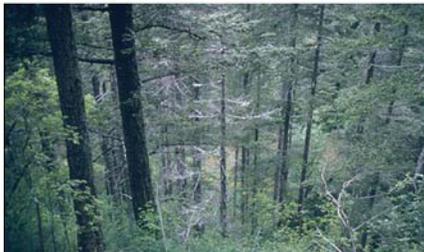


Volume 3

Draft Title 11, Trees; Amendments to Other City Titles; Multnomah County IGA 2nd Amendment



Citywide Tree Policy Review and Regulatory Improvement Project



City of Portland
Bureau of
**Planning and
Sustainability**
Sam Adams, Mayor
Susan Anderson, Director

Ordinances and Exhibits

Recommended Draft to Portland City Council
December 2010



The Bureau of Planning and Sustainability is committed to providing equal access to information and hearings.

If you need special accommodation, please call 503-823-7700, the City's TTY at 503-823-6868, or the Oregon Relay Service at 1-800-735-2900.

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Recommended Draft • Volume 3
Draft Title 11, Trees;
Amendments to Other City Titles;
Multnomah County IGA 2nd Amendment

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ORDINANCE No.

Amend and consolidate existing tree regulations into new Code Title 11, Trees, adopt companion amendments in other Titles, and direct the establishment of customer service improvements and implementation funding (Ordinance; add Code Title 11 and amend related Titles)

The City of Portland Ordains:

Section 1. The Council finds:

General findings

1. Portland's urban forest is a unique community asset, providing a broad array of valuable ecological, social, and economic benefit, including cleaner air and water, reduced stormwater runoff, reduced landslide and flood impacts, carbon sequestration, neighborhood beauty and walkable streets, public health benefits, and enhanced property values.
2. Almost half the tree canopy in Portland shades City owned or managed property, while slightly more than half the canopy shades privately owned property. The Bureau of Parks and Recreation estimates that City's street and park trees generate aesthetic and ecological benefits worth \$21 million annually, and that the rate of return for maintaining these trees is almost \$4 for every dollar invested. Parks and Recreation also projects that the total replacement value of trees in Portland is roughly \$5 billion.
3. In 2004 the City updated its Urban Forest Management Plan, confirming goals to protect and enhance the urban forest (including reaching 33 percent tree canopy averaged over the city), establish and maintain resources to manage the urban forest, and ensure that the benefits of the urban forest are distributed so that they are enjoyed by all Portland residents. The Urban Forest Management Plan provides the main policy basis for the Citywide Tree Policy Review and Regulatory Improvement Project, although the project also supports the goals of the Portland Watershed Management Plan (2006) and the City's Climate Action Plan (2009), both of which call for enhancement of the urban forest.
4. The project originates from a grassroots push for reform of Portland's tree regulations. In 2005 the Southwest Neighborhoods Inc. (SWNI), Tree Committee published a report calling for reform of the City's tree regulations, and presented this report to the Urban Forestry Commission and members of the City Council. The report identified the need for stronger tree preservation requirements, stronger enforcement, and improved access to information about tree policies, programs, and requirements.
5. In 2006 the Bureau of Parks and Recreation led a multi-bureau effort to produce an action strategy to achieve the goals of the 2004 Urban Forestry Management Plan. The City Council accepted the Urban Forestry Management Plan *Action Plan* (UFAP) on March 15, 2007. The UFAP assigned a high priority to actions involving review and update of the City's tree-related policies, regulations, and associated procedures. Desired outcomes include the creation of a consistent, cohesive regulatory framework for trees, and that such framework will enhance the urban forest through development and redevelopment. The

Urban Forest Action Plan is provided as Appendix G of the Citywide Tree Project Report to City Council, December 2010 (Recommended Draft Report).

6. In fall 2007 the City Council launched the *Citywide Tree Policy Review and Regulatory Improvement Project*, directing the Bureau of Planning and Sustainability (BPS), then Bureau of Planning, to lead the effort with City Bureaus including Parks and Recreation, Development Services, and Environmental Services.
7. In fall 2007 BPS convened an interbureau project team which sponsored a collaborative project scoping process involving interviews with community stakeholders, briefings with local groups, and research on the tree policies and regulations of other cities in the region and across the country.
8. In spring 2008 BPS convened a 23-member Stakeholder Discussion Group (SDG) representing east-side and west-side neighborhoods, residential, commercial/industrial, and institutional development communities, the arborist community, and the environmental community, including Friends of Trees and Audubon Society of Portland.
9. The Stakeholder Discussion Group (SDG) met with the team regularly for almost a year, systematically reviewing a series of issue papers produced by project staff. The SDG expressed diverse views on the complexity, inconsistency, and gaps in existing City tree regulations, erratic and confusing tree preservation requirements and tree permit system, and the effectiveness of City tree inspections and enforcement. The Stakeholder Group also provided comments and suggestions for potential solutions.
10. In early 2009, project staff vetted a set of initial proposals that emerged from the SDG process. The initial proposals were presented to the Portland Planning Commission, Urban Forestry Commission, Sustainable Development Commission, Development Review Advisory Committee, Citywide Land Use Group, neighborhood organizations and watershed councils, and the Planning and Development Bureau Directors.
11. The initial proposals received general support from the various reviewers, including strong support for consolidation of City tree regulations into a single comprehensive code title, stronger requirements for tree preservation, planting, protection during development, and enforcement, and proposed customer improvements including a single point of contact, a 24-hour tree hotline, and a community tree manual. Reviewers generally supported a more standardized tree permit system, but cautioned staff to be mindful of impacts on homeowners. Reviewers also advised staff to avoid unduly increasing the cost of development.
12. Staff refined the proposals based on input from the vetting process, and on February 17, 2010 published the Proposed Draft for public review and hearings before the Portland Planning Commission and Urban Forestry Commission.
13. On February 12, 2010, notice of the public hearing was mailed to 621 parties on the project mailing list and Bureau of Planning and Sustainability legislative project mailing list. Two public workshops were held on March 9, 2010 and March 16, 2010, at the Multnomah Art

Center and Floyd Light Middle School, respectively. Project staff also provided briefings to other interested groups during this period, including the City's Development Review Advisory Committee and the Citywide Land Use Group. Outreach conducted for the project is outlined in Appendix D of the Recommended Draft Report.

14. The Planning Commission (PC) and Urban Forestry Commission (UFC) held a joint public hearing that began on March 23, 2010. The commissions continued the hearing and invited written and oral public testimony during three joint work sessions on April 13, April 26, and May 11, and additional separate work sessions on June 8, 2010 (PC) and June 17, 2010 (UFC). The Planning Commission closed the public hearing on June 8, 2010. The Urban Forestry Commission accepted public testimony until June 17, 2010. Final work sessions were held on July 27 (PC) and July 29, 2010 (UFC).
15. Staff sent electronic mail messages on March 15, May 26, and July 15 to inform the approximately 450 individuals and organizations on the project mailing list of upcoming Planning Commission and Urban Forestry Commission hearing/work session dates and opportunities to comment. These messages also noted that up-to-date summaries of the Planning Commission's and Forestry Commission's deliberations and directions to staff had been posted on the project website.
16. The commissions received testimony from 71 organizations and individuals. Most testifiers expressed strong support for consolidating regulations into a single tree code title, stronger tree preservation and planting requirements in development situations, a standardized tree permit system, more effective enforcement, and implementation of customer service improvements. A number of people recommended that tree size thresholds be reduced so that the proposed regulations would address smaller trees. Several representatives of the development community expressed strong concerns about the potential impact of proposed development standards on the cost of development and housing affordability. Several people opposed the proposed prohibition on planting trees on the City's Nuisance Plants List because that would prohibit future planting of Norway maple, which is an abundant street tree in Portland and is called for specifically in the Ladd's Additional Historic District Design Guidelines. Some expressed concern about the impact of the proposed tree permit system on homeowners. A number of testifiers, including City bureaus stated that the proposal was overly complex and costly. The written record of testimony submitted during the hearing process is in Appendix B of the Recommended Draft Report.
17. On July 27, 2010 the Portland Planning Commission unanimously approved the proposed draft with specific directions to revise the Proposed Draft for public review and a hearing before the City Council. On July 29, 2010 the Urban Forestry Commission unanimously followed suit.
18. The commissions approved revisions designed to simplify and reduce the cost of the proposal while maintaining anticipated tree canopy benefits to the extent possible. The commissions also approved specific revisions to the development standards including tree preservation exemptions for small lots and high coverage developments, and a reduction in the tree size threshold for application of the tree preservation standards. The commissions approved a citywide tree permitting system with direction to establish a more streamlined

tree removal permit system for homeowners on developed single dwelling lots. The commissions did not approve a request to delay the prohibition on future planting of Norway maple or an exception to allow planting of Norway maples in Ladd's addition, but directed staff to continue working with the neighborhood representatives to identify suitable tree replacement species.

19. The Recommended Draft features:

- a. The Recommended Draft Report to City Council, December 2010, which documents the project purpose, process, and proposal in its entirety
- b. Consolidation of City tree regulations into a new code title, Title 11, Trees (Exhibit A) Title 11:
 - i) Addresses trees on public and private property and in development and non-development situations
 - ii) Reauthorizes, updates, and elevates the urban forestry program and Urban Forestry Commission
 - iii) Clarifies bureau functions, assigning primary responsibility to the City Forester for trees in non-development situations, and to the Director of the Bureau of Development Services for trees in development situations. The Chief Engineer in the Bureau of Transportation retains primary authority for trees as they affect the function of public rights of way and public utility infrastructure
 - iv) Establishes tree preservation and tree density standards to apply to all types of development. The standards are intended to encourage retention of larger healthy trees and to achieve the City's tree canopy targets, while also supporting City development goals. The standards provide options to preserve, plant, and/or pay a fee in lieu to the City's Tree Planting and Preservation Fund. Exemptions recognize constraints on small lots and high building coverage development situations. The standards are intended to be clear and objective.
 - v) Clarifies tree-related requirements for public works and capital improvement projects
 - vi) Establishes a more standardized, predictable permit system for trees on public and private property. The updated permit system includes basic tree replacement requirements for dead, dying, dangerous trees and nuisance tree species, and clarifies the criteria to be applied in reviewing requests to remove larger healthy trees or multiple trees. The updated permit system replaces an exemption for developed single family lots with a basic tree replacement requirement for trees that are 20 or more inches in diameter
 - vii) Establishes a permit to allow limited tree pruning in environmental and other resource overlay zones, and a programmatic permit option for public agencies' routine tree-related activities instead of requiring individual permits
 - viii) Prohibits planting of tree species on the City's Nuisance Plants List on

- City owned or managed property including City rights of way consistent with the City's adopted invasive plant management strategy
- ix) Incorporates provisions governing the Heritage Tree Program and updated directions for addressing Dutch Elm Disease as adapted from Ordinance 159750 which has now been superseded.
 - x) Consolidates, standardizes and clarifies procedures for enforcement and assignment of penalties
 - xi) Treats trees as a fundamental component of the City's green infrastructure and a basic site development requirement similar to stormwater management and erosion control. As such the provisions of Title 11 are not land use regulations
- c. Companion amendments to various code titles where tree related provisions were moved into Title 11 or were needed to establish cohesiveness and consistency between titles. Amendments to Title 3, Administration; Title 8, Health and Sanitation; Title 14C, Public Order and Police; Title 16, Vehicles and Traffic; Title 17, Public Improvements; Title 20, Parks and Recreation; Title 24, Building Regulations; Title 29, Property Maintenance Regulations; and Title 31, Fire Regulations, are in Exhibit B of this ordinance.
- d. Specified Title 11 development standards and relevant enforcement procedures will be administered by the City outside Portland City limits in unincorporated areas of Multnomah County that are within the Urban Service Boundary. These regulations will be administered through the existing "Intergovernmental Agreement to Transfer Land Use Planning Responsibilities between City of Portland and Multnomah County (last amended per Ordinance No. 179313, June 13, 2005). This IGA is being amended through a separate ordinance to reference application of tree regulations as appropriate.
- e. Amendments to Title 33, Planning and Zoning which complement the regulations of Title 11, and which addressed in a separate ordinance. Title 33 amendments:
- i) Establish flexible development standards to encourage tree preservation, including allowing limited reductions in required parking spaces and housing density, increased flexibility to meander pedestrian pathways and locate required outdoor areas, and a bonus housing density option
 - ii) Update the existing numeric tree preservation standards and adding new qualitative criteria in land divisions to 1) improve the quality of tree preservation and 2) allow consideration of site-specific opportunities and constraints
 - iii) Require tree preservation plans approved through land divisions to be recorded with the final plat, and establishing a time limit after which such tree preservation requirements expire
 - iv) Add tree preservation as one of the factors to consider in Design Reviews and specified Conditional Use Reviews
 - v) Establish consistent tree replacement requirements for trees in environmental and other resource overlay zones, including non-native trees

- and trees in transition areas.
 - vi) Update the provisions of certain overlay zones and plan districts to improve consistency and increase tree removal allowances in conjunction with certain activities
 - vii) Update definitions to ensure consistent application of stream and wetland setback standards to protect riparian trees and vegetation in existing overlay zones, and to include additional tree terms
- f. Amendments to the Ladd’s Addition Conservation District Guidelines to clarify that the prohibition on planting nuisance species trees applies and that the street plan guidelines will inform the selection of species to replace nuisance species street trees in the future. These amendments are addressed in a separate ordinance, along with the Title 33 amendments.
- g. Customer service improvements as described in the Recommended Draft Report and provided in Exhibit C of this ordinance, including:
- i) Upgrades to the City’s electronic tree permit tracking system – necessary to improve program efficiency, transparency and enforcement, and to implement the 24-hour tree hotline.
 - ii) Establishing a single point of contact for the public – responds to questions relating to tree programs and requirements, refers the public to appropriate city and community programs, assists in tree permitting.
 - iii) Piloting a 24-hour tree hotline – checks into questions and complaints about tree cutting after weekday business hours and on weekends.
 - iv) Developing a Community tree manual – provides information on tree care and best management practices, instructions and assistance to facilitate code compliance, and information on topics of interests such as fruit and nut trees, habitat trees, optimizing trees and solar energy systems.
 - v) Pursuing Neighborhood Tree Plans - The Urban Forestry Program in the Bureau of Parks and Recreation is pursuing this action currently, and has recently received a grant from the East Multnomah Soil and Water Conservation District.
20. The revised proposal described in the Recommended Draft Report is estimated to generate approximately more than 100 additional acres of future tree canopy per year through a combination of improved tree preservation and planting, more than 10 times the canopy that would be attained by putting the same amount investment into City tree planting efforts alone.
21. Approximately 85 percent of the additional tree canopy will be generated through implementing the new Title 11 tree preservation and tree density standards that will apply in land use review and development situations. Additional tree canopy enhancement will be attained through implementing the updated tree permit systems outlined in Title 11 and amendments to Title 33, Planning and Zoning.
22. The adoption of Title 11 and other amendments must be accompanied by additional staffing

and funding as needed to successfully meet project goals and avoid adverse impacts on existing programs, and as indicated in Exhibits D, Tree Canopy Estimates, Financial Impacts and Budget Proposal section of the Recommended Report to City Council, and E. Financial Impact Statement. The estimated total ongoing program implementation cost is \$535,000. About two thirds of these costs will be covered by increases in development and land use review fees, and capital project funding. Other ongoing program costs are associated with the improved tree permit system and hiring a single point of contact to assist the public and help process permits. These functions would not be fee-supported and would require general fund dollars or other sources of funding. One-time costs for initial project preparation (training, development of procedures and informational materials, outreach, etc.), permit tracking system upgrades, vehicles for tree inspectors, and the community tree manual are estimated at roughly \$262,000 in FY 2011-12 and \$165,000 in FY 2012-13. These items will require general fund dollars or funds from an alternative source(s).

