



Memorandum

Date: August 23, 2019

To: Planning and Sustainability Commission
Urban Forestry Commission
Interested Parties

From: Emily Sandy, Analyst II Bureau of Development Services
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Re: **Proposed Draft for Amendments to Title 11, Trees, Chapter 11.50, Trees in Development Situations, Tree Preservation Requirements for Private Trees.**

In 2016, in response to concern about large trees being removed in development situations in Portland neighborhoods, amendments to Title 11, Trees, were developed to strengthen regulations pertaining to tree preservation, especially preservation of large sized trees, **in development situations on private property.**

On April 13, 2016 City Council approved the amendments to Title 11, Trees. The amendments became effective on **May 13, 2016.** Those 2016 amendments to Title 11 are summarized as follows:

1. Continued to require that at least 1/3 of non-exempt trees be preserved or pay a fee in-lieu of preservation, regardless of tree size. Added requirement that all non-exempt trees 36 inches or larger in diameter be preserved or pay a fee in-lieu of preservation.
2. Amended the fee in-lieu of preservation as follows:
 - a. For removal of non-exempt trees with a diameter of 12 inches or larger, but less than 36 inches, a graduated scale is used to determine the payment amount. Based on the current fee schedule, the fees are \$1,800-\$3,600 per tree removed.
 - b. For removal of non-exempt trees with a diameter of 36 inches or larger, an “inch-per-inch mitigation” payment is required. Based on the current fee schedule, fees start at \$16,220 for removal of a 36-inch diameter tree and increase at \$450 per additional diameter inch of tree removed.
3. Required applicants to post a notice on-site and send a notice to the neighborhood association and district coalition 45 days prior to development permit issuance for removal of non-exempt trees 36 inches in diameter or larger.
4. Exempted certain affordable housing projects, as defined by the Portland Housing Bureau, from the fee in-lieu of preservation for removal of non-exempt trees 36” in diameter or larger.
5. Clarified that trees on private property that are impacted by a capital improvement project are regulated the same as a City or Street Tree, not as Private Trees.
6. Included a sunset date of December 31, 2019.

The Bureau of Development Services is proposing to retain the amendments and extend the sunset date an additional 2 years until December 31, 2021.

Please see the attached commentary and proposed code language. The proposed amendments will be heard by the Planning and Sustainability Commission on September 24, 2019, and by the Urban Forestry Commission on October 17, 2019. Urban Forestry Commission may consider the input of the Planning and Sustainability Commission. Each body will make a recommendation to City Council.

**Proposed Amendments to Title 11, Trees, Chapter 11.50,
Trees in Development Situations. Tree Preservation Requirements**

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ATTACHMENTS: Ordinance 187675 and Exhibits, April 13, 2016

COMMENTARY

PROJECT BACKGROUND

In 2016, due to public concern about large trees being removed in development situations in Portland neighborhoods, BDS, together with Portland Parks & Recreation (PP&R) proposed to amend Title 11, Trees, to strengthen development regulations pertaining to tree preservation, especially preservation of large trees, on private property.

Over 2015 and 2016 Tree Code Oversight Advisory Committee began formulating concepts for addressing some issues identified with Title 11 and its implementation, including issues related to the preservation of large sized trees. The concepts were intended to inform a larger, comprehensive package of Title 11 code amendments. In November of 2016, due to acute public concern about the removal of large trees in development situations, the Tree Code Oversight Advisory Committee and the Development Review Advisory Committee, as well as the Urban Forestry Commission, were asked to review a draft proposal from PP&R to create a greater disincentive for removal of especially large trees. The proposal was intended to be a narrowly-focused, quick amendment to address the situation of larger sized trees specifically, with the intent to make further amendments regarding this issue as part of a future more comprehensive update to Title 11. As of August 2019, a comprehensive update to Title 11 is not funded or anticipated.

After hearings and recommendations by the Planning and Sustainability Commission and the Urban Forestry Commission, City Council adopted amendments to Title 11 summarized as follows:

1. Continued to require that at least 1/3 of non-exempt trees be preserved or pay a fee in-lieu of preservation, regardless of tree size. Added requirement that all non-exempt trees 36 inches or larger in diameter be preserved or pay a fee in-lieu of preservation.

