day period, unless the applicant voluntarily withdraws the application for a Legacy Tree delisting permit in writing, the City Arborist shall issue said permit. Nothing in this section shall be construed to exempt any person from the requirements of obtaining any additional permits as are required by law regarding the Tree.

Section 14. The Urbana Tree Commission shall have no authority to deny a Legacy Tree delisting application.

Options

The City Council may:

- a) Approve the Legacy Tree Ordinance;
- b) Approve the Legacy Tree Ordinance with certain changes; or
- c) Deny the Legacy Tree Ordinance.

Recommendation

At their January 16, 2013 meeting, the Urbana Tree Commission, by a vote of five ayes to zero nays, recommended that the Urbana City Council **APPROVE** the Legacy Tree Ordinance. City staff likewise recommends approval.

Prepared by:

Aditi Kambuj, Planner I

Attachments: Exhibit A: Legacy Tree Ordinance No. 2013-04-027

Ordinance No. 2013-04-027

AN ORDINANCE ESTABLISHING A LEGACY TREE PROGRAM

WHEREAS, on August 16, 1976, pursuant to Ordinance No. 7677-24, the Urbana City Council established the position of the City Arborist, whose duties include overseeing a program for planting and maintenance of trees on City property, and carrying out public education programs concerning the planting, maintenance or removal of trees, shrubs and other plants on public and private properties; and

WHEREAS, on August 16, 1976, pursuant to Ordinance No. 7677-24, the Urbana City Council established the Urbana Tree Commission with the duties of advising the City Arborist and hearing any appeals of administrative decisions concerning City Arbor functions; and

WHEREAS, the City of Urbana in 1976 became a charter member of the Tree City USA program and has since been recognized annually by the National Arbor Day Foundation as maintaining its Tree City USA status;

WHEREAS, in 2009, the Urbana City Council adopted a goal to Encourage Sustainable Landscaping and Gardening by establishing a heritage tree program, recording and marking trees of significant height and growth, and studying providing notice when significant trees are removed; and

WHEREAS, the Urbana Tree Commission, with the City Arborist and City staff assistance, seeks to establish a voluntary Legacy Tree Program intended to recognize and provide information about our trees to the public, and encourage the preservation of significant trees; and

WHEREAS, at its January 16 2013 meeting, the Urbana Tree Commission supported the Legacy Tree Program by a vote of five ayes and zero nays.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF URBANA, ILLINOIS, as follows:

Section 1. Establishment. The Urbana City Council does hereby establish a Legacy Tree Program.

Section 2. Statement of purpose. The purpose of this Ordinance is to encourage the identification, awareness, commemoration, and preservation of significant trees within the City of Urbana.

Section 3. Definitions.

The following defined terms shall apply to this Ordinance:

"City Arborist" shall mean the City Arborist as established by Article II of Chapter 25 of the Urbana Municipal Code or his/her designee.

"Legacy Tree" shall mean a tree or a group of trees designated by the Urbana Tree Commission pursuant to this ordinance as meeting one or more Legacy Tree Standards as defined in Section 11 of this Ordinance.

"Property Owner" shall mean the person or persons in whose name or names the property is held according to the last recorded deed of record in the Office of the Champaign County Recorder. "Property Owner" shall also mean the City of Urbana in connection with property it owns in fee simple absolute or which has been impliedly or expressly dedicated as a public right-of-way for current or future use for vehicular or pedestrian traffic purposes. "Property Owner" shall not include any unit of state, federal or local government which owns property within the City of Urbana corporate limits unless such unit of government has entered into an inter-governmental agreement with the City of Urbana whereby such unit of government has agreed to participate in the Legacy Tree program.

"Tree" shall mean a self-supporting woody perennial plant, excluding shrubs, with developed branches, a natural habit of considerable height and a trunk diameter measured at four and one-half feet above grade of not less than 2".

"Urbana Tree Commission" shall mean the Urbana Tree Commission as established by Article II of Chapter 25 of the Urbana Municipal Code.

Section 4. Nomination. Nomination of each Tree to be considered for Legacy Tree designation may be made by any resident of the City of Urbana, including an individual member of the Urbana Tree Commission. Any Tree located on a Property Owner's property may be nominated. The nominator shall submit a completed Nomination Form to the City Arborist. In the case of any Property Owner who is receiving or who has applied to receive financial or other assistance from the City in connection with the redevelopment of the property or demolition of any structure located on such property shall be deemed, by reason of such receipt or application, to authorize the City Arborist to inspect the trees located on such property in order to determine whether any Tree located thereon qualifies for Legacy Tree status. The Property Owner of the property for which redevelopment or demolition assistance is being received or for which such assistance has been sought shall be encouraged but not required to cooperate with the City's efforts to preserve and protect those Trees located on the said property which would otherwise qualify for Legacy Tree status.