23. The commissions approved a phased project implementation and funding approach, as proposed by the directors of the bureaus of Development Services, Parks and Recreation, Environmental Services, and Planning and Sustainability. Project implementation will take place over three fiscal years. In FY 2011 – 12, activities would focus on permit tracking system upgrades, staff training, development of informational materials, and public outreach to prepare for code implementation, and production of the community tree manual. These activities would be funded through a one-time allocation from the General Fund. Code amendments, fee increases and ongoing general funding would go into effect mid-year FY 2012-13. One-time general funding will also be needed for BDS during this “transition year” to allow for adequate accrual of fee revenues. In FY 2013-14, the program would be funded through fees, CIP dollars and ongoing general fund allocation. One-time general funding is anticipated to terminate at that time. This phased-in approach is intended to provide time for City bureaus to gear up and to educate Portlanders about the regulatory updates, and for the local economy and City budget to stabilize sufficiently before implementing the updated regulations.
24. The Citywide Tree Project is expressly listed as a component of Portland’s strategy to comply with Metro’s Title 13, Nature in Neighborhoods Program. Completion of the Citywide Tree Project is also cited as an upcoming accomplishment in the City’s 2009-2010 annual National Pollutant Discharge Elimination System (NPDES) and Stormwater Program compliance reports to the Oregon Department of Environmental Quality.

NOW, THEREFORE, the Council directs:

- a. Adopt the *Citywide Tree Policy and Regulatory Improvement Project – Planning Commission and Urban Forestry Commission Recommended Draft Report to City Council, December 2010*.
- b. Establish Title 11, Trees, in accordance with Exhibit A.
- c. Amend Titles 3, Administration; 8, Health and Sanitation; 14C, Public Order and

Police; 16, Vehicles and Traffic; 17, Public Improvements; 20, Parks and Recreation; 24, Building Regulations; 29, Property Maintenance Regulations; and 31, Fire Regulations in accordance with Exhibit B.

- d. Adopt the commentary of Exhibits A and B as legislative intent and additional findings.
- e. Adopt the recommendations of Exhibit C, Customer Service Improvements section of the Recommended Report to City Council.
- f. Direct the bureaus of Parks and Recreation and Development Services to budget for initial project ramp up in the FY 2011-12 budgets of the bureaus of Parks and Recreation and Bureau of Development Services as indicated in Exhibit D Tree Canopy Estimates, Financial Impacts and Budget Proposal section of the Recommended Report to City Council, and Exhibit E, Financial Impact Statement. Also direct the bureaus to report to City Council early in the FY 2012-13 budget process, on plans to fund the administration of Title 11 and Title 33 amendments and improvements outlined in Exhibit D, including proposed increases in development and land use review fees, and allocations from the general fund.

Section 2.

1. The Council declares that Directives a, e, and f of this ordinance shall become effective 30 days from adoption
2. To provide time to the City to prepare to administer Title 11, Trees and other elements of this proposal, the Council declares that Directives b, c, and d shall become effective on February 1, 2013, pending Council approval of staffing and funding for implementation.

Section 3. If any section, subsection, clause or phrase of this Ordinance, or the code amendments it adopts, is for any reason held to be invalid or unconstitutional, that shall not affect the validity of the remaining portions of the Portland City Code and other identified documents. Council declares that it would have passed the Portland City Code and other identified documents, and each section, subsection, sentence, clause, and phrase thereof, regardless of the fact that any one or more sections, subsections, sentences, clauses, or phrases of this Ordinance, may be found to be invalid or unconstitutional.

Passed by the Council:

Commissioner Mayor Sam Adams

Prepared by: Roberta Jortner

Date Prepared:

LaVonne Griffin-Valade

Auditor of the City of Portland

By

Deputy

Exhibit A

Title 11, Trees - Proposed Code

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COMMENTARY

CHAPTER 11.05

LEGAL FRAMEWORKS AND RELATIONSHIPS

Purpose

The Legal Frameworks chapter includes a comprehensive purpose for the Tree Title as an implementation facet of the Urban Forest Plan, to protect the health, safety, and welfare of Portland Citizens, and includes a list of associated tree benefits achieved by addressing trees in both development and non-development situations. This list highlights the key values and benefits, including maintaining watershed health and community livability, as well as sustaining and enhancing the urban forest.

CHAPTER 11.05

LEGAL FRAMEWORK AND RELATIONSHIPS

Sections:

- 11.05.010 Purpose.
- 11.05.020 Official Name.
- 11.05.030 Authority.
- 11.05.040 Where This Title Applies.
- 11.05.050 Other City, Regional, State, and Federal Regulations.
- 11.05.100 Severability.
- 11.05.110 Liability.

11.05.010 Purpose.

- A. The Tree Code is one of the implementation measures of the Urban Forest Plan. Together with education and other initiatives, these regulations protect the health, safety, and general welfare of the citizens of Portland and are consistent with other plans and policies of the City. In so doing, the appearance of the City is enhanced and important ecological, cultural, and economic resources are protected for the benefit of the City's residents and visitors.
- B. The chapters within this title address trees in both development and non-development situations and seek to enhance the quality of the urban forest and optimize the benefits that trees provide. Desired tree benefits include:
 - 1. Capturing air pollutants and carbon dioxide;
 - 2. Maintaining slope stability and preventing erosion;
 - 3. Filtering stormwater and reducing stormwater runoff;
 - 4. Reducing energy demand and urban heat island through shading of buildings and impervious areas;
 - 5. Providing visual screening and buffering from wind and storms;
 - 6. Sustaining habitat for birds and other wildlife;
 - 7. Providing a source of food for wildlife and people;
 - 8. Maintaining property values and the beauty, character and natural heritage of the City; and
 - 9. Meeting the multi-purposed objectives of the Urban Forest Plan, including reaching and sustaining canopy targets for various urban land environments.

COMMENTARY

Official Name

This includes other reference names for the Tree title.

Authority

Specifically confers administrative non-legislative responsibility for the Title from City Council to the City Forester and Development Services Bureau Director, as required by City Charter.

Where this Title Applies

This section sets up the framework for applying the Tree Code to the unincorporated county pockets that are already subject to zoning and other development requirements through an intergovernmental agreement. The intention is to apply the development related tree requirements to sites within the county pocket. Since the non-development tree permit requirements (Chapter 11.40) are not fully fee supported, and are funded through the city's general fund, this program would not extend outside city limits.

This section also notes that state or federal jurisdiction preempts the provisions of the title. Chapter 20.40 did not explicitly exempt State or Federal lands, however, it has routinely been the City's practice to do so. Some state rights of way (such as 82nd Avenue) are managed cooperatively by the state and city. In cases where the City is managing the street or maintaining street trees, these regulations will apply. Regardless of government agency jurisdiction, the City retains the ability to abate a hazardous situation (e.g. tree leaning into the street).

A clarification is also included noting that trees in above ground containers are not subject to the title. This is to address trees on balconies, rooftops, floating homes, etc. and reflects that these trees while performing some benefit these are more often decorative and not intended to be managed as part of the urban forest.

11.05.020 Official Name.

The official name of this Title is "Title 11, Trees" and it may be referred to as "Title 11" or the "Tree Code".

11.05.030 Authority.

The regulations of this Title are adopted under the City's police power to regulate to protect the public health, safety and welfare.

Pursuant to Section 2-104 of the City Charter, the City Council confers its non-legislative functions as described herein to the City Forester and Director of the Bureau of Development Services to administer and enforce this Title.

11.05.040 Where This Title Applies.

- A. In City of Portland. This Title applies to all trees within the City of Portland.
- B. County urban pockets. Trees in the "County urban pockets" are subject to only some of the regulations of this Title. The County urban pockets are areas outside the City of Portland where the Portland Zoning Code and other Portland regulations are administered.
 - 1. Trees in the County urban pockets are subject to the regulations of:
 - a. Chapter 11.05, Legal Frameworks and Relationships
 - b. Chapter 11.10, Administration of this Title
 - c. Chapter 11.15, Funds and Contributions
 - d. Chapter 11.80, Definitions and Measurements
 - 2. Trees in the County urban pockets are exempt from the regulations of:
 - a. Chapter 11.20 Urban Forestry Program
 - b. Chapter 11.30 Tree Permit Procedures
 - c. Chapter 11.40 Tree Permit Requirements (No Associated Development)
 - d. Chapter 11.45 Programmatic Tree Permits
 - 3. Trees in the County urban pockets are subject to some of the regulations of the following chapters. Each of these chapters specifies which sections apply to the County urban pockets:
 - a. Chapter 11.50 Trees in Development Situations
 - b. Chapter 11.60 Technical Specifications

Other City, Regional, State, and Federal Regulations

This section establishes the relationships between the regulations within Title 11, and between the regulations in this title and other City code titles, and also between the regulations in this title and other regional, state and federal regulations.

This clarifies that the requirements of Title 33 and any conditions of land use approval granted through that title must be met in addition to the requirements of this title.

This section also specifies that approvals granted through this Title do not relieve a person from complying with other city, regional, state and federal regulations, such as the endangered species act or migratory bird treaty act. It is envisioned that similar language will also appear on City issued tree permits.

Additional clarification is provided to let the reader know that if a list or references to another regulations are included, the they may not be exhaustive and might not include all applicable requirements. References to such requirements when provided however, refer to the most current adopted version of those regulations, unless a specific citation indicates otherwise. For example, the "2007 Urban Forest Action Plan" is specific to that particular version, while the "Urban Forest Plan" refers to the most recent adopted version.

Finally, this section includes a provision intended to address situations where adopted city policy or guidelines may conflict with the requirements of this title. In these situations, these regulations are viewed with more weight than other City policy or guidance which is intended to influence and inform decisions. These other policy or guideline documents must be followed to the extent that they do not conflict with this title, but in cases where they conflict, the City Forester is granted the authority to require an alternative that meets this title in a manner that reasonably satisfies the intent of the conflicting policy or guideline. As an example, a park master plan that includes planting nuisance species trees (prohibited on City properties through this Title) may be altered to plant a substitute tree without the need to amend the park master plan, provided the substitute meets the objective of the original tree selection.

c. Chapter 11.70 Enforcement

- C. State or Federal jurisdiction. Trees within public rights-of-way that are managed by the State of Oregon are exempt from the regulations of this Title. Trees located on lands or within utility corridor easements that are owned by State or Federal agencies are also exempt from the regulations in this Title. However, these trees may be subject to other City regulations or Intergovernmental Agreements. Furthermore, the City retains summary abatement authority for nuisances posing an immediate threat to public safety.
- D. Trees in containers. Trees placed in above-ground containers are exempt from the requirements of this Title.

11.05.050 Other City, Regional, State, and Federal Regulations.

- A. Relationship to Title 33, Planning and Zoning.
 - 1. Generally. The regulations of Title 33 shall be met in addition to the regulations of this Title, unless otherwise specified in a condition of land use approval;
 - 2. Conditions of approval. Conditions of approval attached to a land use review shall be met unless they have expired as specified in Title 33, Planning and Zoning.
- B. Relationship to other City, Regional, State and Federal regulations.
 - 1. Compliance required. In addition to the requirements of the this Title and Title 33, Planning and Zoning, tree removal and planting actions shall comply with all other City, regional, state, and federal regulations, including the Clean Water Act, Endangered Species Act, and Migratory Bird Treaty Act. Compliance with Title 11 does not in any way imply, either directly or indirectly, compliance with any other law. Where the provisions of this Title conflict with those set forth in other regulations under the City Code or ordinance, the more restrictive requirement will prevail. When both provisions are equally restrictive, the most recently adopted requirement will prevail, except in matters affecting public safety.
 - 2. References to other regulations. References in the tree code to other City, regional, state, or federal regulations do not constitute a complete list of such regulations. These references do not imply any responsibility by the City for enforcement of regional, state, or federal regulations.

Severability

This allows the Title to remain in effect should a particular provision be challenged and struck as invalid. This also specifies that the provision that is stricken as applied to one particular situation may still be valid for other situations or circumstances unless the court has ruled more broadly on the rule's validity.

Liability

Specifies that the City Council and City staff are not directly liable for implementing this title, or for the actions or inactions of owners or occupants of property in keeping their property, abutting sidewalks, and adjacent Street Trees maintained in a safe condition.

3. Current versions and citations. All references to other City, regional, state, or federal regulations in the Tree Code refer to the most current version and citation for those regulations, unless specifically indicated otherwise. Where the referenced regulations have been repealed, requirements to comply with those regulations are no longer in effect. Where the citation for the referenced regulation has been renumbered, the regulation continues to apply.
4. City guidelines and policy documents. City, Street, or Private Trees may be subject to policy, design, or other guidance documents adopted in compliance with City Code. In these cases, the City Forester shall adhere to these documents insofar as they do not conflict with the requirements of this Title. In cases of such conflict, the City Forester may require an alternative that is consistent with this Title and that reasonably satisfies the overall objectives of the policy or guidance document.

11.05.100 Severability.

If any provision of this Title, or its application to any person or circumstance, is held to be unconstitutional, unlawful or invalid as applied, the remainder of this Title, shall not be affected, and shall continue, insofar as possible, in full force and effect. In the case where a provision is held to be unconstitutional, unlawful or invalid as applied, its application to other persons or in other circumstances, shall not be affected, and shall continue, insofar as possible, in full force and effect. To that end, the provisions of this Title are declared to be severable.