2. Amended the fee in-lieu of preservation as follows:
 - a. For removal of non-exempt trees with a diameter of 12 inches or larger, but less than 36 inches, a graduated scale is used to determine the payment amount. Based on the current fee schedule, the fees are \$1,800-\$3,600 per tree removed.
 - b. For removal of non-exempt trees with a diameter of 36 inches or larger, an “inch-per-inch mitigation” payment is required. Based on the current fee schedule, fees start at \$16,220 for removal of a 36-inch diameter tree and increase at \$450 per additional diameter inch of tree removed.
3. Required applicants to post a notice on-site and send a notice to the neighborhood association and district coalition 45 days prior to development permit issuance for removal of non-exempt trees 36 inches in diameter or larger.
4. Exempted certain affordable housing projects, as defined by the Portland Housing Bureau, from the fee in-lieu of preservation for removal of non-exempt trees 36” in diameter or larger. This item was added during the City Council hearing process.
5. Included a sunset date of December 31, 2019 for items 1-4.

There is some data that indicate the amendments have been effective at encouraging preservation of larger diameter trees. However, the Urban Forestry Commission has indicated a desire to further examine the effectiveness of the amendments at achieving this goal, as well as other research, before making them permanent, amending them, or letting them sunset. BDS and PP&R concur with this assessment, but notes that BDS or PP&R work on further analysis may require provision of resources if staff is to support this effort.

The Bureau of Development Services now proposes to extend the sunset date for the 2016 amendments described above from December 31, 2019 to December 31, 2021.

POLICY CONTEXT

Purpose of Title 11

The adopted purpose statement for the Chapter that was amended, 11.50, Trees in Development Situations, is as follows:

11.50.010. Purpose: The regulations of this Chapter support and complement other City development requirements, with a focus on achieving baseline tree preservation and total tree capacity on a site, considering the anticipated use and level of development. This Chapter regulates the removal, protection and planting of trees through the development process to encourage development, where practicable, to incorporate existing trees, particularly high quality or larger trees and groves, into the site design, to retain sufficient space to plant new trees, and to ensure suitable tree replacement when trees are removed. It is the intent of these provisions to lessen the impact of tree removal and to ensure mitigation when tree preservation standards are not met.

The amendments do not prohibit or prevent development envisioned by the comprehensive plan, recognizing that the urban forest is dynamic and evolving. Development is allowed to continue, but there is a greater incentive to preserve larger sized trees, whose ecological value is difficult to replace, where possible. When trees are removed, new trees will be planted.

Tree Preservation Applicability and Exemptions

Tree preservation standards are triggered when there are any trees over 12 inches in diameter that are not dead, dying, dangerous, or a nuisance species, and where ground disturbance projects into the root protection zone of any of those trees. However, tree preservation does not apply in some situations, including locations within some of the higher intensity Commercial, Industrial and Employment Zones (but not all of those zones), on sites less than 5,000 square feet in area, or on sites with 85% building coverage or more. Within those parameters tree preservation requirements are triggered for all project types and sizes; not only new development projects and not only new residential development projects. This could include a new commercial development, a new apartment complex, re-development of a site with a single dwelling unit, a new accessory dwelling unit (ADU), a detached garage on a lot with an existing single dwelling unit, or a small kitchen or family room addition to an existing dwelling.

PROPOSAL

The 2016 amendments that are set to sunset on December 31, 2019 fell into 4 categories:

- 1. Amended the general tree preservation mitigation that applies to 1/3 of the non-exempt trees on the site over 12 inches in diameter.** Previously, all non-exempt trees are treated the same in terms of both preservation priority and mitigation fees. All non-exempt trees were uniformly subject to the 1/3 preservation requirement, regardless of size. An applicant could choose to remove the largest sized trees over the smallest sized trees with no differentiation in fees paid-in-lieu.

The mitigation requirement adopted in 2016 is more responsive to the size of the tree not designated to be preserved and protected. The amendment includes tiers of tree sizes and corresponding mitigation, expressed in the number of two-inch diameter replacement trees required. For especially large diameter trees (36 inches or greater in diameter), the mitigation fee is based on the cost of planting that number of two-inch diameter replacement trees, as stated on the annually adopted Urban Forestry fee schedule. The rate is currently \$450.00 per inch.