Section 5. Consent. On receiving a nomination, the City Arborist shall contact, in writing, the Property Owner on which the nominated Tree is located to inform the said Property Owner of the nomination and request the Property Owner's consent to evaluate and potentially designate the Property Owner's Tree as a Legacy Tree. If the nominated Tree is on property owned by the City of Urbana, the City Arborist shall inform the Director of Public Works of the nomination and request consent from the said Director to evaluate and potentially designate the Tree as a Legacy Tree. If the City Arborist identifies a tree on property for which the owner has received or applied for redevelopment or demolition financial or other assistance from the City, the City Arborist shall notify the said property owner that one or more trees on the said owner's property may qualify for designation as a Legacy Tree. Any consent to participate in the Legacy Tree Program by a Property Owner shall be in writing and signed by the said Property Owner. If there is more than one Property Owner on which the nominated Tree is located, the written and signed consent of a majority of all Property Owners shall be required. Participation in the program is voluntary.

Prior to the execution of any written request for consent, the City Arborist shall provide a written notice in the form of a brochure or other writing to the Property Owner on which the nominated Tree is located which explains:

- (i) The benefits available to the Property Owner should such nominated Tree be designated as a Legacy Tree;
- (ii) The process for the voluntary "designation" and "de-listing" of a Legacy Tree (as hereinafter set forth);
- (iii) Any recommended best practices to ensure long-term health of designated Legacy Trees.
- (iv) Any detriments which might occur from following voluntary Tree care best practices.
- (v) Any detriments which might reasonably be expected to arise in connection with a Tree being designated as a Legacy Tree.

In the event, after the provision of the aforesaid written notice, the Property Owner elects not to sign the consent form, the Legacy Tree nomination process shall cease and no further action regarding that Tree shall be undertaken during the next twelve (12) consecutive months.

Section 6. Evaluation. In the event that the Property Owner on which the nominated Tree is located provides written consent to participating in the Legacy Tree Program, the City Arborist shall conduct a "Legacy Tree Assessment" as defined in Section 11 of this Ordinance to ascertain whether or not the nominated Tree meets the City's standards for Legacy Tree designation.

If the Property Owner on which the nominated Tree is located has given written consent to participation in the Legacy Tree Program, the City Arborist shall submit his/her Legacy Tree Assessment findings regarding the nominated Tree to the Urbana Tree Commission along with the City Arborist's recommendation regarding whether the nominated Tree should be designated as a "Legacy Tree."

On receiving the City Arborist's recommendation, the Urbana Tree Commissioners may individually inspect the nominated Tree prior to making a final determination of a Legacy Tree designation.

Section 7. Designation. On receiving the City Arborist's recommendation and on completion of any individual inspections, the Urbana Tree Commission shall consider, at their next regular or special meeting, whether the nominated Tree qualifies under the Legacy Tree Assessment hereinafter set forth, and may designate the nominated Tree as a "Legacy Tree" by majority vote of those voting members present and voting.

Section 8. Benefits. For designated Legacy Trees on private property, the property owner shall receive participation benefits, as may be from time to time determined.

Section 9. Public Awareness Programs. Information about characteristics and location of designated Legacy Trees shall be made available to the public through identification markers near designated Legacy Trees, listing on the City of Urbana website, and by printed brochures.

Section 10. Withdrawal of consent. At any time during the process of designating a nominated Tree as a "Legacy Tree" but before the Urbana Tree Commission has approved such designation, the Property Owner on which the nominated Tree is located may withdraw their written consent to the nomination. Should consent be withdrawn, all proceedings for nominating a Tree for Legacy Tree status shall cease. If the said Property Owner has given written consent to participate in the Legacy Tree Program but, thereafter, elects to have such nomination withdrawn, such request shall be in writing signed by the property owner.

Section 11. Legacy Tree Assessment. In the event that the Property Owner on which the nominated Tree is located provides written consent to participate in the Legacy Tree Program, the City Arborist shall conduct a Legacy Tree Assessment which shall include:

1. A **Locale Assessment** to ensure the tree is visible from the public-right-of-way and note distance from overhead utilities;
2. A **Condition Assessment** to ensure the tree is in good or better condition and assess tree safety.
3. A **Legacy Standards Assessment** to ascertain whether the nominated tree meets one or more of the Legacy Tree standards as specified below:
 - i) **Size** - The tree is in the top one percent of tree sizes of its inventoried species in Urbana.
 - ii) **Rarity** - One of a kind type tree due to species type, characteristic and/or a species of less than one percent of all inventoried trees in Urbana.
 - iii) **Historic or Notable event** - There is a documented association with a historic event of 75 or more years and/or a more recent event of notable worth.

- iv) **Age** - The tree is more than 100 years old or a minimum of 75 years old when adjacent to a historically designated home.
- v) **Special Ecological Value** - The tree is shown to provide soil stabilization, important genetic resource, or provides critical habitat for important plant or animal species.
- vi) **Location** - The tree is considered to be of public value as a prominent visual focal point as viewed from public streets and ways.
- vii) **Aesthetics** - The tree has a distinct or unusually appealing visual characteristic.
- viii) **Illinois or National Register of Big Trees** - The tree is included in the Illinois or National register of Big Trees.