11.05.110 Liability.

- A. Nothing in this Title will be deemed to impose any liability upon any member of City Council or the City or any of its officers or employees.
- B. Every property owner shall be liable to persons injured or otherwise damaged by reason of the property owner's failure to keep his/her private property, sidewalks, planting strips and trees fronting or upon such private property in a safe condition so as not to be hazardous to public travel.
- C. Furthermore, every property owner shall be liable to the City of Portland for all expenses, including attorney fees, incurred by the City in defense of or paid by the City in settlement or satisfaction of any claim, demand, action or suit brought by reason of that property owner's failure to satisfy the obligations imposed by this Title.

COMMENTARY

CHAPTER 11.10

ADMINISTRATION OF THIS TITLE

The administration chapter addresses the details of how this title will be implemented. Since two primary bureaus (Development Services and Parks) will implement these regulations through a single title, it is critical that the implementers' roles be expressly detailed. This chapter describes the various duties of the City Forester, Development Services Director, City Engineer, Urban Forestry Commission and Appeals Board, and Code Hearings Officer. It also includes procedures for amending the title, as well as requirements for interagency and intergovernmental agreements, and accepting performance guarantees. This chapter also authorizes collection of fees as established by City Council.

Code Administration and Duties Performed

This section lays out the specific duties charged to the implementing Bureaus. For the purposes of this title, the City Forester is the Bureau of Parks and Recreation representative, the BDS Director is the Director of Development Services, and the City Engineer represents the interests of the water, environmental services, and transportation infrastructure bureaus. This section authorizes the City Forester and BDS Director to develop and adopt administrative rules as necessary to carry out the assigned duties and functions.

The Citywide Project Team discussed the role of administrative rules in implementing this title. The Project Team opted to include more specificity in the code in lieu of developing separate administrative rules at this time to give the City Council and public more certainty in the content of the proposed regulations. Future amendments to move requirements to administrative rule can be reviewed on their individual merits, and will also allow the implementing bureaus to determine where rules are needed as they begin to apply the new regulatory framework. The reader will note several places in the code and commentary text where reference is made to developing future rules and procedures.

City Forester

Roles for the City Forester are derived largely from existing Section 20.40.050. In addition, responsibilities that were previously assigned to the parks superintendent are now assigned to the City Forester, since this has been the practice.

CHAPTER 11.10

ADMINISTRATION OF THIS TITLE

Sections:

- 11.10.010 Code Administration and Duties Performed.
- 11.10.020 Determining What Regulations Apply.
- 11.10.030 General Rules for Reading and Applying the Code Language.
- 11.10.040 Amendments to this Title.
- 11.10.050 Interagency and Intergovernmental Agreements.
- 11.10.060 Performance Guarantees.
- 11.10.070 Fees.

11.10.010 Code Administration and Duties Performed.

This Title is primarily implemented by two City officials; the City Forester and the Director of the Bureau of Development Services (BDS Director). The City Engineer has a role as described below in the resolution of infrastructure conflicts within the public streets and city-owned easements. The roles for the Urban Forestry Commission and Appeals Board include major urban forest policy direction and hearing appeals of tree removal permits, as described in Chapter 11.20. The Code Hearings Officer adjudicates enforcement cases.

The City Forester and BDS Director are authorized to adopt, amend and repeal administrative rules, not in conflict with the provisions of this Title, pertaining to matters within the authority or responsibility of the City Forester or BDS Director under the provisions of this Title. No such rule shall be effective or binding on any person until it is filed for inclusion in the City Auditor's Portland Policy Documents repository in accordance with the provisions of Chapter 1.07 of this Code. If any person feels aggrieved by any such administrative rule, the person may appeal to the Council for its amendment or repeal by filing with the City Auditor a petition which shall be presented to the Council at its next regular meeting, unless the petitioner requests a later hearing. Until and unless amended or repealed by the Council, any administrative rule made under this Section shall be in full force and effect.

- A. City Forester. The City Forester shall be an arborist. The City Forester is responsible for:
 - 1. Administering the tree permit program for City, Street, and Private Trees per Chapter 11.40 and Programmatic Permits per Chapter 11.45;
 - 2. Reviewing development permits for compliance with City and Street Tree preservation and protection and Street Tree planting requirements per Chapter 11.50;
 - 3. Processing violations of this Title as stated in Chapter 11.70;

COMMENTARY

Under this Title, the City Forester is primarily responsible for administering the tree permit program when no development is occurring. Coordination between the City Forester and BDS Director is required, especially for activities in environmental, and other overlay and plan district areas that are subject to tree restrictions contained in Title 33, Planning and Zoning. Coordination is also required to ensure seamless integration of development and non-development rules pertaining to trees.

It is anticipated that the City Forester will continue to provide technical consultation to BDS in evaluating trees on private property when development is proposed or under construction, advising on tree preservation and planting efforts for city projects.

Following discussions with the Urban Forestry Commission (UFC) in consultation with the City Forester, the City Forester's duties have been expanded to include coordinating Commission review and input on city projects and budget decisions that are likely to impact the urban forest.

The City Forester is also tasked to assist the City Engineer (defined as the Chief Engineer of the Water Bureau, Chief Engineer of the Environmental Services Bureau, and City Engineer for the Transportation Bureau) with addressing trees in the City rights of way.

BDS Director

This section clarifies the specific administrative duties for the Director of the Bureau of Development Services. The BDS Director will continue to review and inspect City and Private trees in the context of building permit review. The City Forester will likely assist the other bureaus in preparing these development plans on City projects, serving as an independent review authority. Street trees remain the responsibility of the City Forester during these development projects.

4. Managing the Urban Forestry Program by:
 - a. Preparing and submitting the annual budget request for the operation of the Parks and Recreation Forestry Division; and
 - b. Providing tree maintenance or supervisory services including cutting, pruning, spraying, planting and tree removal on city managed property required by or performed by the Bureau of Parks and Recreation subject to the annual budget. Bureaus may also employ normal procedures to have such services provided by private contractors; and

5. Preserving and enhancing the urban forest by:
 - a. Developing and periodically updating specifications for planting, pruning, removing and maintaining trees in accordance with proper arboricultural practices;
 - b. Developing lists of recommended trees for streets as well as recommended trees for other specific objectives;
 - c. Coordinating with the UFC and City bureaus, the development, monitoring, and reporting on implementation of the Urban Forest Plan described in Chapter 11.20; and
 - d. Providing staff services and carrying out the other responsibilities applicable to the UFC including:
 - (1) Preparing a monthly report on the Urban Forestry Program's activities for the Urban Forestry Commission's (UFC) review;
 - (2) Reviewing and identifying for the UFC budget proposals, programs, and projects that could substantially affect trees or the urban forest; and
 - (3) Analyzing potential activities for consideration in the development of the UFC's annual work plan and retreat.

- B. BDS Director. In addition to duties specified in other City Titles, the BDS Director is responsible for:
 1. Reviewing development permits for compliance with tree preservation, protection and planting requirements per Chapter 11.50;
 2. Processing violations of this Title as stated in Chapter 11.70; and

City Engineer

The City Engineer is primarily responsible for ensuring that public improvement capital projects and other public works projects adhere to the standards of this title. The City Forester will consult with the City Engineer in support of this objective. A notation is included to clarify the City's maintenance responsibility for trees in greenstreet facilities and center medians, since most other Street Trees are the maintenance responsibility of the adjacent property owner. The City Engineer is assigned to collaborate with the City Forester in identifying for the Forestry Commission projects and budget items that affect the urban forest.

Hearings Officer

The City Hearings Officer is charged with hearing abatement cases and adjudicating enforcement cases following established procedures in Title 22, Hearings Officer, and Chapter 11.70, Enforcement.

Determining What Regulations Apply

This section is intended to give the reader a basic orientation to the framework of the Tree Title. Essentially, the code is organized around two principles: the type of tree (City Tree, Street Tree, Private Tree) and whether or not there is development proposed or occurring that affects those trees. Non development related requirements are contained in Chapter 11.30 and 11.40 for City, Street, and Private Trees, and 11.45 for public agency Programmatic Permits.

Development related requirements are contained in Chapter 11.50.

All heritage tree requirements are contained in Chapter 11.20.

3. Processing violations affecting trees when the violation is of a requirement of this Title and Title 33, Planning and Zoning. In such cases, the BDS Director may also consult with the City Forester.
- C. City Engineer. The City Engineer in consultation with the City Forester is responsible for:
1. Reviewing tentative planting proposals in public streets for the purpose of protecting existing utilities and sewer and water lines;
 2. Applying standards for planting, care, and protection of trees through development projects, including public works, and capital improvements;
 3. Planting, care, and management of trees in center medians and greenstreet facilities; and
 4. Identifying for the City Forester city programs and capital projects or significant budget proposals that would substantially affect trees or the urban forest and that warrant UFC involvement or review.
- D. Urban Forestry Commission (UFC). The roles and functions of the Urban Forestry Commission are specified in Chapter 11.20.
- E. Urban Forestry Appeals Board. The roles and composition of the Appeals Board are specified in Chapter 11.20.
- F. Code Hearings Officer. The City's Code Hearings Officer is responsible for hearing abatement cases and providing review of enforcement cases related to this Title, following the procedures in Title 22, Hearings Officer.

11.10.020 Determining What Regulations Apply.

- A. Determine whether the proposed activity will require a development permit.
1. If the proposal will require a development permit, the regulations of Chapter 11.50 apply to the proposal. Chapter 11.50 will also direct readers to other regulations relevant to the proposal.
 2. If the proposal will not require a development permit, the regulations of Chapters 11.30 and 11.40 apply to the proposal. Chapter 11.40 will also direct readers to other regulations relevant to the proposal.
 3. The regulations of those chapters are specific to City, Street, and Private Trees as defined in Chapter 11.80, Definitions and Measurements.
- B. For regulations pertaining to Heritage Trees, refer to Chapter 11.20.

COMMENTARY

General Rules for Reading and Applying the Code Language

This section clarifies how the code provisions are to be applied, and that the reader should rely on the literal meaning of the language. When the literal meaning is unclear, then the context or intent of the regulations should be examined. This section also clarifies how certain terms are used in the code. These are consistent with terms in Title 33, Planning and Zoning, also referred to as the Zoning Code.

11.10.030 General Rules For Reading and Applying the Code Language

- A.** Reading and applying the code. When a conflict arises as a result of a particular tree situation spanning multiple chapters, the more specific provisions take precedence. When the conflict cannot be resolved by the more specific provision, the requirement that results in retaining the existing tree will prevail, except in cases where the public safety is jeopardized.

- B.** Terms.
 - 1.** Defining words. Words used in this Title have their dictionary meaning unless they are defined in Chapter 11.80, Definitions and Measurements. Words listed in the Definitions chapter have the specific meaning stated, unless the context clearly indicates another meaning.

 - 2.** Tenses and usage.
 - a.** Words used in the singular include the plural. The reverse is also true.

 - b.** Words used in the present tense include the future tense. The reverse is also true.

 - c.** The words "shall," "will," and "may not" are mandatory.

 - d.** "May" is permissive.

 - e.** "Prohibited" means that a particular activity is in violation of this Title.

 - f.** When used with numbers, "At least x," "Up to x," "Not more than x" and "a maximum of x" all include x.

 - 3.** Conjunctions. Unless the context clearly indicates otherwise, the following conjunctions have the following meanings:
 - a.** "And" indicates that all connected items or provisions apply;

 - b.** "Either...or" indicates that the connected items or provisions apply singly, but not in combination.

 - 4.** Lists. Lists of items that state "including the following," "such as," or similar language are not limited to just those items. The lists are intended to provide examples, but not to be exhaustive of all possibilities.

COMMENTARY

Amendments to this Title

Since this title addresses the interests and responsibilities of several bureaus, specific procedures are laid out regarding who can prepare and coordinate an amendment to the Title. Cross bureau consultation is required to ensure that the changes do not adversely impact another bureau's operations.

The Urban Forestry Commission is charged with reviewing proposed code amendments, and making recommendations to City Council. The Commission must hold a hearing to receive input from the public. The Planning and Sustainability Commission (PSC) is assigned to advise the Urban Forestry Commission on proposed amendments before the UFC makes its recommendation. This is important to ensure coordination with the Zoning Code, since the PSC is the advisory body overseeing that title. Notice to Metro is required to ensure regional coordination, and to ODOT since agreements affecting some state rights of way may be affected. Other affected bureaus, interested persons, and recognized organizations, including those listed by the Office of Neighborhood Involvement, would be notified as well. The City Council makes final decisions regarding code amendments, and is also empowered to declare an emergency and adopt amendments without interbureau coordination or Urban Forestry Commission input.

11.10.040 Amendments to this Title.

- A.** General.
 - 1.** Substantive changes to this Title may be prepared by any bureau but will be coordinated by the Bureau charged with those responsibilities in the Title in consultation with the Bureaus of Planning and Sustainability, Parks and Recreation, Development Services, Environmental Services, Transportation, and Water.
 - 2.** Technical corrections and matters of simple clarification may be prepared by the Auditor or City Attorney.
- B.** Urban Forestry Commission (UFC) hearing required. The UFC shall hold at least one public hearing before making a recommendation on an amendment.
- C.** Planning and Sustainability Commission (PSC). The PSC will provide advice on the proposed amendment to the UFC. The PSC may choose to hold a public hearing.
- D.** Public notice for the hearing.
 - 1.** Who is notified. Notice of any public hearing held by the UFC or PSC to consider a proposed amendment to this Title shall be mailed to Metro, the Oregon Department of Transportation, all recognized organizations, affected bureaus, and interested persons who have requested such notice. Notice shall also be published in a recognized newspaper.
 - 2.** Notice time frame. The notice shall be mailed at least 30 days prior to the hearing
- E.** City Council. The City Council shall hold at least one public hearing on the proposed amendment. Notice of the hearing shall be mailed to those who testified at the UFC hearing, either in person or in writing, or those who requested such notice. The notice shall be sent at least 14 days before the hearing. City Council makes the final decision on amendments, after considering the recommendations of the UFC and PSC and after hearing testimony from the public.
- F.** Declaring an emergency. City Council may declare an emergency and amend this Title and associated Administrative Rules without following the process set out in this section. Public hearings, consultations with Bureaus or Commissions, and notification are not required in an emergency under this Subsection.

