

## **Title 11 Amendment Project Follow Up to City Council Session 10.5.22**

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### **Commissioner Hardesty:**

#### **1) Request for more information about item #15 “Clarify City Forester review is required in City projects”**

##### ***Why does it look like the entire section has changed?***

For consistency, Portland City Code (PCC) 11.50.040.C.2 (General Tree Preservation for City and Street Trees) was reformatted to mirror the formatting of the previous section, PCC 11.50.040.C.1 (General Tree Preservation for Private Trees)

##### ***Why was the “Retention” paragraph (11.50.040.C.2) changed?***

The reference to “consultation” in current code language has been misunderstood as “advisory” and only to be applied if there are proposed tree removals. This is inconsistent with the role of the City Forester as stated in PCC 11.10.010.A.2, which states “The City Forester is responsible for Reviewing development permits for compliance with City and Street Tree preservation and protection and Street Tree planting requirements per Chapter 11.50.”

This amendment does not provide the City Forester with the authority to stop City projects from moving forward. It clarifies that work on City or Street trees requires a review from the City Forester consistent with the authority given in PCC 11.10.010.A.2. This is currently the practice with regard to Urban Forestry review in Capital Improvement Projects and no regulatory or process changes will result from this amendment. This authority is also consistent with the review and permitting role of other infrastructures bureaus such as BES (PCC 17.32.030) and PWB (PCC 21.08.010).

This amendment was reviewed and supported by:

- Chief Engineers of PBOT, PWB, BES and staff from BDS and BPS
- Planning and Sustainability Commission
- Development Review Advisory Committee
- Urban Forestry Commission

**2) Request for more information about item #41 “Remove ‘without compensation’ from UFC section” and how this affects city policy on volunteers and advisory boards**

The intent of this amendment is to proactively remove barriers to compensate members serving on the Urban Forestry Commission (UFC). PP&R is piloting provision of compensation to members of the public serving on advisory groups and current code precludes the UFC from participating in that pilot. Additionally, in the event that PP&R is able to compensate UFC members, consistent with a citywide approach, removing this restriction now avoids the need for a stand-alone amendment in the future, which could delay implementation.

**3) Request for clarification on implication on development projects of #32 “Provide City Forester authority to issue a stop work order”**

This amendment brings the stop work order language in Title 11 into alignment with other city codes (see below). In the event that a regulated tree is being removed without a permit, the City Forester or BDS Director needs to be able to issue a stop work order to preserve the tree. The current code language requires “public safety” to be at risk. This is inconsistent with other City titles and poses a significant barrier to avoiding negative outcomes from unpermitted tree work.

Examples of language consistency with other city code:

- PCC 26.030.080 Stop Work Orders (Electrical Regulations)
- PCC 25.04.015 Stop Work Orders (Plumbing Regulations)
- PCC 10.70.030 Stop Work Orders (Erosion and Sediment Control Regulations)
- PCC 32.66.040 Stop Work Orders (Signs and Related Regulations)

This amendment was reviewed and supported by:

- Chief Engineers of PBOT, PWB, BES and staff from BDS and BPS
- Planning and Sustainability Commission
- Development Review Advisory Committee
- Urban Forestry Commission

**4) Request for more information about an unspecified item about sidewalks**

Amendment #47 clarifies exemptions from street tree planting standards. Title 11 requires the street tree planting standards to be met during development, with exemptions for when the development activity is limited to the street and does not modify sidewalks, tree wells, or tree planting areas. This amendment clarifies that street

tree planting standards must be met even when a tree does not already exist in the tree planting area. This is consistent with current application of the code, and the intent of Title 11, to produce consistent street tree canopy throughout the City.

Amendment #19 also touches on the exemptions from the street tree planting standards. It includes existing driveways and existing trees as reasons why a location may be exempt from the street tree planting standards.

These amendments were reviewed and supported by:

- Chief Engineers of PBOT, PWB, BES and staff from BDS and BPS
- Planning and Sustainability Commission
- Development Review Advisory Committee
- Urban Forestry Commission

### **Commissioner Mapps:**

#### **5) Request for clarification on numbering in our proposed package of 35 amendments (# of original proposed amendments and number dropped).**

At the start of the project, nearly fifty amendments were under consideration with each one assigned a number. For the sake of clarity for bureau partners and members of the public following this work, those numeric values were maintained through the life of the project. UF staff removed the amendments no longer under consideration from the Attachment B before submitting to City Council. The current Attachment B only shows those amendments currently proposed to City Council.