Size of Tree Removed (inches in diameter)	Required Mitigation	Associated Cost
At least 12 and less than 20	The cost of (2) two-inch diameter replacement trees	\$1800
At least 20 and less than 36	The cost of (4) two-inch diameter replacement trees	\$3600
At least 36 or more	The cost per inch of tree removed	\$16,200 and up

Trees that are 20-36 inches in diameter are more valuable from an ecological perspective than those below 20 inches. The focus of the amendment in 2016 was primarily on the especially large diameter trees (36 or greater in diameter), though there was a smaller financial incentive to preserve the trees 20-36 or greater in diameter over those with less than 20 inches in diameter. To-date, no data has been reviewed to evaluate the effectiveness of this graduated scale for the lowest two tiers. More time will be necessary to evaluate whether the current graduated scale is effective at incentivizing the preservation of trees 20 inches or more in diameter over the smaller diameter trees, or whether the tree diameter thresholds and/or mitigation requirements should be adjusted.

- 2. Provided an additional disincentive for the removal of especially large trees by requiring mitigation for all non-exempt trees 36 inches or greater in diameter and larger on the site that are not designated to be preserved and protected.** As noted in #1 above, for especially large diameter trees (36 inches or greater), there is an added disincentive for removal of these trees. First, the amendment does not subject non-exempt trees 36" or greater in diameter to only the 1/3 preservation requirement; preservation is required for ALL non-exempt trees 36 inches or greater in diameter. Therefore, if an applicant is choosing what trees to preserve on their site, they are

incentivized to choose the larger diameter tree over the smaller diameter tree. Second, the fee in lieu of preservation is greater, using an inch-per-inch methodology based on the current per-inch fee determined by the annually adopted Urban Forestry fee schedule. Currently, the fee begins at \$16,200 and goes up accordingly as the diameter size of the tree increases.

Select Data: Post-Amendment and Pre-Amendment

36” or Larger Trees Removed and Preserved

	Pre-Amendment (2015)	Post-Amendment (Average/Year)	%Change
# Non-exempt 36” + Trees Removed:	42	15	-64%
#36” + Trees Preserved	91	156	71%

Issued Permits and Fees In-Lieu Collected

	Pre-Amendment (2015)	Post-Amendment (Average/Year)	%Change
# Issued Permits	6,843	6,588	-4%
Fee In Lieu of Preservation Revenue	\$200,400	\$462,376	131%

Data suggests the amendment has been effective at encouraging large diameter trees (36 inches or greater in diameter). The number of large diameter trees preserved increased by 71% while the number of trees large diameter trees removed decreased by 64%. At the same time, the fees in lieu of preservation collected more than doubled, despite the number of permits remaining relatively consistent. However, currently there is no data collected to discern why more large diameter trees have been preserved. In some cases, especially on larger sites, preservation of the larger diameter trees may not be the result of a choice between paying the fee in lieu of preservation or designing the project to retain the tree. On larger sites, larger diameter trees may be far away from the development site and so their likelihood of preservation (or removal) would not have been as affected by the proposed development. An extension of the sunset date will provide an opportunity to examine project sites and determine how effective the amendment is at encouraging preservation of larger diameter sites where the tree is affected by the proposed development.

3. **Added a notification requirement prior to development permit issuance when non-exempt trees 36 inches or greater in diameter are not designated to be preserved and protected.** Previously, there was no notification requirement for any tree removal in any development situation. The 2016 amendment requires that a notice must be posted on-site and sent to the neighborhood association and district coalition when a tree 36 inches or greater in diameter is proposed for removal. The notice must be posted by the property owner or their designee on the site for a minimum of 45 calendar days. The development permit will not be issued until the posting notification period is completed. The informational notice is intended to alert neighbors to the plans for tree removal and provide for an opportunity for interested parties to contact the property owner or their designee about alternate plans for the tree(s) in question. It does not initiate a formal public comment period to the City about the pending development permit, or to provide an opportunity to appeal the issuance of the pending development permit.