COMMENTARY

Interagency and Intergovernmental Agreements

This section authorizes the BDS Director or City Forester to delegate their duties or authority with respect to this title to other bureaus through an Interagency Agreement (IGA). An IGA does not allow regulations of this title to be waived, but can set specific terms for implementing portions of the code. For example, the City Forester could adopt an IGA for the City Engineer to administer the street tree planting permit program. Similarly, the Director could adopt an IGA for the City Forester to inspect development tree protections. Intergovernmental agreements between the City and Multnomah County can be updated or newly established to address trees in the unincorporated county pocket areas. However, if the county chose to confer street tree review or other authority to the City that is not already provided by this Title, the relevant portion of the title would need to be amended in addition to adopting or amending an IGA.

Performance Guarantees

This section describes the requirements for performance guarantees. Performance guarantees may be collected for City, Street and Private tree requirements and enforcement situations. For example when a tree has been injured but may still be viable, the City could require the responsible party to post a bond or other security to cover the cost of removal and replacement of the tree, should the tree subsequently die within a set period of time. Performance guarantees may also be used to allow tree planting to occur beyond the expiration period of a tree permit if outside the planting season, or to guarantee an alternate root protection method.

11.10.050 Interagency and Intergovernmental Agreements.

The City Forester or BDS Director in the course of their duties in implementing this Title may enter into agreements with other bureaus or public agencies. These interagency and intergovernmental agreements may allow the BDS Director or City Forester to delegate powers granted within this Title to or provide services to other bureaus or city agencies, subject to the requirements outlined in the agreement. Such agreements may not grant or delegate powers or authority not already assigned to the City Forester or BDS Director. Neither the BDS Director nor the City Forester may enter into any agreement under this Section that requires expenditure of City funds, unless such funds have been appropriated by the Council through the budget process.

11.10.060 Performance Guarantees.

- A. Applicability. The City Forester or BDS Director may require performance guarantees when an owner, applicant, or responsible person defers a planting requirement, as an assurance for performance path root protection methods, or when a violation has occurred and there is uncertainty regarding the extent of a particular tree injury.
- B. Types of guarantees. Guarantees may be in the form of a performance bond payable to the City in cash, by certified check, time certificate of deposit, irrevocable letter of credit, or other form acceptable to the City. Indemnity agreements may be used by other governmental agencies. Guarantees shall be accompanied by a contract. The form of the guarantee and contract shall be approved by the City Attorney. The City Forester and BDS Director are each authorized to accept and sign the contract for the City, and to accept the guarantee.
- C. Amount of guarantee. The amount of the performance guarantee shall be equal to at least 110 percent of the estimated cost of performance as described below. The owner, applicant or responsible party shall provide written estimates by three contractors with their names and addresses. The estimates shall include as separate items all materials, labor, and other costs of the required action.
 - 1. Planting deferral. When tree planting is deferred, the cost of performance is equivalent to the payment in lieu for any trees to be planted and maintained for a 2 year period.
 - 2. Alternate root protection method assurance. If assurances are required for alternate root protection methods, the cost of performance is the estimated cost for removing the tree, plus an equivalent payment in lieu for planting to meet the tree standards in Chapter 11.50, Trees in Development Situations.

Fees

This section is derived from existing language in Section 20.40.070.F. and generally authorizes the council to adopt a schedule of fees for services and other types of charges that are deemed necessary to implement this Title. The fee schedule will be maintained in a separate "fee schedule" document, similar to building and land use service fee schedules. Updates to these fees will require City Council authorization, but would not require that the codes be amended, as was previously the case with Title 20 permit fees.

3. Violation remedy. Should an injury result to a protected tree, and where the City Forester determines that the tree may still be viable, the property owner or responsible party may submit a performance guarantee in lieu of providing for an arborist treatment regimen or removing the tree in accordance with the provisions in Chapter 11.70. If assurances are allowed in these cases, the cost of performance is the estimated cost for removing the tree, plus an equivalent payment in lieu for replacing the tree based on mitigating at an inch for inch equivalent.

D. Completion. An inspection and approval of the action or improvement covered by the performance guarantee is required before the performance guarantee is returned. The inspection will be conducted by the appropriate City bureau that holds the guarantee. If the action or improvement is not completed satisfactorily within the stated time limits, the City may have the necessary action or improvement completed and seek reimbursement for the work from the performance guarantee. Any remaining funds will be returned to the owner, applicant, or responsible party.

11.10.070 Fees.

A. Generally. The City Council may establish and amend by ordinance permit, inspection, review, enforcement, in-lieu of planting or preservation, appeal and other fees as necessary to sustain the development permit, tree permit, and other Development Service or Urban Forestry programs. All fees, charges, civil penalties, and fines established by authority of this Title will be listed in the Portland Policy Documents.

B. Fees in lieu of planting or preserving trees. Where allowed by other provisions of this Title, a fee may be paid into the Tree Planting and Preservation Fund in lieu of planting or preserving trees. The fee per tree is the entire cost of establishing a new tree in accordance with standards described by the City Forester. The cost includes materials and labor necessary to plant the tree, and to maintain it for 2 years. The fee will be reviewed annually and, if necessary, adjusted to reflect current costs. See Section 11.15.010 for more information on the Tree Planting and Preservation Fund.

COMMENTARY

CHAPTER 11.15 FUNDS AND CONTRIBUTIONS

This Chapter includes the provisions for the Tree Planting and Preservation Fund and Urban Forestry Fund, and for charitable contributions that are offered to the City.

Tree Preservation and Planting Fund

Much of the basis for this section is carried over from Chapter 33.248. Some clarifications have been added, and a broadening of situations in which payment into the fund is allowed. Payments can now be paid in conjunction with all development, permit mitigation, private tree violation payments, and voluntary contributions, in addition to the payments that have been allowed previously in conjunction with meeting former T1 tree planting standards.

Since payment to the fund is required when the development-related Tree Preservation standards are not met, the uses for the fund have been expanded to include not just tree planting but options to enhance tree preservation. The funds may be used to purchase conservation easements or land to preserve other existing trees. The code does not specify a priority for use of the funds to plant trees on public or private lands in order to offer greater flexibility for the City Forester to utilize these funds as opportunities are presented. However, it is generally preferred to plant on public properties (City and other public agencies) in order to ensure their long term oversight.

Funds provided in lieu of tree preservation or planting must be used to plant trees within the same watershed as the trees that were removed. This is consistent with the current requirements. The Stakeholder Discussion Group weighed other options ranging from requiring fund dollars to be used to plant trees in the neighborhood where trees were removed, to no restriction on location of replacement trees. One was seen as too inflexible and difficult to manage, the other raised concerns that trees would be "exported" from one side of the city to another. The watershed approach strikes a balance and will help meet goals of the Urban Forest Management Plan and the Portland Watershed Management Plan. Watersheds are defined in Chapter 11.80.

In contrast, funds for preservation may be aggregated and used anywhere in the city so long as the purpose is explicitly for tree preservation. Since these opportunities are more limited and may require larger commitments of the fund, it is appropriate that the fund be leveraged in this manner. It is also envisioned that land acquired could be used for supplemental planting.

CHAPTER 11.15

FUNDS AND CONTRIBUTIONS

Sections:

- 11.15.010 Tree Planting and Preservation Fund.
- 11.15.020 Urban Forestry Fund.
- 11.15.030 Charitable Contributions.
- 11.15.040 Annual Report.

11.15.010 Tree Planting and Preservation Fund.

- A.** Purpose. The purpose of the Tree Planting and Preservation Fund is to facilitate tree planting, to ensure mitigation or tree replacement when tree preservation or tree density standards are not met on a particular site, and to advance the City's goals for the urban forest and equitable distribution of tree-related benefits across the city.
- B.** Expenditures. Money in the Tree Planting and Preservation Fund may be used only as follows:
 - 1.** To plant trees on public or private property, including streets, in the same watershed as the site from which the funds were collected. Planting trees includes the cost of materials and labor necessary to install and establish a tree for a 2 year period;
 - 2.** To purchase conservation easements for the perpetual retention of trees and tree canopy. Such conservation easements shall allow the city to replace trees that are removed when they die or become dangerous; and
 - 3.** To acquire land to permanently protect existing trees or groves.
- C.** Contributions. Contributions to the Tree Planting and Preservation Fund may occur through a number of means, including:
 - 1.** Payment made in lieu of tree replacement as part of a tree permit issued as stated in Chapter 11.40;
 - 2.** Payment made in lieu of preservation or planting where site or street characteristics or construction requirements make it infeasible to meet the requirements of Chapter 11.50;
 - 3.** Payment of restoration fees for enforcement actions for Private Trees; and
 - 4.** Voluntary contributions. The funds shall be used within the watershed of the contributor's choosing.

COMMENTARY

The Tree Preservation and Planting Fund is to be carried over to subsequent fiscal years and maintained separately from the general fund, as it is purpose-specific (required by City Charter). The specific payment amount will be set in a separate fee schedule, so that it can be updated to reflect current costs. The fee amount will be based on the cost of planting, establishing and maintaining a 2 inch tree for 2 years. Since the code uses both "tree for tree" replacement and "up to inch for inch" replacement, required payment when expressed in numbers of inches would be determined by dividing the total number of required inches by 2, and multiplying by the in lieu fee per tree. The current tree fund rate is \$300 per inch. This would equate to \$600 per 2-inch tree.

Example: Fee calculation when numbers of trees are required.

Replacement required = 3 trees

Required Payment in Lieu = 3 times the per tree fee

Example: Fee calculation when inches of trees are required.

Replacement required = 22 inches

22 inches divided by 2 (the caliper size of an off-site tree) = 11

Required Payment in Lieu = 11 times the per tree fee

Urban Forestry Fund

The purposes and source of monies for this fund are different than the Tree Preservation and Planting Fund, and thus the funds may be used more broadly. These funds are collected from enforcement actions resulting from violations to City or Street Trees and other general sources of forestry revenue. Since the general purpose of this fund is to raise awareness of the importance of the urban forest, funds may be used for education and outreach in addition to tree planting. Like the Tree Planting and Preservation Fund, this fund is to be carried over to subsequent fiscal years and maintained separately from the general fund.

- D. Administration of the Tree Planting and Preservation Fund. The Tree Planting and Preservation Fund is administered by the City Forester, maintained in a dedicated separate account, and is independent of the general fund. Any balance in the Tree Planting and Preservation Fund will be carried forward into subsequent fiscal years.

11.15.020 Urban Forestry Fund.

- A. Purpose. The purpose of the Urban Forestry Fund is to replace Street or City Trees illegally removed or damaged, to enhance the urban forest through the planting of new Street or City Trees, and to increase public awareness of trees, tree care, and values of the urban forest.
- B. Expenditures. Money in the Urban Forestry Fund may be used as follows:
 - 1. To replace, establish, and maintain Street or City Trees illegally removed or damaged;
 - 2. To plant, establish and maintain Street or City Trees where, in the judgment of the Forester, they will enhance the values of the Urban Forest;
 - 3. To provide education, outreach and technical assistance to the community; and
 - 4. Other Forestry-related actions or programs, as determined by the City Forester.
- C. Contributions. Contributions to the Urban Forestry Fund may occur through a number of means as established by the City Forester, including:
 - 1. Payment of restoration fees, civil penalties, or civil remedies resulting from City or Street Tree enforcement actions; and
 - 2. Voluntary contributions
- D. Administration of Urban Forestry Fund. The Urban Forestry Fund is administered by the City Forester, maintained in a dedicated separate account, and is independent of the general fund. Any balance in the Urban Forestry Fund will be carried forward into subsequent fiscal years.

COMMENTARY

Charitable Contributions

This section is adapted from section 20.40.080.G, which provides that the city may accept gifts for tree maintenance or planting. Examples of charitable gifts were added to this language, as well as a clear statement that the City is not obligated to accept gifts in cases where the maintenance costs are too great, or the goods are devalued, damaged, or unnecessary because the city already has sufficient quantities of the material or service being offered. This section is important as it authorizes the City Forester to accept these contributions without the need for City Council to adopt an ordinance each time.

Annual Report

Annual reporting requirements to the UFC and City Council are added to prompt and inform discussions around tree planting performance, opportunities to improve the cost-effectiveness and costs of City tree planting, and updates to the fee schedule. Presently, the report is provided to the Commissioner in charge of the Bureau of Parks and Recreation. However, with multiple bureaus involved with implementation of this title, it is more appropriate that all Commissioners be appraised. This report also provides Urban Forestry an opportunity to raise awareness of the forestry program and highlight any issues for Council's consideration.

The report could optimally be combined with the Urban Forestry Commission's report described in Chapter 11.20.

11.15.030 Charitable Contributions.

The City Forester may accept, on behalf of the City, gifts and contributions which are specifically designated for the purpose of planting or maintaining trees within the City. Gifts may include: nursery stock and planting supplies, vehicles, tools, pro bono consultation, education and outreach services, and real property for the purposes of open space and tree planting or preservation. Contributions may also be made to the Tree Planting and Preservation Fund or Urban Forestry Fund as described in this chapter. Nothing in this Section obligates the City Forester to accept such gifts when the City Forester determines it is not in the best interests of the City to do so.

11.15.040 Annual Report.

The City Forester will provide an annual report to the Urban Forestry Commission and City Council at the end of each fiscal year. The report will include any charitable contributions received, as well as fund revenues collected and spent and the end balance in each fund. The report should also include recommendations for future expenditures of the funds and means to optimize those expenditures in the upcoming fiscal year.

- A. Tree Planting and Preservation Fund. The report will include a general inventory by watershed of the funds collected and number and types of trees planted or area protected through preservation easements or acquisition.
- B. The Urban Forestry Fund. The report will include an accounting of expenditures.

COMMENTARY

CHAPTER 11.20 URBAN FORESTRY PROGRAM

This chapter is largely developed from existing provisions within Chapter 20.40, *Street Tree and Other Public Tree Regulations*. The provisions within that chapter address primarily the regulation of public (i.e. City and Street) trees, implying that the urban forest program is only addressing municipal trees. Shifting these provisions to Title 11 elevates the role of this program and clarifies that the program addresses Portland's urban forest in its entirety. The opportunity to elevate the role of the Urban Forestry Program as an integral part of tree management on public and private lands as well as public and private development projects is one major benefit of having a consolidated Tree Title.

This chapter reflects several minor amendments to existing code language to bring the provisions up to date and eliminate archaic references. During the course of the Citywide Tree Policy Review and Regulatory Improvement Project the Urban Forestry Commission discussed their role and desired level of involvement. The outcome of these discussions is represented here. This chapter serves in part as a placeholder and it is envisioned that as the Commission's involvement in this Title and broader Forestry policy discussions continues, additional programs and references could be added here.

Purpose.