### **Constituents:**

#### **6) Address whether “invasive vines” could be added to [11.60.060 Tree Maintenance Specifications and Responsibilities](#).**

This is addressed in PCC 29.20.010.G (Outdoor Maintenance Requirements) ***Nuisance Plants***. *Eradication, as defined in 29.10.020 V., is required of all plants identified on the Nuisance Plants List. The Director shall adopt administrative rules detailing implementation and enforcement of this provision.*

To provide City Forester with this authority could be explored in a future Title 11 update. We’d want to be sure we were addressing it correctly. Preliminary

consideration reflects that PCC 11.60.060 may not be the right place for this, as 11.60.060 is specific to tree maintenance and provides the City Forester authority to conduct or direct others to conduct tree maintenance actions. Invasive vines cannot be controlled by conducting tree maintenance activities. A separate section would need to be created to give the City Forester authority to require removal of vines growing on trees and would constitute a significant policy shift that needs to be explored in future updates.

## **7) Address question about tree preservation requirements on private property in development situations.**

The current amendment project was limited in scope to technical and minor policy issues. It did not include amendments which would have a significant impact.

When Title 11 was implemented in 2015 it capped mitigation fees for trees removed in development at \$1,200 regardless of tree size. Shortly after the Tree Code went into effect, public concern emerged about the removal of especially large diameter trees during development. As a result, Ordinance 187685 was adopted to strengthen the regulations for tree preservation of especially large diameter trees. This was commonly known as the “Large Tree Amendment” or the “Stop-Gap” amendment. Acknowledging that the amendment was an emergency ordinance that was a “fast track” project with limited opportunity for public comment and staff analysis, a sunset date of December 31, 2019, was added to the amended regulations. **The provision included an exemption from these preservation fees for affordable housing projects which is still in effect.**

In 2019, staff initiated a project to extend the sunset date of the 2016 amendments to provide for additional time to review those amendments and the regulations for tree preservation in development more generally. As part of the legislative adoption process, the Urban Forestry Commission (UFC) recommended the size threshold for great mitigation be reduced from 36” diameter at breast height (dbh) to 20” dbh. Portland City Council adopted an extension of the sunset date to December 31, 2024 and directed BPS, BDS, and BPS to conduct an analysis, legal review, and stakeholder engagement on the UFC’s proposal.

In late 2020, project staff returned to City Council. The staff report found that the Large Tree Amendment reduced the number of trees 36” dbh or greater removed in development by 71%. Further, economic analysis conducted by Johnson Economics concluded that the UFC’s proposal to reduce the size threshold to 20” dbh would only have a marginal impact on future housing development. Over a twenty-year time period the total number of housing units developed would be reduced by 0.06% (54 total

units). The staff report also detailed the significant economic, environmental, and human health services that urban trees provide.

In November 2020, Ordinance 190200 was adopted to implement the staff report's recommendation while maintaining the December 31, 2024 sunset.

When a healthy tree is removed it can take decades for newly planted replacement trees to reach the size and maturity to provide those same public health and environmental services. The community loses those services for a generation. For this reason, it is established best practice to prioritize preserving trees whenever possible and, when trees cannot be preserved, to recoup the value lost through mitigation. The mitigation fees in Title 11 are currently below the recognized value of mature trees. For example, the staff report noted that the structural value of a 32" dbh tree in a residential zone is calculated to be \$16,000 while the mitigation fee for removal under Title 11 would be \$14,400.

Mitigation payments resulting from trees removed in development go into the Tree Planting & Preservation Fund. This fund is the primary revenue source for addressing canopy inequity in Portland. The fund is used exclusively to plant trees consistent with *Growing a More Equitable Forest*, the City's tree planting strategy. In 2022 alone, the fund was used to plant 2,500 trees, 60% of which were in priority neighborhoods. Priority neighborhoods are determined using data to identify where canopy levels are lowest and where resources for tree planting are needed the most to address existing inequities in urban canopy relative to race and income.

PCC 11.50.090 and PCC 11.50.095 detail the process for a property owner, or property owner's representative, to request an administrative review or appeal, to determine if city code, as applied in PCC 11.50, has been improperly administered.