By undertaking a Legacy Tree Assessment, as defined in Section 11 of this ordinance, regarding whether a Tree qualifies for Legacy Tree status, the City will not assess whether or not the location or the condition of the Tree presents any hazard to human life, health or safety or injury to property. Property Owners shall remain responsible for the care and condition of Trees located on their property to assure safety insofar as conditions relating to each Tree.

Section 12. De-listing an unhealthy or declining Legacy Tree. If a Legacy Tree other than on City property needs to be removed due to poor health and decline beyond repair, the Property Owner may remove the Tree following issuance of a Legacy Tree delisting permit by the City Arborist. The Legacy Tree delisting permit shall be issued at no cost to the Property Owner within seven (7) calendar days of receipt of the application for the Legacy Tree delisting permit. If Tree damage, decline and/or poor health are not obvious, the application shall include a certified arborist's recommendation for removal. Once a Legacy Tree delisting permit is issued, the Legacy Tree shall be removed from the City's database and other public records, as applicable. If the Legacy Tree poses imminent and serious danger to the Property Owner(s) or other persons' and/or their property, the Legacy Tree may be removed prior to issuance of a Legacy Tree delisting permit. Nothing in this Section shall be construed to exempt any person from the requirements of obtaining any additional permits as are required by law.

Section 13. De-listing a healthy designated Legacy Tree. A Property Owner pursuing the removal of a Legacy Tree from the Legacy Tree Program for reasons other than those stated in Section 12 of this Ordinance, may do so at

their own discretion, following issuance of a Legacy Tree delisting Permit by the City Arborist. The City Arborist shall not issue a Legacy Tree delisting permit until the passage of 45 calendar days following the submittal of a Legacy Tree delisting permit application for de-listing a healthy Legacy Tree. During the 45-day period, the City Arborist shall post a sign on the public right-of-way adjoining the property or the property on which the subject Legacy Tree is located. Said posted sign shall be visible from the public right-of-way and shall be posted for no less than 15 days and no more than 30 days prior to the next regular or special Urbana Tree Commission meeting at which any public comments on removal shall be heard. The required sign shall indicate that a Legacy Tree delisting Permit has been requested for the subject Tree. In addition, the sign shall indicate the telephone number of the Public Works Department and the details about the next regular or special Urbana Tree Commission meeting at which any public comments on the removal shall be heard. Said sign should be removed no later than ten (10) calendar days after the completion of the said Urbana Tree Commission Meeting.

The Legacy Tree delisting permit application shall be included as an agenda item on the said Urbana Tree Commission meeting agenda. Any individual wishing to speak on the pending Legacy Tree delisting permit application shall have the opportunity to do so during the public input section of the Urbana Tree Commission meeting. All public comments received on the Legacy Tree delisting permit application will be advisory for the applicant and such comments shall be communicated in writing to the applicant by the City Arborist. Following the 45-day period, unless the applicant voluntarily withdraws the application for a Legacy Tree Delisting permit in writing, the City Arborist shall issue said permit. Nothing in this section shall be construed to exempt any person from the requirements of obtaining any additional permits as are required by law regarding the Tree.

Section 14.The Urbana Tree Commission shall have no authority to deny a Legacy Tree Delisting Permit application.

Section 15. Violation and Penalty. Any person who violates any provision of this article or who fails to comply with any notice issued pursuant to the provisions of this article, upon being found guilty of violation, shall be subject to a fine as prescribed in Section 1-10 of the Urbana Municipal Code.

Section 16. This Ordinance shall be effective following its passage by the City Council and signature by the Mayor.

Section 17. The City Clerk is directed to publish this Ordinance in pamphlet form by authority of the corporate authorities.

PASSED by the City Council this _____ day of _____, 2013.

AYES:

NAYS:

Phyllis D. Clark, City Clerk

APPROVED by the Mayor this _____ day of _____, 2013.

Laurel Lunt Prussing, Mayor

CERTIFICATE OF PUBLICATION IN PAMPHLET FORM

I, Phyllis D. Clark, certify that I am the duly elected and acting Municipal Clerk of the City of Urbana, Champaign County, Illinois. I certify that on the ___ day of January, 2013, the City Council of the City of Urbana passed and approved Ordinance No. 2013-04-027, entitled: **"AN ORDINANCE ESTABLISHING A LEGACY TREE PROGRAM"** which provided by its terms that it should be published in pamphlet form. The pamphlet form of Ordinance No. _____ was prepared, and a copy of such Ordinance was posted in the Urbana City Building commencing on the _____ day of _____, 2013, and continuing for at least ten (10) days thereafter. Copies of such Ordinance were also available for public inspection upon request at the Office of the City Clerk.

DATED at Urbana, Illinois, this _____ day of _____, 2013.

(SEAL)

Phyllis D. Clark, City Clerk