Anecdotally, applicants conduct their notification prior to permit application or are informed of the requirement at application intake. If completed before or shortly after permit submittal, the timeline does not have an impact on the timeframe for permit issuance as other bureau and department reviews happen concurrently with the notification period and generally the permits are not issued within 45 days of intake for other reasons. The exception is for priority projects identified by the Mayor, in particular for Portland Housing Bureau and other affordable housing projects, where the goal for permit issuance is sometimes shorter than that. It would be useful to know whether the notification requirement does or does not affect the overall timeline for permit issuance. It would also be useful to know if the notification requirement is effective at reaching community members to alert them of pending tree removal.

4. **Added an exemption for certain affordable housing sites from the fee in lieu of preservation for non-exempt trees 36 inches or greater in diameter.** This item was added during the City Council hearing process. When projects meet the criteria used the the Portland Housing Bureau to be exempt from System Development Charges (SDCs), they are also exempt from the fee in lieu of preservation for large diameter trees. The fees in lieu of preservation for trees less than 36” still apply.

Since the amendment was adopted, 8 trees on 3 sites utilized this exemption. There were 156 affordable housing sites eligible for the SDC exemption. Though the reach of the amendment does not appear far-reaching, further analysis should be done to determine the effects of this waiver on low-income and underserved residents, if there are other examples where City code is effectively waived for certain affordable housing sites, and, if so, to what extent they are waived. This information will be valuable in order to make a recommendation that is consistent with the goals of the City’s plans, policies, and overall regulatory approach.

STAFF PROPOSAL

Although the 2016 amendments passed in Ordinance 187675 did not include a directive to monitor and report back on the amendments, there are some remaining questions that may be answered before presenting a proposal to make permanent, amend, or rescind the amendments. Specifically,

- More time will be necessary to evaluate whether the current graduated scale is effective at incentivizing the preservation of trees 20 inches or more in diameter over the smaller diameter trees, or whether the tree diameter thresholds and/or mitigation requirements should be adjusted.
- An extension of the sunset date will provide an opportunity to examine project sites and determine how effective the amendment is at encouraging preservation of larger diameter trees where the tree is affected by the proposed development.
- It would be useful to know whether the notification requirement does or does not affect the overall timeline for permit issuance. It would also be useful to know if the notification requirement is effective at reaching community members to alert them of pending tree removal.
- Further analysis should be done to determine the effects of this waiver on low-income and underserved residents and if there are other examples where City code is effectively waived for certain affordable housing sites, and, if so, to what extent they are waived. This information will be valuable in order to make a recommendation that is consistent with the City's plans, policies, and overall regulatory approach.

Therefore, at this time, BDS proposes to extend the sunset date for the 2016 amendments described above from December 31, 2019 to December 31, 2021.

PROPOSED CODE LANGUAGE

CHAPTER 11.50

TREES IN DEVELOPMENT SITUATIONS

Sections:

- 11.50.010 Purpose. [No Change]
- 11.50.020 When a Tree Plan is Required. [No Change]
- 11.50.030 Development Impact Area Option for Large Sites and Streets. [No Change]
- 11.50.040 Tree Preservation Standards.
- 11.50.050 On-Site Tree Density Standards. [No Change]
- 11.50.060 Street Tree Planting Standards. [No Change]
- 11.50.070 Tree Plan Submittal Requirements. [No Change]
- 11.50.080 Changes to Approved Tree Plans and Emergency Tree Removal. [No Change]

11.50.040 Tree Preservation Standards.

(Amended by Ordinance Nos. 187675, 188278, 188816, 188959 and 189078, effective July 18, 2018.)

- A. [No Change]
- B. [No Change]
- C. Tree Preservation Requirement. Any trees preserved shall be protected in accordance with the specifications in Section 11.60.030. The regulations for Private Trees in Subsection 11.50.040.-C.1. sunset after December 31, 2019~~21~~. After December 31, 2019~~21~~ the regulations in effect will be those in effect on January 1, 2015.
 - 1. Private Trees.
 - a. General tree preservation.
 - (1) Retention. An applicant shall preserve and protect at least 1/3 of the non-exempt trees 12 inches and larger in diameter located completely or partially on the development site, unless mitigation occurs per Subsection 11.50.040 C.1.a.(2) below. Retaining trees at least 6 and less than 12 inches in diameter that are documented in a report prepared by an arborist or landscape professional to be Garry Oak (*Quercus garryana*), Pacific Madrone (*Arbutus menziesii*), Pacific Yew (*Taxus brevifolia*), Ponderosa Pine (*Pinus ponderosa*), or Western Flowering Dogwood (*Cornus nuttallii*) species are not included in the total count of trees on the site but may be used toward meeting the preservation standard.

