ORDINANCE NO. 919

AN ORDINANCE OF THE CITY OF REXBURG, MADISON COUNTY, IDAHO, KNOWN AS "CITY TREE ORDINANCE", INTENDED TO PROMOTE THE GENERAL HEALTH, SAFETY AND WELFARE OF THE CITY OF REXBURG BY PROVIDING DEFINITIONS OF THE TERMS USED IN THE ORDINANCE; ESTABLISHING THE STANDARDS FOR PLANTING, MAINTAINING OR REMOVING TREES, SHRUBS OR OTHER PLANTS ON PUBLIC PROPERTIES; PROVIDING THE GUIDELINES FOR PLANTING, MAINTAINING OR REMOVING TREES, SHRUBS OR OTHER PLANTS ON PRIVATE PROPERTIES AND IN THE IMPACT AREA; PROVIDING PENALTIES FOR FAILURE TO COMPLY WITH ANY PROVISIONS OF THIS ORDINANCE AND SETTING FORTH THAT A VIOLATION OF THIS ORDINANCE CONSTITUTES A MISDEMEANOR; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR SEVERABILITY; REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING AN EFFECTIVE DATE HEREOF.

WHEREAS, the City believes trees are critical elements of the environment which promote and protect the public health, safety, and general welfare of the community; and

WHEREAS, trees, shrubs and plants provide a vital contribution to the aesthetic character of the community and the region's natural beauty; and

WHEREAS, trees, shrubs and plants provide a cost-effective protection against severe weather conditions with cooling effects in the summer months and insulating effects in winter; and

WHEREAS, trees, shrubs and plants add to the general values of local properties; and

WHEREAS, trees, shrubs and plants create an improved air and water quality with the absorption of pollutants, assimilation of carbon dioxide and generation of oxygen and the reduction of excessive noise and adverse impacts caused by noise pollution; and

WHEREAS, trees, shrubs and plants provide reduction of the adverse impacts of land disturbing activities such as runoff from impervious surfaces, soil erosion, and land instability, and sedimentation pollution; and

WHEREAS, trees, shrubs and plants provide habitat, cover, food supply and corridors for a wildlife to interact with the community.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF REXBURG IDAHO:

SECTION I. DEFINITIONS: The following words and phrases when used in this ordinance shall have the meaning set out in this Section:

ADJACENT PROPERTY OWNER: Any person owning property adjacent to public rights-of-way.

ALTERNATE HOST PLANT: One of two kinds of plants on which a pest must develop to complete its life cycle.

ANSI A300: The American National Standard for Tree Care Operations - Tree, Shrub and Other Woody Plant Maintenance - Standard Practices. This is a document offering basic performance standards for tree pruning; published in 1995 by the American National Standards Institute (ANSI) or the same as amended from time to time.

ARBORICULTURE: The cultivation of trees, including planting, pruning, removal or any other action which affects the growth and maintenance of trees.

CITY: The City of Rexburg, Idaho.

CITY TREE COMMISSION: The City Tree Commission or the City Tree Commission's designee.

CRITICAL ROOT ZONE: The area under a tree extending from the base of a tree in all directions to an imaginary line 10 feet outside of the drip line or as determined at a preliminary site inspection by the City Tree Commission.

FORESTER: The person responsible for administering the City's tree program.

HAZARD: Any tree, public or private, with visibly defined structural defects likely to cause failure of all or part of the tree, and be a danger to public safety.

PERMIT: Written approval issued by the City and required for any activity on public trees or within the critical root zone of public trees.

PERSON: Any individual, firm, partnership, corporation, association, company or organization of any kind.

PEST: Any insect, disease or other organism harmful to trees.

PRUNING: The practice of cutting tree limbs according to standards contained in ANSI A300.

PUBLIC PROPERTY: Any property owned by, dedicated to, or deeded to, the public or for the public's use. City parks, public rights-of-way and other publicly owned, controlled, leased or managed properties are included in this definition. This definition excludes any federal or state owned properties except where otherwise provided by contract or law.

