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October 10, 2019

Mayor Ted Wheeler and Members of Portland City Council
Portland City Hall
1221 SW Fourth Ave
Portland, OR 97204

Dear Mayor Wheeler and City Commissioners:

On September 24, 2019, the Planning and Sustainability Commission (PSC) held a public hearing on a proposed amendment to Title 11, Trees, Tree Preservation in Development Situations (PCC 11.50.040). The proposal was to extend the sunset date of certain regulations for tree preservation of private trees, particularly large diameter trees, in development situations from December 31, 2019 to December 31, 2021 to allow for additional analysis and outreach. The amendments were originally passed in 2016 (ORD 187685) and 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 non-exempt trees with a diameter of 12 inches or larger, but less than 36 inches, adopted a graduated scale to determine the amount of the fee-in-lieu of preservation. Based on the current fee schedule, the fees are \$1,800-\$3,600 per tree.
 - b. For non-exempt trees with a diameter of 36 inches or larger, adopted an “inch-per-inch mitigation” fee-in-lieu of preservation. 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.
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 when non-exempt trees 36 inches in diameter or larger are not designated to be preserved.
4. Exempted certain affordable housing projects, as defined by the Portland Housing Bureau, from the fee in-lieu of preservation for non-exempt trees 36” in diameter or larger.
5. Included a sunset date of December 31, 2019.



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1900 SW 4th Avenue, Suite 7100, Portland, OR 97201 | phone: 503-823-7700 | fax: 503-823-7800 | tty: 503-823-6868

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Comments

1. The Commission recognizes there is some data that indicates the regulations have improved tree preservation of 36-inch and larger diameter trees. However, as staff noted, further analysis could be done, including on the effect on equitable outcomes, the impact on other City priorities, and whether the amendments are effective at preserving mid-size and large-sized trees. Members of the Commission noted specifically that a strong equity component should be part of any future work.
2. The Commission received testimony regarding the urgency of strengthening the Tree Code, particularly in light of the effects of climate change. Oral and written testimony identified removing or modifying exemptions from tree preservation requirements in development situations, effectively increasing the scope of those regulations, as one avenue toward strengthening the tree code.
3. In addition to the initial proposal, the Commission deliberated specifically on removing the exemption for tree preservation in development situations for certain industrially and commercially zoned sites (those in IH, IG1, CX and EX). Though staff has not done a thorough analysis to confirm, members of the commission noted that commercial and industrial lands often abut neighborhoods with lower income residents and communities of color – such that loss of tree canopy in these zones would have disproportionate impacts. The Commission also acknowledged that this change was not publicized, and therefore any analysis, including effects on buildable lands inventory, and full range of testimony was not provided. In part to acknowledge these concerns, the Commission voted to recommend removing this exemption, also with a sunset date of December 31, 2021. This will provide for a baseline for analysis, and additional time for analysis and outreach.
4. The Commission urges City Council to fully fund further work on these amendments and potentially other amendments, including a full scoping effort, appropriate data analysis and a focus on equity.
5. Finally, the Commission notes that, in 2016, PSC voted to apply the initial amendments to street trees (trees in the right-of-way), as well as private trees. This was not adopted by City Council. The Commission would like any future work on Title 11 to consider application of these standards to Street Trees.



Recommendation

The Portland Planning and Sustainability Commission recommends that City Council:

1. Amend the Tree Code (Title 11) to extend the sunset date of those certain regulations regarding tree preservation of private trees in development situations, identified above, from December 31, 2019 to December 31, 2021, as shown in Exhibit A.
2. Amend the Tree Code (Title 11) to remove the exemption for tree preservation in development situations for sites zoned IH, IG1, EX and CX (11.50.040.B.1) with the removal of the exemption to sunset on December 31, 2021, as shown in Exhibit A.

Sincerely,



Eli Spevak
Vice Chair

Cc: Urban Forestry Commission