The purpose statement is taken largely from the definition section of 20.40.020.N. for 'Urban Forestry' while adding the policy function of developing goals and objectives related to the role of managing trees.

The Urban Forestry Commission

This section is adapted from 20.40.030. It establishes the basic tenets of the Urban Forestry Commission: its membership, terms, ability to set rules, meeting requirements, and duties. The Commission determined that having a maximum term limit was important to allow for infusion of new ideas, but did not want to prevent a former member from serving again. To meet these objectives, a one year break in service between second and subsequent terms is required. Also added is the requirement that any adopted rules be part of the Portland Policy Document repository so that they are readily accessible to the public and others.

CHAPTER 11.20

URBAN FORESTRY PROGRAM

Sections:

- 11.20.010 Purpose.
- 11.20.020 The Urban Forestry Commission.
- 11.20.030 The Urban Forestry Appeals Board.
- 11.20.040 Technical Assistance.
- 11.20.050 The Urban Forest Plan.
- 11.20.060 Heritage Trees.

11.20.010 Purpose.

The field of urban forestry has as its objective the cultivation and management of trees and related plants for their present and potential contribution to the physiological, sociological and economic well being of urban society. Inherent in this function is a comprehensive program designed to establish policies, goals and objectives, and implementing actions, and to educate the urban populace on the role of trees and related plants in the urban environment. In its broadest sense, urban forestry is one essential component of a multi-managerial urban system that includes neighborhoods and watersheds within the City, wildlife habitats, outdoor recreation opportunities, landscape design, green infrastructure, air filtering and greenhouse gas capture, recycling of municipal vegetative wastes and tree care in general.

11.20.020 The Urban Forestry Commission.

- A.** Membership. The Urban Forestry Commission consists of eleven members who have demonstrated an interest in the protection and enhancement of the urban forest, appointed by the Mayor in consultation with the Commissioner of Parks and Recreation and confirmed by the City Council. At least three members shall have experience and expertise in arboriculture, landscape architecture or urban forestry. One member shall be on the board of a non-profit organization that has a demonstrated direct interest in the urban forest, who is not a City employee. The remaining seven members, insofar as possible, shall represent diverse geographic areas, interests, and expertise of the community. Representatives or their designees of the City Commissioners in charge of the Bureaus of Development Services, Transportation, Environmental Services, and Water may serve as ex-officio, non-voting members of the Commission.
- B.** Terms. Members will serve without compensation for terms of 4 years and may be reappointed for one additional consecutive term. After serving two consecutive terms, at least 1 year shall elapse before a member may again be reappointed to the Commission. Notwithstanding the limitations of this Section, a member of the Commission will continue to serve until his or her replacement is appointed.

Duties

The Urban Forestry Commission's duties have also been revised to place greater emphasis on providing input on other bureau actions and activities that have a direct relation to or impact on the urban forest including policy development (e.g. The Urban Forest Plan), bureau budget proposals and reductions, and capital improvements and public works projects. The objective is to assign the Commission to a greater advocacy role on behalf of the City's urban forest related interests. The Commission is also the primary reviewing body for amendments to this Title, in consultation with other City bureaus and the Planning and Sustainability Commission, stipulated in Chapter 11.10. The Commission's role regarding heritage tree nominations is carried over from existing language in Section 20.40.150. The UFC will also prepare an annual report that identifies key issues affecting the urban forest. It is envisioned that this report could be combined with the City Forester's annual fund report, stipulated in Chapter 11.15.

One UFC role that has been eliminated is that of appeals body for City tree permit decisions. This duty is now assigned to a subcommittee of the Urban Forestry Commission (see next commentary page) in order to make the process more nimble, facilitate quicker decisions, and allow the UFC to focus more of its efforts on broader policy and programmatic issues.

- C.** Rules of order. The Urban Forestry Commission will elect its own chair and adopt such rules of procedure as it deems necessary to the conduct of its duties. Unless otherwise stated in the rule, all rules are effective upon adoption by the Commission and shall be filed in the office of the City Forester and in the Portland Policy Documents repository described in Chapter 1.07.
- D.** Meetings. The Commission will meet at least monthly and may meet more often.
- E.** Duties. The Commission is responsible for carrying out the following duties:

 - 1.** Providing assistance in the development, periodic reviews, and updates to the Urban Forest Plan, and submitting said plan updates to the City Council for approval.
 - 2.** Reviewing and providing input on plans, policies, and projects developed pursuant to other City Code provisions which contain elements or which affect matters related to urban forestry and other matters to ensure that the policies of the Urban Forest Plan are fully considered.
 - 3.** Advising the City Forester, Director of the Bureau of Parks and Recreation, and Citizen’s Budget Advisory Committee on the preparation and contents of the annual Forestry Division budget request.
 - 4.** Considering and making recommendations to the City Council pertaining to:

 - a.** Proposed amendments to this Title;
 - b.** Heritage Tree nominations; and
 - c.** Other city bureau budget proposals that may substantially affect programs relating to trees and the urban forest.
 - 5.** Preparation of an annual report which specifically addresses the relations with and concerns of the various City bureaus and other matters brought forward by the City Forester. The report will include an evaluation of the opportunities and barriers to effective management of the urban forest, and assessment of progress of these issues identified in prior annual reports.

The Urban Forestry Appeals Board

This section describes the form and functions of the Urban Forestry Appeals Board (Appeals Board). The Appeals Board is a new sub-body of the Urban Forestry Commission. Its function is to hear all appeals of tree removal permits for City, Street, and Private Trees, as well as applicant appeals of Programmatic Permit decisions. The decision of the Appeals Board is final. This supplants the quasi-judicial role of City Council, who presently has final decision authority for tree permit appeals. This is appropriate given that very few appeals have been raised to City Council in the past (1 in 15 years), and the Commission is already acting on behalf of the City Council for other urban forestry matters.

It is anticipated that the Appeals Board will provide reports to the full Commission about issues raised during an appeal that could have a broader policy implication. The Appeals Board may also elevate an appeal to the full commission when greater input is desired.

The Appeals Board is designed to make the appeals process more efficient, hear cases in a timely manner, maintain a link between the policy decisions and on-the-ground actions, and preserve the full Commission's agenda for broader policy and programmatic concerns. Consensus can also be made more readily by balancing the opinions of 5 members versus the full 11 member commission. The board will meet only as needed to address pending appeals.

Technical Assistance

This section is adapted from existing language in Section 20.40.045, and allows the Urban Forestry Commission to solicit the services of technical experts to help evaluate proposals if the necessary expertise is not available within the Commission's membership.

The Urban Forest Plan

This section incorporates existing language in Title 20 which refers inconsistently to a "Master Plan", "Tree Planting and Maintenance Plan", and a "Street Tree Plan". The plan that is currently in effect is the Urban Forestry Management Plan and is accompanied by the implementation strategy contained in the Urban Forest Action Plan. The Urban Forestry Commission wanted to update this reference and ensure that the term would not become antiquated over time. The term "Urban Forest Plan" (Plan) is intended to refer an 'umbrella' for the various guiding policy documents of the Urban Forestry Program. The Plan can therefore consist of several types of documents, ranging from broad policy and framework documents to neighborhood-scale plans, to implementing guidance and administrative rules. These documents can be deleted, added to or revised as needs arise, without the need to update or change the authorizing code. Provisions are included to require periodic review and updates on a maximum ten-year cycle.

11.20.030 The Urban Forestry Appeals Board.

- A.** Membership. The Urban Forestry Appeals Board consists of five members of the Urban Forestry Commission, selected by a majority of the Commission. Members will serve without compensation for terms not to exceed their membership in the general Commission and may be reappointed.
- B.** Rules of order. The Urban Forestry Appeals Board may elect its own chair and propose rules of procedure as it deems necessary to the conduct of its duties. The Commission will consider and adopt such rules upon majority vote. All rules become effective upon adoption by the Commission and shall be filed in the Portland Policy Documents repository described in Chapter 1.07.
- C.** Meetings. The Appeals Board will meet as required to respond and to hear appeals within the time allotted to appeals as described in this Title. Appeal hearings are open to the public.
- D.** Duties. The Appeals Board is responsible for reviewing and deciding appeals of tree permit decisions as authorized in this Title.

11.20.040 Technical Assistance.

When requested by the Urban Forestry Commission and Commissioner of Parks and Recreation, the City may retain the services of a professional review panel of not more than three members, either foresters, arboriculturists, landscape architects or some combination thereof to advise the Commission on the efficiency of proposed actions and planting schemes. At least one member of this panel should be very familiar with Portland. The City Forester will present a list of qualified professionals to the Urban Forestry Commission for its review and selection. A member of the professional review panel may not serve if the member has a conflict of interest.

11.20.050 The Urban Forest Plan.

- A.** Purpose. The Urban Forest Plan (the Plan) establishes a comprehensive framework of goals, policies, and actions to guide City management activities and decisions over the short and long term. The plan will be implemented through the individual and collective works of the City Forester and other City bureaus, agencies, citizens, organizations and other groups.
- B.** Roles. The City Forester, in consultation with the Urban Forestry Commission and City bureaus, is responsible for coordinating the development, update, and implementation of the Urban Forest Plan. Working groups made up of representatives of those bureaus and groups who contribute to the management of the City's urban forest will be formed to develop citywide action plans to implement the Plan, and to monitor and report on progress of those actions.

Heritage Trees

This section is adapted from existing language in Section 20.40.150. Like the provisions authorizing the Urban Forestry Commission, provisions relating to Heritage Trees were located within the public tree chapter although the program relates to trees on both public and private properties.

Currently there are 283 Heritage Trees, comprised of 119 species. To reinforce the City's Invasive Plant management strategy, nuisance species trees may no longer be nominated to be Heritage Trees. This will not affect protections for the six existing nuisance species Heritage Trees (Norway maple, Princess tree, 2 Sweet Cherry trees and 2 White Birch trees), and should other species be added to the invasive plants list, already designated Heritage Trees will likewise not be affected. The purpose behind this prohibition on future listings is to reinforce a consistent city policy regarding management of nuisance plants and trees.

To either nominate or remove a heritage tree from the list, six members of the UFC must vote affirmatively. This represents a majority of the full UFC membership, but is intentionally set to a higher threshold than just a majority vote of the members present at a particular meeting. Currently, a majority vote is required to nominate a tree, and a unanimous vote is required to delist a tree. The proposal is intended to normalize the voting thresholds for either action, while maintaining a higher bar. Note that ex-officio members are not voting members.

The City Forester is responsible for maintaining the list of Heritage Trees. The City Forester may also place a plaque designating the tree, at his or her discretion.

The maintenance and protection provisions for heritage trees are largely carried over from Section 20.40.150.

Pruning and removal of Heritage Trees are not subject to the permit requirements of Chapter 11.40. Instead, the City Forester reviews pruning requests and provides updates to the UFC. For removals, the request is heard by the UFC at a public hearing. An exception is provided for emergencies, where the public safety or health of adjacent trees is threatened. In these cases the City Forester may allow a tree to be removed without a public hearing or UFC review, and if the City Forester is not immediately available, the code allows removal of the hazardous portion of the tree until the City Forester can provide additional direction. This is similar to emergency provisions for other trees.

- C. Updates. The Plan will periodically, and at least every 10 years, be reviewed and updated to respond to changes in the condition of the urban forest, changes in city policy or changes to applicable regulatory mandates.

11.20.060 Heritage Trees.

- A. Generally. Heritage Trees are trees that because of their age, size, type, historical association or horticultural value, are of special importance to the City.
- B. Nuisance trees. Trees may not be designated as Heritage Trees if, on the date they would be designated, the tree species is on the Nuisance Plant List.
- C. Private trees. Trees on private property may not be designated as Heritage Trees without the consent of the property owner; however, the consent of a property owner will bind all successors, heirs, and assigns. When a Private Tree is designated as a Heritage Tree, the owner shall record the designation on the property deed, noting on such deed that the tree is subject to the regulations of this Chapter.
- D. Designation. The Urban Forestry Commission (UFC) makes a recommendation to City Council as to whether a tree should be designated as a Heritage Tree. A recommendation to designate a tree shall be supported by at least six members of the UFC. City Council may designate a tree if it finds that the tree's health, aerial space, and open ground area for the root system have been certified as sufficient by an arborist.
- E. Removal of designation. The Urban Forestry Commission (UFC) makes a recommendation to City Council as to whether the Heritage Tree designation should be removed from a tree. A recommendation to remove the designation shall be supported by at least six members of the UFC. City Council may remove the designation if it finds that the designation is no longer appropriate.
- F. Heritage Tree removal. Heritage Trees may be removed only with the consent of the UFC, except as provided in Subsection I., below. The UFC shall hold a public hearing on a request to remove a Heritage Tree. Consent to remove the tree shall be supported by at least six members of the UFC.
- G. List and plaques. The City Forester maintains a list of the City's designated Heritage Trees. The City Forester may place a plaque on or near Heritage Trees.
- H. Maintenance and Protection. The City Forester maintains Heritage Trees located on streets and on property owned or managed by the City. Heritage trees on private property shall be maintained by the property owner. It is unlawful for any person without prior written authorization from the City Forester to remove, prune, or injure any Heritage Tree. The City Forester shall report to the Urban Forestry Commission any such authorization granted.

COMMENTARY

I. Emergencies.

- 1.** If the City Forester determines that a Heritage Tree is dangerous and is a threat to public safety, the City Forester may order the tree to be removed without prior consent from the UFC.
- 2.** In an emergency, when the City Forester is unavailable, pruning only what is necessary to abate an immediate danger may be performed without authorization by the City Forester. Any additional work shall be performed under the provisions of this Section.

COMMENTARY

CHAPTER 11.30 TREE PERMIT PROCEDURES

This chapter describes the procedures and requirements for tree permit application submittal, review, notice and appeals for regulated City, Street, and Private Trees. These procedures apply when no development is proposed. The criteria and standards for tree permits, the provisions governing Programmatic Tree Permits, and provisions for Heritage Trees are established in the separate chapters.

When Tree Permits Are Required

This section describes the two tiers of permits (Type A and B). Type A permits involve technical reviews to ensure that specific standards are met, and thus are not appealable by the general public. The applicant may appeal the City Forester's determination and seek review through the Appeals Board. Type A permits include pruning and planting requests as well as requests to remove dead, dangerous, or dying trees, requests for Private Tree removals for nuisance species trees, trees located within 10' of a building, or 4 or fewer trees that are each smaller than 20" diameter. On developed single dwelling properties that cannot be further divided, a Type A permit is only required to remove trees at least 20 inches in diameter. Type A permits require tree-for-tree replacement for trees that are removed.