PUBLIC RIGHTS-OF-WAY: Improved or unimproved public property owned by, dedicated to, or deeded to the public or for the public's use, for the purpose of providing vehicular, pedestrian and other public use. Such public property provides circulation and travel to abutting properties and includes, but is not limited to, streets, sidewalks, landscaping, provisions for public utilities, cut and fill slopes, and open public space. For the purposes of this Chapter, alleys are excluded from this definition.

PUBLIC SAFETY: The condition of being safe from bodily harm and/or property damage resulting from tree conditions and/or failures while using public property.

PUBLIC NUISANCE: Any tree or part thereof (public or private) which, by reason of location or condition, constitutes a hazard to public safety.

PUBLIC TREES: Any tree (inclusive of roots within the critical root zone) whose trunk is located, partly or in whole, on public property.

TOPPING: "Rounding" or "heading back" or any other term that can be described as severe cutting back of limbs within a tree crown to buds, stubs, or laterals not large enough to assume a terminal role or as defined in ANSI A300.

TREE: Any woody plant, which is 15 feet or more in height at maturity, with a single or multiple trunk, often unbranched for several feet above the ground and having a definite crown.

SECTION II. APPLICABILITY: This Chapter establishes regulations and standards necessary to ensure that the City continues to realize the benefits provided by the Community Forest. It is not intended to resolve or regulate disputes over trees on private property that do not affect general public safety. This ordinance is enacted to:

A. Promote the general welfare of the City by establishing and maintaining the maximum amount of canopy coverage provided by trees;

B. Preserve and enhance the City's environmental, economic and social character with mature trees;

C. Protect public safety, health & welfare;

D. Encourage site and utility planning, building, and development practices to prevent indiscriminate removal or destruction of trees and avoid unnecessary disturbance to trees within the City and its Area of Impact;

E. Maintain trees in a healthy, non-hazardous condition through application of tree care standards contained in ANSI A300;

F. Establish and maintain appropriate species diversity and age classes in order to provide a stable and sustainable community forest;

G. Establish a process by which public trees are to be planted, pruned and removed;

H. Implement the goals and objectives of the City's Comprehensive Plan.

SECTION III. JURISDICTION: This Ordinance shall apply to the following properties as set forth:

Public Property The City Tree Commission shall manage and regulate the planting, maintenance, protection, removal and replacement of all public trees within the City limits; thus exercising the City's authority to do so granted pursuant to the provisions of Idaho Code 50-312 - Improvements of Streets, Idaho Code 50-317 - Removal of snow, ice rubbish and weeds, Idaho Code 1415 (7) Responsibilities of single county-wide highway districts within cities – Final decision on urban renewal projects – Settlement of questions.

Private Property The City Tree Commission shall have jurisdiction over trees located on private property which are found to be public nuisances and may cut and remove those trees from all private property within the city and the public rights of way abutting the same and may assess the cost thereof against the property so cleared, and against the property abutting public rights of way so cleared, as provided for in Idaho Code 50-317. The assessment shall be collected as provided in Idaho Code 50-1008.

Area of Impact The City Tree Commission shall make recommendations with respect to trees that are of general public interest within the Impact area. Such general public interest shall include, but not be limited to, trees that will impact visually the public rights of way, trees that overhang public owned properties, and trees that are of such a nature as to have significant public recognition.

SECTION IV. ESTABLISHMENT OR DESIGNATION OF COMMISSION: The Mayor with the assistance of the City Council shall designate a City Tree Commission, which shall consist of not less than five (5) nor more than fifteen (15) individuals, but can be an existing commission provided it meets the above requirements, and authorize such persons or commission to perform the duties imposed and exercise the powers granted by this chapter. For the purposes of this Ordinance, the City Tree Commission, is hereby authorized to carry out the following duties:

Administrative/Management Duties:

A. Develop, administer and maintain a Community Forestry Management Plan.

B. Administer a program of public outreach and education relating to Community Forestry and the planting and care of trees.