- (2) Mitigation. For each tree not preserved and protected below the 1/3 requirement, payment to the Tree Planting and Preservation Fund is required as shown in Table 50-1. The fee is calculated using the per-inch Restoration Fee for Tree Removal in the adopted fee schedule for Title 11. In cases where more than one tree is proposed for removal in excess of that allowed by Subsection 11.50.040 C.1.a.(1), the mitigation payment required to meet the 1/3 retention standard is based on the largest tree or trees proposed for removal.

**Table 50-1
Required Mitigation**

Size of Tree Removed (inches in diameter)	Required Mitigation
At least 12 and less than 20	The cost of (2) two-inch diameter replacement trees
At least 20 and less than 36	The cost of (4) two-inch diameter replacement trees
At least 36 or more	The cost per inch of tree removed

b. Preservation of trees 36 inches or greater.

- (1) Retention. An applicant shall preserve and protect all non-exempt trees 36 inches in diameter or greater located completely or partially on the development site, unless mitigation and notice occurs per Subsections 11.50.040 C.1.b.(2) and 11.50.040 C.1.b.(3), below. Retention or mitigation of these trees may also be used to meet the standards for general tree preservation in Subsection 11.50.040 C.1.a. above.
- (2) Mitigation. For each tree 36 or more inches in diameter not preserved and protected, payment to the Tree Planting and Preservation Fund is required as shown in Table 50-1. The fee is calculated using the per-inch Restoration Fee for Tree Removal in the adopted fee schedule for Title 11.
- (3) Notice. If a tree 36 inches or greater in diameter is not preserved and protected as allowed by Subsection 11.50.040 C.1.b.(2) above, the property owner or the property owner’s representative must post a notice on the site and send a notice to the recognized Neighborhood Association and District Coalition in which the site is located. The notices are for notification purposes only. The notices do not provide for public comment on the proposal or for appeal of the proposal. The property owner or the property owner’s representative must provide a signed certification to the Bureau of

Development Services that a notice was posted on the site and a notice was sent to the Neighborhood Association and District Coalition. The development permit may not be issued until the business day following the day the notification period is completed.

- (a) The posted notice must:
 - (i) Be posted on the site for at least 45 calendar days prior to development permit issuance;
 - (ii) Be posted within 10 feet of the street lot line nearest the tree or trees to be removed;
 - (iii) Include the date of posting and the date of the end of the notification period;
 - (iv) Include a site plan at least 8.5 x 11 inches in size showing the location and description of the trees(s) to be removed including diameter inch size(s); and
 - (v) Include contact information for the property owner or the property owner's representative.
- (b) The notices to the Neighborhood Association and District Coalition must:
 - (i) Be e-mailed or mailed to the Neighborhood Association and District Coalition using the contact information maintained by the Office of Community & Civic Life. If mailed, the notice must be sent via certified or registered mail. The date of the e-mail or the mailing must be at least 45 calendar days prior to development permit issuance;
 - (ii) Include a description of the trees(s) to be removed including diameter inch size(s); and
 - (iii) Include contact information for the property owner or the property owner's representative.
- (4) Exemption of tree preservation mitigation payments for affordable housing developments. Projects are exempt from the mitigation requirements in Subsection 11.50.040 C.1.b.(2) if the development will be an affordable housing development approved for system

development charge exemptions under Section 30.01.095. The amount of the mitigation exemption shall be pro-rated to a percentage equal to the percentage of dwelling units on the development site that are approved for the systems development charge exemption in Section 30.01.095. The Director of the Portland Housing Bureau may adopt administrative rules for the administration of Subsection 11.50.040 C.1.b.(4).

- c. Exception for Capital Improvement Projects. Trees on private property that are part of a capital improvement project and within the development impact area are regulated as City and Street Trees.

2. City and Street Trees.

[No change]