Type B permits are required to remove healthy trees that meet specified size thresholds. Unlike nuisance species Private Trees that may be removed with a Type A permit, requests to remove healthy nuisance species City and Street Trees require Type B permits in order to evaluate the potential loss of established canopy and other benefits against the potential harm to ecologically sensitive areas. An evaluation is conducted to determine whether the removal is appropriate and ensure that impacts will be properly mitigated. When the Type B permit request involves removal of trees at least 20 inches in diameter, or removal of more than four trees at least 12 inches in diameter, then the request is subject to public notice and opportunity for public appeal.

CHAPTER 11.30

TREE PERMIT PROCEDURES

Sections:

- 11.30.010 Purpose.
- 11.30.020 When Tree Permits Are Required.
- 11.30.030 Applications.
- 11.30.040 Procedure for Type A Permits.
- 11.30.050 Procedure for Type B Permits.
- 11.30.100 Regulations That Apply After Permit Approval.

11.30.010 Purpose.

This chapter establishes application requirements and procedures for all tree permits required by this Title to ensure that the legal rights of individual property owners and the public are protected. Tree permits are generally required for specific tree related activity when not associated with development.

11.30.020 When Tree Permits Are Required.

A. Generally. Tree permits are required for tree-related activities not associated with:

1. Heritage Trees (see Chapter 11.20);
2. Programmatic Permits (see Chapter 11.45); or
3. Tree plans or activities that require a development permit (see Chapter 11.50).

B. Types of Permits.

There are two types of tree permits, A and B. This chapter assigns activities and sets out the procedures for each permit type. Applications for activities subject to both a Type A and Type B permit will be processed as a Type B permit. The type of permit may be modified during the course of the review when the City Forester finds that the standards or review factors are not met or when the approved scope of the tree activity is changed. For example, a Type A tree permit application to remove a dangerous tree may be modified to a Type B removal request when the City Forester finds the tree is not dangerous. Conversely, the City Forester may modify a Type B request to remove a Street Tree by granting a Type A pruning permit instead of allowing the removal. The standards and review factors for granting Type A or B permits are in Chapter 11.40.

Table 30-1 summarizes the activities that are subject to a Type A or Type B permit.

Applications

This section establishes the information that is required to evaluate application submittals for pruning, planting, removal or other tree-related activity. Electronic submittals are allowed to facilitate faxing or emailing applications. Multiple requests can be made for a single site with one application to allow more efficient processing of requests, and enable applicants to develop larger scale plans for tree related work when necessary. In some cases, the work may extend beyond a single site. It is envisioned that many of these projects would fall within a Programmatic Permit (Chapter 11.45), otherwise separate tree permit applications would need to be filed for each site.

Table 30-1
Summary of When Tree Permits are Required, by Permit Type

| Permit Type | City and Street Trees | Private Trees | |
|---------------------------|--|--|---|
| | | In specified overlay zones & plan districts* | Outside specified overlay zones & plan districts* |
| No permit required | Pruning: branches or roots <¼” and sucker shoots Removal: trees <3” | Planting Pruning: outside of environmental zones Removal: Trees <6” | Planting Pruning Removal: <ul style="list-style-type: none"> • Trees <12” • Trees on single dwelling lots <20” |
| A | Planting, Pruning of branches or roots ≥ 1/4" Other tree activity, as determined by the City Forester Removal: Trees that are dead, dying, or dangerous | Pruning: in environmental overlay zones Removal: Trees that are <ul style="list-style-type: none"> • Dead, dying, dangerous • Nuisance species • Within 10’ of buildings Trees that are at least 6" and less than 20" as allowed by the overlay zone or plan district (See Title 33) | Removal: Trees that are <ul style="list-style-type: none"> • Dead, dying, dangerous • Nuisance species • Within 10’ of buildings • Up to four trees <20” per site per year • Trees ≥ 20” on single dwelling sites (see Subsection 11.40.020 B.2.) |
| B | Removal: Healthy trees | <ul style="list-style-type: none"> • Healthy non-nuisance trees ≥ 20” • More than four non-nuisance trees ≥ 12” per site per year Note: Removal of other trees may be allowed subject to a land use review; See Title 33, Planning and Zoning | |

*See Subsection 11.80.020 B.19. for a list of applicable overlay zones and plan districts

11.30.030 Applications.

A. Applications for Tree Permits shall:

1. Be made in writing or electronically upon forms furnished by the City;
2. Be legible, accurate, and contain sufficient information in order to evaluate the request; and
3. Be accompanied by the correct fee.

B. A separate application is required for each site, but each application may address multiple trees and multiple types of activities, such as planting, pruning, or removal.

C. Marking trees to be removed. Applicants for permits for tree removal shall mark each tree proposed for removal by tying or attaching yellow tagging tape around the trunk of the tree at 4.5 feet above ground level.

Consent to Site Access

This subsection is adapted from similar language in Title 32, Signs, and authorizes the City to access the site to review relevant information related to the permit.

Authority

This subsection specifies that the City Forester is the review authority for tree permit applications. Subsequent paragraphs specify who is authorized to submit such applications.

For Trees on City property, the applicant is the Bureau that owns the site. For other public property under City management, the Bureau or public agency that manages the trees may submit an application. These Bureaus or agencies may authorize another agent to submit an application on their behalf. Limiting who may submit applications to conduct tree work on these sites will help ensure that a coordinated approach to tree management occurs and prevent conflicts in planned tree removal or planting. This also requires that members of the public coordinate any request to plant or remove a tree on public property with the appropriate agency or City Bureau.

For Street Tree permit requests, typically the adjacent property owner is authorized to submit the application. However in a number of instances this does not apply. The Bureau of Environmental Services is responsible for maintenance and installation of trees in greenstreet facilities. The Bureau of Transportation is responsible for maintaining center median street trees. The City Forester, as manager of the City's street tree assets, is given broad authority to remove, plant, or prune street trees without requiring the adjacent property owner's permission. It is preferred and is the current practice of the City Forester to obtain the owner's permission before planting or removing trees, however, there may be occasions when this is either not practical (out of state owner) or not desirable (dangerous tree and an unresponsive owner). Finally, public agencies such as utilities, who have obtained a Programmatic Permit are not required to obtain property owners consent for Street Tree related work. However, procedures for appropriate notification to adjacent owners would be spelled out through the Programmatic Permit specifications (see Chapter 11.45).

For Private Trees, the property owner or owner's authorized agent (property manager/contractor/landscaper) may apply for permits. This provides flexibility and convenience for property owners and enables contractors to submit batches of permits for multiple jobs, provided they have the owners' authorization. Since the enforcement provisions apply to the responsible party (owner or contractor) there is cause for both parties to ensure that permits are properly obtained.

- D.** Consent to site access. By submitting an application for a tree permit, the owner and applicant agrees that authorized City representatives may enter the site during business hours for the purpose of conducting inspections related to the tree permit request.
- E.** Authority. An applicant will be authorized to apply for the Tree Permit, as described below:
- 1.** City Trees. For City Trees, only the Bureau that owns the site may submit an application. Where the City is managing trees on lands not owned by the City, the Bureau assigned to manage or care for trees, the owner, or the agent authorized to represent the property owner may submit the application.
 - 2.** Street Trees. The applicant shall be the owner of the adjacent property or be authorized by the owner of the adjacent property where the Street Tree will be planted, pruned, or removed. Exceptions to this requirement include:
 - a.** The Bureau of Environmental Services shall act as applicant for permits for street trees in greenstreet facilities.
 - b.** The Bureau of Transportation shall act as applicant for permits for street trees in center medians.
 - c.** The City Forester may plant, prune or remove Street Trees without obtaining the authorization of the adjacent property owner.
 - d.** Public agencies operating under the conditions of a Programmatic Tree Permit are not required to obtain the adjacent owner's consent for tree-related work on streets.
 - 3.** Private Trees. The applicant shall be the owner of property where the tree is located or be authorized by the owner. For trees that straddle property lines, the owners of all properties where the tree is located shall authorize the application. For commonly held tracts such as open space or private street tracts, the application shall be submitted by the agent or parties authorized to represent the shared ownership interest in the tract. It is the applicant's responsibility to obtain the appropriate consent for tree permit applications.
 - 4.** City, Street, and Private Trees within easements, or addressed by deed restrictions or other agreements. Any person having or asserting the right to remove trees under the terms of an easement, deed restriction or other agreement shall comply with the provisions of this Title. An easement holder, beneficiary of a deed restriction, or other person seeking to remove a tree on the property of another under an

COMMENTARY

Additional clarification is included for trees located in easements or subject to private agreements. This section allows an easement or agreement holder to submit an application but specifies that the easement or agreement do not supersede the requirements of the Title. For example, a view preservation easement may require that trees be topped when they get too tall. Topping would violate Title 11, but other lawful remedies may still exist (removal and replacement or pruning of the tree). Finally, this section clarifies that the presence of an easement does not change the type of tree. For example, a tree on private property in a City-owned easement continues to be regulated like a Private Tree and not like a City Tree.

Procedure for Type A Permits

The procedures for Type A and Type B permits are similar, but include several key distinctions. Type A permits are more technical determinations and utilize professional judgment in some cases. The limited discretion involved in these decisions minimizes the need for public oversight in the form of appeals. Therefore Type A permits are only appealable by the applicant, where certain Type B requests may be appealed by the public.

Type A permit applications are submitted in accordance with the previous section and are reviewed to determine if adequate information has been provided. The Forester will inform an applicant of any missing information, and provide 30 days for the applicant to complete the application. Without the information there may be inadequate grounds to deny the request, and insufficient justification to approve it. These provisions allow the application to be voided.

The City forester then makes a decision based on the facts and evidence and issues a permit if the request is approved, or a written decision if not approved.

An applicant may appeal a denial or the conditions of an approval to the Appeals Board. This is to provide due process when the applicant feels the decision was in error. The appeal must be filed within 14 days of the decision or else the decision is final.

If an appeal has been filed, a hearing will be scheduled within 45 days of the Forester's decision. This is to account for a 14 day appeal period, plus 31 days to bring the appeal to the appeals board. The applicant/appellant will be notified of the hearing date at least 14 days before the hearing.

The scope of the Appeals Board decision is limited. They may either agree with the Forester, or reverse the Forester's decision. The appeals board is not empowered to broker a mitigation agreement. Alternatively, the Appeals Board could remand the decision back to the Forester citing particular objections or concerns that the Forester could consider in developing or reviewing an alternative mitigation plan. For example, if the Forester denied a pruning request, the Appeals Board could remand the decision with suggested conditions. The Forester would ultimately be the one to impose the requirement, and report back to the Board on the final resolution.

The chart on the following commentary page summarizes the Type A and B permit process.

agreement is authorized to apply for permits or approvals required by this Title. The owner of a servient tenement, the grantor of a deed restriction or other person who by agreement has authorized another to possess, occupy or use property owned by the person is authorized to apply for permits or approvals required by this Title. The presence of an easement, deed restriction or other agreement does not change the type of tree. A tree remains either a City Tree, a Street Tree or a Private Tree.

11.30.040 Procedure for Type A Permits.

Type A permits are technical determinations regarding the facts of a particular request, and applications of city standards to ensure that work is performed in accordance with best management practices to protect trees, the public, or public infrastructure, and to ensure tree replacement. Type A permits are reviewed administratively by the City Forester. There is no public notice, and only the applicant may appeal the decision.

A. Application.

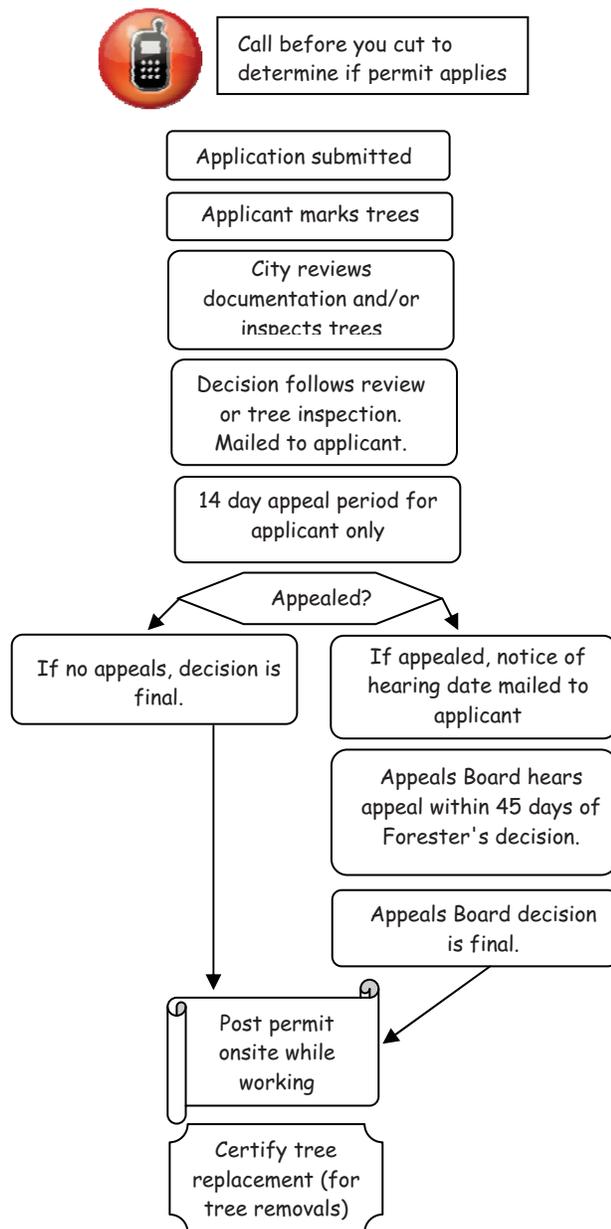
1. Generally. Applications for a Type A Tree Permit shall meet the requirements of Section 11.30.030, Applications.
2. Additional information required.
 - a. If the City Forester requires additional information to review an application, the City Forester will send a notice to the applicant requesting the additional information.
 - b. The applicant will have a maximum of 30 days from the date of the City Forester's notice to submit the additional information.
 - c. If the additional information is not received by the City Forester within 30 days from the date of the City Forester's notice, the application will be voided on the 31st day. The City will not refund the filing fee.