C. Administer and maintain a permitting procedure for all planting, pruning, protection and removal of public trees.

D. Establish and maintain an inventory of all public trees.

E. Maintain a Community Forestry budget to be contained within the budget of the City. The City may expend funds to plant, maintain or remove trees in accordance with the provisions of this Chapter, the Community Forestry Management Plan and existing policies.

F. Oversee and require compliance with pest management programs as may be adopted by the City.

G. Facilitate the proper selection, planting and maintenance of public trees in residential, commercial and industrial developments within City limits and the Rexburg Area of City Impact, the City Tree Commission shall review and provide comment on development applications when such applications are submitted to the City Planning and Zoning Department.

H. Establish policies to carry out the provisions of this Chapter;

I. Perform all necessary acts to ensure that all public trees conform with the Community Forestry Management Plan and this Chapter.

J. Annually provide public notification of the requirements of this Chapter.

Tree Planting Duties:

A. Establish and maintain specifications for tree planting on public property.

B. May establish and maintain a nursery for the growing of the species of trees permitted on public property.

Tree Maintenance Duties:

A. Order the pruning or removal of public trees to ensure public health, safety and welfare while considering the health of the tree and other elements of the infrastructure.

B. Declare trees as public nuisances in accordance with State statutes and regulations.

C. Manage the abatement of public nuisances as declared in accordance with this Chapter.

Tree Removal Duties

A. Remove trees located on public rights-of-way which have been declared to be a public nuisance.

B. Any trees on public rights-of-way scheduled for removal shall be affixed with a public notice stating the reason for removal.

Such notice shall be posted not less than 30 days prior to scheduled removal date unless determined by the City Tree Commission to be an emergency or immediate hazard to public safety.

Tree Protection Duties:

A. To avoid creating public nuisances or damaging public trees, the City Tree Commission is authorized to require their protection (including the critical root zone) from construction or other harmful practices.

SECTION V: RESPONSIBILITIES OF ADJACENT PROPERTY OWNERS:
Any person in possession of private property shall maintain trees upon adjacent public rights of way and any trees upon private property which may affect public property, in a safe and healthy condition in compliance with the provisions of this Chapter. Adjacent property owners have the following responsibilities:

Responsibilities for public trees

A. **Obtain Permits**

1. Meet all requirements and obtain all permits necessary for work done (including, but not limited to, pruning and removal) on any public trees as required.

2. Meet all requirements and obtain all permits necessary prior to commencing repair of damage done to public streets or sidewalks adjacent to any public trees.

3. Meet all requirements and obtain all permits necessary for any tree planting on public property.

B. **Routine Tree Maintenance**

1. Pruning of trees located on public rights-of-way adjacent to the owner's private real property.
    a. Prune and maintain such public trees according to ANSI A300, except sections 5.5 and 5.6, which are deleted.

    b. Topping, heading, shearing or rounding over are not acceptable forms of tree pruning and are not allowed on public trees unless first approved by the City Tree Commission.

    c. Except as otherwise determined by the City Tree Commission, branches that overhang sidewalks or streets shall be pruned to provide sufficient vertical clearance over the sidewalk and street so as not to interfere with public travel.

    d. Trees shall be pruned to remove dead limbs or other limbs that are considered a public nuisance.

2. Control pests on trees located on public rights-of-way adjacent to the owner's private real property;

3. Provide water sufficient to keep trees located on public rights-of-way adjacent to the owner's private real property in a healthy, growing condition.

C. **Protection/Preservation**

1. Obtain a permit from the City Tree Commission before performing any activity which may harm any part of a public tree (inclusive of the critical root zone);

2. Notify the City Tree Commission when any part of a public tree is damaged or destroyed.

Responsibilities for private trees

A. Routine Tree Maintenance

1. Removal or pruning of trees located on the owner's private real property that is considered a public nuisance.

2. Pruning of trees located on the owner's private real property that is considered a public nuisance. Branches that overhang sidewalks or streets shall be pruned to provide sufficient vertical clearance over the sidewalk and street so as not to interfere with public travel.

3. Control of pests on trees located on the owner's private real property which may, upon determination by the City Tree Commission, pose a threat to public trees.

4. Removal of all debris (wood, branches & leaves) from public property by sunset of the day on which any tree work is done.

SECTION VI. PERMITS:

A. **No person may perform any of the following acts** without first obtaining from the City Tree Commission a permit for which no fee shall be charged, and nothing in this section shall be construed to exempt any person from the requirements of obtaining any additional permits as required by law:

1. Plant trees on public rights-of-way or in any public places that are not consistent with the plans established by the Tree Commission.

2. Prune, cut, remove or otherwise disturb any public tree. This provision shall not be construed to prohibit owners of property adjacent to public rights-of-way from watering or fertilizing such trees.

3. Attach any object to public tree(s).

B. **Permit Application Procedures**

1. Contact the City Tree Commission via mail, phone, fax or email prior to commencement of the proposed work.

2. Upon inspection, the City Tree Commission may issue a permit to perform any of the acts specified in part A of this section

3. The City Tree Commission may condition the approval of any permit.

C. **Requirements:** Public Tree Planting Permits.

1. Each application for a planting permit shall designate the species and variety of public tree proposed. The City Tree Commission shall designate the location of the planting.

2. Approval of public tree species, spacing, placement and minimum tree well sizes shall be obtained from the City Tree Commission prior to issuance of a permit.

3. Whenever any public tree is planted or set out in conflict with the provisions of this Chapter, it shall be lawful for the City Tree Commission to remove or cause removal of the same. The cost of removal of such tree may be charged to person responsible for the planting thereof.

D. **Requirements**: Tree Pruning/Removal Permits.

1. Prior to pruning or removal of any public tree, application for permit must be made by the property owner or private tree firm currently licensed by the City.

2. Whenever a tree on public rights-of-way is removed, the applicant shall replace the tree removed as a condition of issuance of a permit for removal, unless such requirement is waived by the City Tree Commission for good cause shown. Conditions may include a requirement for compensatory payments.

SECTION VII. PENALTIES FOR VIOLATION:

A. Any person who violates any provision of this Chapter or who fails to comply with a lawful order of the City Tree Commission shall be guilty of a misdemeanor. Any person convicted of a misdemeanor under the provisions of this Chapter may be punished by a fine not to exceed $300 or be imprisoned in the County Jail facility for a period not to exceed 6 months or by both such fine and imprisonment.

B. In addition to any criminal penalties that may be imposed, the City may pursue civil penalties and restitution for actual damages.

SECTION VIII. PUBLIC NUISANCES: The following are hereby declared public nuisances under this Chapter:

A. Any tree, shrub or plant or part thereof (public or private) which, by reason of location or condition, constitutes a hazard to public safety as determined by the City Tree Commission.

B. Any tree, shrub or plant or part thereof (on public or private property) which obstructs the free passage of pedestrian or vehicular traffic upon public rights-of-way or which obstructs public street lighting.

C. Any tree, shrub, plant or alternate host plant or part thereof (on public or private property) which harbors pests which reasonably may be expected to injure or harm public trees.

SECTION IX. ABATEMENT OF PUBLIC NUISANCES: The following are the prescribed means of abating public nuisances under this Chapter:

A. Any tree, shrub, plant or alternate host plant or part thereof (public or private) declared to be a public nuisance shall be pruned, removed or otherwise treated in accordance with the requirements of this Chapter. Except for removal of trees from public rights-of-way, all costs for nuisance abatement are the responsibility of the adjacent property owner.

B. The City Tree Commission may cause a written notice to be personally served or sent by mail to the owner of a particular property declaring the existence of a nuisance, and the means by which abatement may be accomplished.