B. Decision by the City Forester.

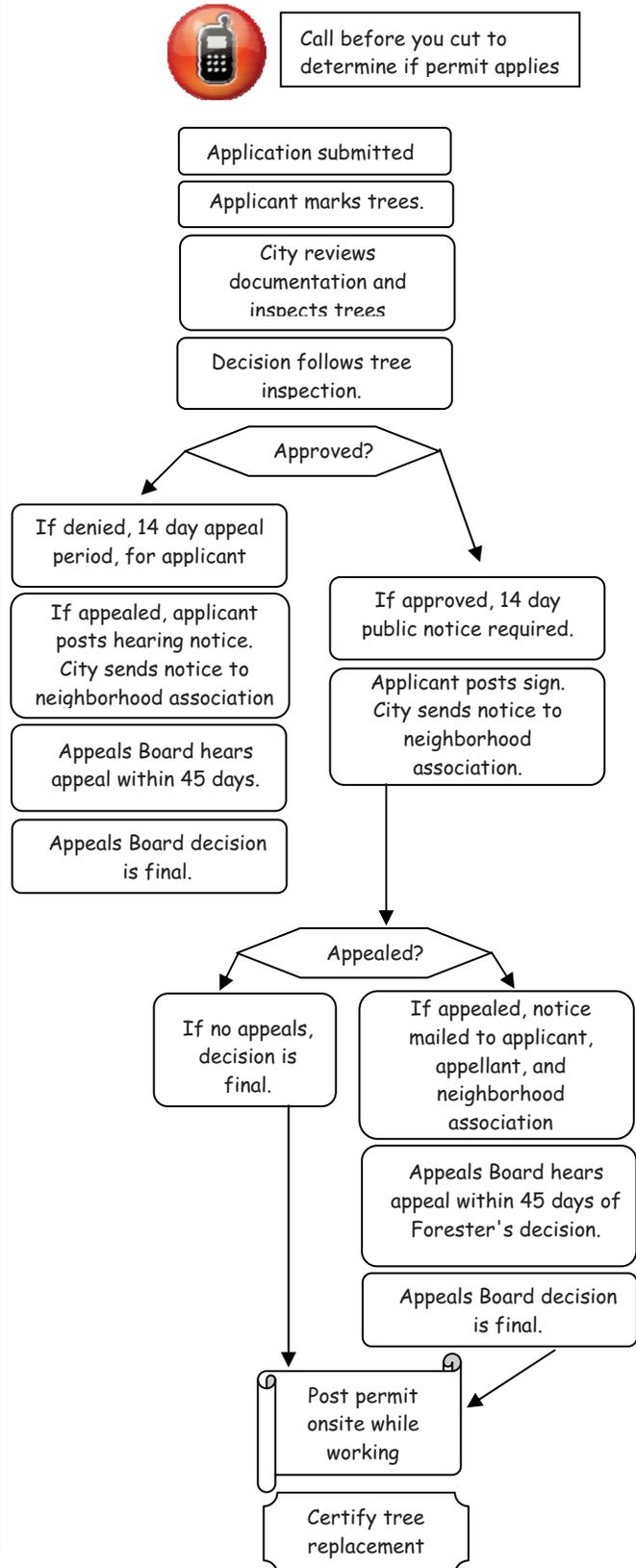
1. The City Forester's decision shall be based on an evaluation of the facts and applicable standards and review factors.
2. The City Forester may issue the permit, deny the permit, or may apply conditions of approval to the permit to ensure the request complies with the applicable review factors and standards.
3. Any work done under a permit shall be performed in strict accordance with the terms and provisions of this Title and conditions of approval of the permit.

COMMENTARY

Type A / Type B (without public notice) process



Type B (with public notice) process



4. The City Forester shall notify the applicant of the decision in writing.
 5. If the applicant does not file a timely appeal as specified in Subsection C., below, the decision is final.
- C. Appeal. The applicant may appeal the City Forester's decision on a tree permit. Appeals shall be:
1. Filed with the City Forester on forms prescribed by the City;
 2. Filed within 14 days from the date on the City Forester's decision; and
 3. Specifically identify how the City Forester erred in applying the standards or review factors.
- D. Appeal process.
1. Scheduling the appeal hearing. The appeal hearing will be scheduled within 45 days of the City Forester's decision. However, the applicant may request the hearing at a later time.
 2. Notice. Notice of the appeal hearing will be sent to the applicant at least 14 days before the hearing.
 3. Hearing.
 - a. Appeals are heard by the Urban Forestry Appeals Board (Appeals Board).
 - b. The Appeals Board will consider the application against the applicable standards or review factors, taking into consideration information provided by the applicant, appellant, and City staff, and any observations made by members of the Appeals Board if they visit the site.
- E. Appeals Board Decision.
1. The Appeals Board may affirm or reverse the City Forester's decision.
 2. The Appeals Board will give due deference to the professional judgment of the City Forester, and will reverse or remand the City Forester's decision only upon a finding that the City Forester's decision is not supported by substantial evidence, or upon a finding that the City Forester's decision was arbitrary or capricious, an abuse of discretion or otherwise was not in accordance with the provisions of this Title.

Procedure for Type B Permits

Type B Permits require more discretion and evaluation of certain factors including impacts to the neighborhood character. Consequently, additional public oversight is warranted. A significant shift for the public appeals process is the inclusion of City and Street Tree removal requests. Previously, only Private Trees were subject to public appeals.

The application procedure mirrors the Type A procedures, except that once the Forester has made a decision to approve a removal, public notification requirements would apply. Following the Forester's approval decision, the applicant would be notified and provided a notice to post on site. Notice would also be sent by the Forester to the neighborhood association.

If any party appealed the decision within 14 days, the applicant, appellant (if different), and neighborhood association would all receive notice of the appeal hearing date, and the hearing process described above for Type A permits would occur.

If the Forester denies a request, and the applicant chooses to appeal the decision, notice of the appeal is posted and sent to the neighborhood association. This is to avoid situations where an applicant may appeal a denial, and the Appeals Board reverses the decision, effectively approving the request. Without this appeal notice, neither neighbors nor the neighborhood association would have any knowledge of the tree removal application until the tree was being cut.

3. The appeal decision of the Urban Forestry Appeals Board is final and may not be appealed to another review body within the City.

11.30.050 Procedure for Type B Permits.

Type B permits involve the consideration of relevant technical and qualitative factors to prevent risks to public health and safety or significant undue impacts on neighborhood character, and to ensure that the impacts of tree removal are mitigated. Type B permits are reviewed administratively by the City Forester, and the decision may be appealed to the Urban Forestry Appeals Board by the applicant and any person adversely affected or aggrieved by the decision.

A. Application.

1. Generally. Application for a Type B Tree Permit shall meet the requirements of Section 11.30.030, Applications.
2. Additional information required.
 - a. If the City Forester requires additional information to review an application, the City Forester will send a notice to the applicant requesting the additional information.
 - b. The applicant will have a maximum of 30 days from the date of the City Forester's notice to submit the additional information.
 - c. If the additional information is not received by the City Forester within 30 days from the date of the City Forester's notice, the application will be voided on the 31st day. The City will not refund the filing fee.

B. Decision by the City Forester.

1. The City Forester's decision shall be based on an evaluation of the facts and applicable standards and review factors.
2. The City Forester may issue the permit, deny the permit, or may apply conditions of approval to the permit to ensure the request complies with the applicable review factors and standards.
3. Any work done under a permit shall be performed in strict accordance with the terms and provisions of this Title and conditions of approval of the permit.
4. If the application is denied, the City Forester shall notify the applicant of the decision in writing.

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5. If the application is tentatively approved, the City Forester shall send notice of the pending approval to the applicant and the neighborhood association. The applicant shall post a copy of the notice on the site in a location clearly visible from the street nearest the tree.
 6. If no appeal is filed within a timely manner as specified in Subsection C., below, the decision is final. The City Forester shall notify the applicant that the decision is final.
- C. Appeal. The applicant, neighborhood association, or any person adversely affected by the decision may appeal the City Forester's decision. Appeals shall be:
1. Filed with the City Forester on forms prescribed by the City;
 2. Filed within 14 days from the date of the City Forester's decision; and
 3. Specifically identify how the City Forester erred in applying the standards or review factors.
- D. Appeal process.
1. Scheduling of the appeal hearing. The appeal hearing will be scheduled within 45 days of the City Forester's decision. However, for good cause shown by any party, the Appeals Board may extend the hearing deadline.
 2. Notice. Notice of the appeal hearing will be sent to the applicant, the appellant, and the neighborhood association at least 14 days before the hearing. The applicant shall post a copy of the appeal hearing notice on the site in a location clearly visible from the street nearest the tree.
 3. Hearing.
 - a. Appeals are heard by the Urban Forestry Appeals Board (Appeals Board).
 - b. The Appeals Board will consider the application against the applicable standards or review factors, taking into consideration information provided by the applicant, appellant, and City staff, or observations made by members of the Appeals Board if they visit the site.
 - c. Additional testimony and evidence may be introduced at the hearing, and the Appeals Board may delay its decision to provide adequate time for other parties to respond.

Regulations That Apply After Permit Approval

Approved tree removal, planting and pruning permits would need to be conspicuously posted while work was being conducted so that passers-by would know that proper approval had been obtained. This also serves the dual purpose of publicizing the permit requirement and the Urban Forestry program.

A certification process completes the loop, ensuring that required conditions have been followed. The particulars of this requirement are not specified in order to allow the City Forester to develop easy and reasonable procedures or modify those procedures in the future. Possibilities include submitting an affidavit, a City inspection afterwards, returning a sales receipt for the replacement tree, or simply attaching a photo in an email.

The permit expiration clause is added to ensure approved activity is conducted in a timely manner, as this would otherwise create difficulty for tracking and enforcement. Removals that occur years after an approval may be perceived as violations. As proposed, the default date is 90 days, but the City can establish a longer or shorter permit duration, depending on the circumstances. For instance, a permit to remedy a violation may have a shorter time frame. Longer time periods may be deemed reasonable for certain larger scale projects (restoration or master planned landscaping) where removal may need to occur early, but the replanting doesn't occur until the end of the project. A performance guarantee may be allowed to defer planting beyond the expiration date if necessary.

Permit suspension and revocation, The permit suspension and revocation provisions are adapted from similar language in Section 32.62.050, and protect the City by allowing the City Forester to withdraw an approval, either temporarily or permanently, when errors or infractions are discovered.

- d. If additional hearings are scheduled, the Appeals Board may, at its discretion, choose to not allow new evidence after the initial hearing.

E. Appeals Board Decision.

1. The Appeals Board may affirm or reverse the City Forester's decision, or remand the decision to the City Forester to determine appropriate mitigation.
2. The Appeals Board will give due deference to the professional judgment of the City Forester, and will reverse or remand the City Forester's decision only upon a finding that the City Forester's decision is not supported by substantial evidence, or upon a finding that the City Forester's decision was arbitrary or capricious, an abuse of discretion or otherwise was not in accordance with the provisions of this Title.
3. The appeal decision of the Urban Forestry Appeals Board is final and may not be appealed to another review body within the City.

11.30.100 Regulations That Apply After Permit Approval.

- A. Posting tree removal permits. Permits for tree removal shall be posted while the approved tree removal work is underway. The permit shall be posted in a location visible to pedestrians and motorists.
- B. Certifying compliance with replacement requirements. Applicants shall certify that they have complied with the tree replacement and any other requirements or conditions stipulated on a permit, as applicable.
- C. Permit expiration. Tree Permits expire 90 days from the date of issuance, unless a specific expiration date has been added to the permit by the City Forester or Urban Forestry Appeals Board. The reviewing authority may require a performance guarantee as described in Section 11.10.060, when replacement planting is allowed to be deferred beyond the permit expiration date.
- D. Permit suspension or revocation. The City Forester may suspend or revoke a tree permit. The permit holder shall be notified of the suspension or revocation in writing. Permits may be suspended or revoked when:
 1. The permit is issued in error;
 2. The permit is issued on the basis of incorrect information supplied by the owner or applicant;

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3. The permit is issued in violation of any of the provisions of City code or an approved land use decision; or
4. The applicant, owner, or contractor listed on a permit is the subject of a pending violation of this Title for the site where the work is proposed or occurring. In such cases, the permit may be suspended until the alleged violation has been resolved.

COMMENTARY

CHAPTER 11.40

TREE PERMIT REQUIREMENTS (NO ASSOCIATED DEVELOPMENT)

This chapter addresses most tree work (planting, pruning, root cutting, removal) when development is not proposed or occurring. This chapter includes the standards and factors for evaluating tree permit requests for all City, Street, and Private Trees. When development is proposed or occurring, the requirements of Chapter 11.50 apply. For activity subject to a Programmatic Permit, the requirements of Chapter 11.45 apply. For Heritage Trees, the requirements of Chapter 11.20 apply.

Purpose

The purpose statement has been adapted from existing chapter 20.40 and 20.42 language, slightly reworded for readability.

Where These Regulations Apply

This section begins by listing the general size threshold of regulated trees.

City and Street Trees - a 3" diameter size threshold replaces the previous "any size" threshold. Establishing a minimum size threshold is more reasonable, efficient, and enforceable, and is consistent with federally recognized definitions of trees.

Private Trees - the previous tree permit applied only to trees 12 or more inches in diameter on private properties, and did not incorporate the existing smaller size thresholds for the regulated trees in some overlay zones or plan districts that are now subject to Title 11 provisions.

The proposal is to continue requiring a tree removal permit for most currently regulated Private Trees at 12 or more inches in diameter. There are two exceptions to this size threshold:

- Single Dwelling Sites (20 or more inches in diameter); and
- Specific Overlay Zones and Plan Districts (6 or more inches in diameter)

For single dwelling sites, the code applies a 20 inch and larger tree size threshold. This provision applies primarily to properties in the City that are currently exempt from tree permits. The prior exemption applied to "built single family lots in single family zones that are not dividable." The previous regulations were intended retain trees on developable sites until a land division application was submitted. However, the term "dividable" and the limitation to single family zones were problematic. The exemption caused confusion in situations where lots were seemingly exempt (i.e. single family house on a normal size lot) but due to an overlay zone, plan district, or a tree preservation requirement from a land use review, property owners would inadvertently violate tree regulations. The exemption also created disparity between one property and the next, based on factors unrelated to the trees themselves. The Planning and Urban Forestry Commissions spent considerable time and discussion developing an approach that reduces confusion for these property owners, while limiting regulatory intrusiveness and increasing equity between all properties in the city.

CHAPTER 11.40

TREE PERMIT REQUIREMENTS (NO ASSOCIATED DEVELOPMENT)

Sections:

- 11.40.010 Purpose.
- 11.40.020 Where These Regulations Apply.
- 11.40.030 Exemptions.
- 11.40.040 City and Street Tree Permit Standards and Review Factors.
- 11.40.050 Private Tree Permit Standards and Review Factors.
- 11.40.060 Tree Replacement Requirements.