C. In the event the nuisance is not abated by the date specified in the notice, the City Tree Commission is authorized to cause the abatement of said nuisance. The reasonable cost of such abatement may be charged to the subject property owner. Monies which have not been recovered through the City bill-collection procedures may result in a lien against the property or assessed on taxes as provided for in Idaho Code Title 50. In addition, the owner of the property upon which the nuisance is located may be subject to prosecution under this Chapter, or any other Chapter of the City Code or the Idaho Code for maintaining a public nuisance. Nothing in this provision shall be construed to exempt any person from the requirement of obtaining permits.

D. The City Tree Commission is empowered to cause the immediate abatement of any nuisance if it is determined by the City Tree Commission to be an emergency or pose an immediate hazard to public safety.

E. If the City Tree Commission determines that disposal of the wood, branches and soil from removal or pruning of a nuisance tree is required to complete abatement, such disposal shall be done as required by the City Tree Commission. All costs associated with the disposal of material from private trees shall be the responsibility of the property owner.

SECTION X. APPEALS:

A. Any person affected by an order, grant, denial, or revocation of a license or permit by the City Tree Commission may appeal such order, grant, denial or revocation to the Rexburg City Council.

B. Such appeal shall be filed in writing and submitted to the City Clerk within 10 days of the date of notification of the decision of the City Tree Commission.

C. The appeal shall be heard by the City Council within 30 days of the appeal being filed, and any action by the City Tree Commission and the appellant shall be delayed until the decision of the City Council is rendered.

D. The City Council may in conformity with the provisions of this Chapter reverse or affirm or modify wholly or partly, the order, grant, denial or revocation of any permit and the decision of the City Tree Commission.

E. The decision of the City Council shall be deemed final.

SECTION XI. SEVERABILITY: The provisions of this Chapter shall be deemed severable and a finding by a court of law that a provision of this Chapter is unlawful shall have no effect on the remaining provisions.

SECTION XII. EFFECTIVE DATE: This ordinance shall be in full force and effect on the first day after its passage, approval, and publication thereof.

SECTION XIII. REPEAL OF CONFLICTS: All ordinances and parts of ordinances in conflict with this ordinance are hereby repealed.

PASSED BY THE COUNCIL AND APPROVED BY THE MAYOR THIS 05th DAY OF MAY, 2004.

Shawn Larsen

Shawn Larsen, Mayor

ATTEST:

Blair D. Kay

Blair D. Kay, City Clerk

(SEAL)

State of Idaho)
: ss
County of Madison)

I, Blair D. Kay, City Clerk of the City of Rexburg, Idaho, do hereby certify that the above and foregoing is a full, true and correct copy of the Ordinance entitled:

AN ORDINANCE OF THE CITY OF REXBURG, MADISON COUNTY, IDAHO, KNOWN AS "CITY TREE ORDINANCE", INTENDED TO PROMOTE THE GENERAL HEALTH, SAFETY AND WELFARE OF THE CITY OF REXBURG BY PROVIDING DEFINITIONS OF THE TERMS USED IN THE ORDINANCE; ESTABLISHING THE STANDARDS FOR PLANTING, MAINTAINING OR REMOVING TREES, SHRUBS OR OTHER PLANTS ON PUBLIC PROPERTIES; PROVIDING THE GUIDELINES FOR PLANTING, MAINTAINING OR REMOVING TREES, SHRUBS OR OTHER PLANTS ON PRIVATE PROPERTIES AND IN THE IMPACT AREA; PROVIDING PENALTIES FOR FAILURE TO COMPLY WITH ANY PROVISIONS OF THIS ORDINANCE AND SETTING FORTH THAT A VIOLATION OF THIS ORDINANCE CONSTITUTES A MISDEMEANOR; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR SEVERABILITY; REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING AN EFFECTIVE DATE HEREOF.

Passed by the City Council and approved by the Mayor this the 05th day of May, 2004.

Blair D. Kay

Blair D. Kay, City Clerk

(SEAL)