11.40.010 Purpose.

The purpose of this Chapter is to manage, conserve and enhance the urban forest when development activity is neither proposed nor occurring. The provisions of this chapter encourage preservation of high quality trees, large trees, and groves; regulate pruning and planting on City-owned and managed sites and streets to protect public safety and public infrastructure; and ensure replacement for trees that are removed.

11.40.020 Where These Regulations Apply.

The regulations of this chapter apply to the following situations when no activity requiring a development permit or land use review is proposed or occurring on the site:

- A. City Trees and Street Trees. City and Street trees at least 3 inches in diameter are regulated by this chapter.
- B. Private Trees.
 - 1. Generally. Trees at least 12 inches in diameter on sites and tracts not included in Paragraphs B.2 or B.3 are regulated by this chapter.
 - 2. Trees on single dwelling sites. On sites that meet all of the following, only trees at least 20 inches in diameter are regulated by this chapter:
 - a. The site is already developed with a single dwelling;
 - b. None of the trees that will be affected by the proposed activity are:
 - (1) Located in an overlay or plan district listed in Paragraph B.3;
 - (2) Heritage Trees; or

COMMENTARY

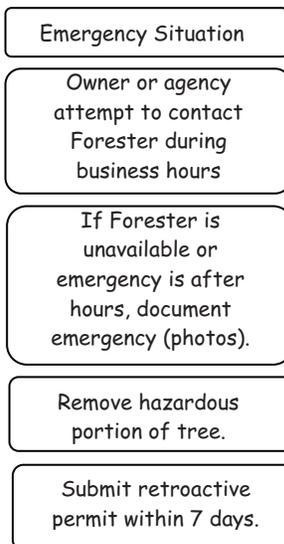
For sites meeting the single dwelling provision, no permit is required for trees less than 20 inches in diameter. For trees at least 20 inches in diameter removal is subject to a Type A permit (no review, and no public appeal option), with a simple tree for tree replacement requirement. The message is "cut a large tree, replace a tree". People should check with the City before removing any tree at least 6 inches in diameter to reduce risk of inadvertent violations should be reduced. A "call before you cut" campaign is recommended. This approach is a non-regulatory outreach tool that can be used to connect with property owners and offer information about tree planting options and incentives like the City's Treebate program.

Specific lot size thresholds have replaced the "dividable" term in Title 20.42 to prevent confusion over which sites qualify for the Single Dwelling permit. The lot sizes represent a dividable lot based on zoning code standards. The Single Dwelling permit provision applies to trees on lots that contain single dwelling houses, and that smaller than 3,000 square feet, in non-single family zones. This is appropriate since these lots are exempt from the tree preservation standards in Chapter 11.50.

Specific overlay zones and plan districts. The size threshold is 6 inches in diameter to recognize the need to address a larger pool of trees in these sensitive resource areas. This size is consistent with the tree sizes addressed in the Zoning Code.

Emergency pruning, root cutting, or tree removal. Provisions are included to relieve a person from the need to obtain a permit when an emergency exists. A retroactive permit is still required to document the removal or pruning and the emergency situation. Provisions are also included for emergency work that the City Engineer or his crews may be responding to (e.g. a waterline break). In the course of repairing the facility they may either need to prune or remove a tree. In these cases they will need to first attempt to contact Urban Forestry, but if Forestry is unavailable, then the work can proceed. Provisions for submitting permit applications after removing trees in emergency situations is consistent with existing provisions in Section 20.42.090.

Emergency Tree Pruning and Removal Process:



- (3) Required to be preserved by a tree preservation plan, a condition of a land use review, or provision of this Title or the Zoning Code; and

c. The site is not larger than the sizes listed in Table 40-1.

Table 40-1 Maximum Site Size for Subsection 11.40.020 B.2.

| Zone | R2.5 | R5 | R7 | R10 | R20 | RF | Other |
|------------------|-------------|-----------|-----------|------------|------------|------------|--------------|
| Site size | 4,749 sf | 9,499 sf | 13,299 sf | 18,999 sf | 37,999 sf | 165,527 sf | 2,999 sf |

3. Specific overlay zones and plan districts. Trees at least 6 inches in diameter in the following overlay zones and plan districts are regulated by this chapter:

- a. Environmental conservation "c" or protection "p" overlay zones;
- b. River environmental "e" overlay zone;
- c. Greenway natural "n", or water quality "q" overlay zones, or within or riverward of the greenway setback in, general "g", industrial "i", or recreation "r" overlay zones;
- d. Scenic corridor "s" overlay zone within the minimum street setback, or within the first 20 feet from the street lot line when there is no minimum street setback;
- e. Pleasant Valley Natural Resources "v" overlay zone, when located within the City limits;
- f. Rocky Butte plan district;
- g. Johnson Creek Basin plan district: only in the Floodplain and South Subdistricts, or otherwise located within 20 feet of lot lines abutting the Springwater Corridor; and
- h. South Auditorium plan district.

C. Emergency pruning or removal. Emergency pruning or removal of trees is regulated by this chapter as follows:

- 1. If an emergency exists because the condition or location of a tree presents such a clear and present danger to structures or the public that there is insufficient time to obtain a tree permit, the hazardous portion of the tree may be removed without first obtaining a required tree permit.

State, Federal and Court Orders

In situations where an order requires tree pruning or removal this provision specifies that a permit is required to allow for consistent tracking and to ensure tree replacement. However, the standard notice and appeal procedures do not apply. This is intended to prevent double jeopardy situations and ensure that the required tree related work can proceed efficiently.

Trees on levees

The Multnomah County Drainage District is obligated by federal standards (U.S. Army Corps of Engineers) to maintain levees in order to retain certification and thus, eligibility for flood insurance. These standards require that trees not be permitted within the critical cross section area of federal levees. Trees often grow voluntarily on these levees. Similar to the State, Federal, and Court Order provisions above, Type A permits are required to ensure trees are replaced, with know review or public appeal process. This is to ensure the larger public interest of flood protection is not jeopardized, while ensuring that mitigation will occur. Replacement may occur anywhere in the watershed on property owned by the District, or other property where the District possesses an easement or other agreement to plant and maintain trees.

Exemptions

This section includes the situations where the requirements of this Chapter do not apply.

Heritage Trees - are addressed through Chapter 11.20.

Trees not in the City of Portland - are also not regulated by this chapter. This includes Multnomah County urban pockets where the City administers land use and development related regulations through an intergovernmental agreement. The tree permit program is not covered in this agreement and is not proposed to be initiated in the County.

Programmatic Permits - The purpose of Programmatic Permits is to facilitate routine public agency operations by not requiring individual permits for ongoing tree related work. Requirements for public notice, tree replacement, and specifications for conducting work will be detailed in the general approval of the programmatic permit (see chapter 11.45)

Agricultural Use - This is intended to relieve farm and forest operations (Christmas Trees, timber, etc), as well as plant nurseries from the tree permit requirement.

Work by City Forester- As the permit review authority the City Forester is not required to obtain permits. However, to aid in Urban Forestry tracking and management, records of the work must be kept.

2. In the course of performing unexpected or emergency road, sewer, or water maintenance activities, representatives of the City Engineer may trim, prune or remove a tree as required to perform the immediate work without first obtaining a required tree permit. If such activities occur during normal business hours, these representatives shall first attempt to contact the City Forester to determine if technical assistance can be made immediately available. If such assistance is not immediately available, then the pruning or removal may occur in accordance with proper arboricultural practices.
 3. Any person who prunes or removes a tree under the provisions of this Subsection shall, within 7 days of such action, apply for a Type A tree permit. The application shall include photographs or other documentation to prove that an emergency existed. The City Forester will evaluate the information to determine whether an emergency existed. Failure to submit an application or provide information documenting the emergency nature of the event may be pursued as a violation per Chapter 11.70.
- D.** State, Federal, and court orders. Trees that must be removed or pruned by an order of the court, or State or Federal order, including hazardous material cleanup orders, are not subject to the public notice and appeal procedures of Chapter 11.30 and approval standards and review factors of this chapter. However, a tree permit is required and the tree replacement requirements of this chapter shall be met.
- E.** Trees on levees. Trees on levees that have been identified by a public Drainage District as violating federal regulations or requirements are subject to the requirements of this chapter for a Type A permit for removal of trees. Required replacement trees shall be placed outside the critical cross section area of the levee, and may be placed on any property in the same watershed that is owned by the applicant; or on property for which the applicant possesses a legal instrument approved by the City, such as an easement, deed restriction, or interagency agreement, sufficient to carry out and ensure success of the replacement.

11.40.030 Exemptions.

The following are exempt from the requirements of this Chapter:

- A.** Heritage Trees. Heritage Trees are addressed in Chapter 11.20:
- B.** Trees outside City Limits. Trees that are outside the City Limits, including areas where the Portland Zoning Code and other regulations are administered. These areas are sometimes referred to as the "County urban pockets."
- C.** Programmatic permits. Activities carried out by public agencies operating under a programmatic permit per Chapter 11.45.

City and Street Tree Permit Standards and Review Factors

This section lays out the standards for evaluating Type A permits (pruning, planting, some tree removal, and other activities) for City and Street trees, along with review factors for Type B permits (removing healthy trees).

Type A Permits - City and Street Trees

Since Type A Permits are technical determinations involving little discretion, these permits are only appealable by the applicant. Examples of Type A permits include removal of dead, dying or dangerous trees, documenting removal of emergency trees after the fact, pruning actions, root cutting, or tree planting.

Planting

The purpose of the planting permit is to ensure that conflicts with overhead or below ground utilities are avoided, visibility is maintained, and the right tree species is selected. Planting specifications are listed in Chapter 11.60. Included in those specifications is a prohibition on planting tree species on the City's Nuisance Plants List. This provision further solidifies the City's policy and commitment to manage invasive plants by supporting the gradual phasing out of these trees.

- D. Agricultural use. Trees on sites that are part of an allowed farm or forest operation, including plant nurseries, when such removal is a customary and necessary activity for the associated agricultural use as provided for in Title 33, Planning and Zoning. Timber harvesting is subject to Oregon Department of Forestry requirements, ORS Chapter 527, and OAR Divisions 600-665.
- E. Work by City Forester. Work done by the City Forester and City Forestry crews involving City and Street Trees. However, the City Forester shall keep records of the location and number of City and Street Trees planted, pruned, and removed.

11.40.040 City and Street Tree Permit Standards and Review Factors.

Type A and B permit applications for tree related work affecting City or Street Trees shall be reviewed using the following applicable review factors and standards in accordance with the application procedures set forth in Chapter 11.30.

**Table 40-2
Summary of Permit Requirements for City and Street Trees**

| Permit Type Required | Activity and Tree Size Threshold (diameter) | Required Replacement (See Section 11.40.060) | Public Notice Required? |
|---------------------------|---|--|-------------------------|
| No permit required | Pruning: branches or roots <1/4" and sucker shoots Removal: trees <3" | None | No |
| A | Planting Pruning: Branches or roots ≥1/4" Other tree activity, as determined by the City Forester | n/a | No |
| | Removal: Trees that are dead, dying, or dangerous | 1 tree for every tree removed | No |
| B | Removal: healthy trees ≥3 to <20" | 1 tree for every tree removed | No |
| | Removal: <ul style="list-style-type: none"> • Healthy trees ≥ 20" • More than 4 healthy trees ≥ 12" per site/per calendar year | Up to inch for inch replacement; determined on case-by-case basis by City Forester | Yes |

- A. Standards and Review Factors for Type A Permits for City and Street Trees.
 - 1. Planting. Planting shall meet the specifications in Chapter 11.60 and the following:
 - a. Street Trees. If the City Forester determines that a proposed street tree planting is suitable for the space available,

Pruning or root cutting

Pruning permits offer the opportunity for consultation with the Forestry experts to avoid detrimentally affecting a tree, to limit the degree of pruning when necessary, and prevent tree topping. Pruning specifications are listed in Chapter 11.60. This provision allows the City Forester to limit or prescribe pruning techniques, or withhold approval from persons who have violated permits in the past.

Other Activities

Title 20 had required a person to obtain a permit to "plant, remove, destroy, cut, prune or treat any tree," however it has been the City's practice to require permits for other activities like attaching lights to trees. This provision expands the City Forester's authority to require permits for "any request which has the potential to harm a tree".

Removal

Certain trees, upon confirming their status, may be removed and replaced, tree for tree. These include dead, dying, and dangerous trees on City owned or managed land. The previous code authorized the City Forester to require "replacement with a new tree". The tree for tree replacement is consistent with this requirement.

A notable difference between the regulations for City and Street Trees and the regulations for Private Trees is that removal of healthy nuisance species City or Street Trees is not allowed without a Type B Permit review, whereas nuisance species Private Trees may be removed through a Type A permit. For Street and City Trees the review is to ensure consideration of the cumulative impacts of removing these trees, and the role of the tree(s) in the character or look of the street or neighborhood. For example, nuisance species trees may contribute to an established single species street tree look, or may be referenced in historic district guidelines or area specific tree plans.

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Type B Permits - City and Street Trees

Type B permits address tree removal requests when an evaluation of certain factors is needed to ensure the proposal does not significantly negatively affect public safety or neighborhood character, and that extraordinary circumstances exist which warrant the removal of the tree. The City's general policy is to retain healthy established City and Street Trees in the majority of cases, except where they are dead or present a hazard or danger. However, it may be appropriate in some cases to substitute a poorly performing (e.g. overcrowded) or improper tree (too big or too small for its space) with a more appropriate tree selection. On City properties, removing nuisance species street trees is typically encouraged, but is still weighed against the review factors to ensure impacts are mitigated or avoided. For streets, impacts to the streetscape are carefully reviewed.

Previously, there were no specific approval criteria in Chapter 20.40. Factors have been added along with a statement that decisions will be made on a case by case. This is intended to preempt the argument that because one tree was removed, another tree should be allowed to be removed, when the facts of that request may be totally different.

Certain standards must be met (tree is not subject to a land use condition of approval or in an area requiring land use review) in addition to determining that extraordinary circumstances exist in order to grant the permit. The review factors include:

- (a) a look at the species selection and the available root and crown space. This is essentially asking whether this is the "right tree, in the right place". Deference is given for removing nuisance trees from City properties. In rights of way, the objective of reducing nuisance species trees must be directly weighed against the consideration factor in (d).
- (b) a look at the crown, stem or roots to see if the tree will continue to grow healthy or begin to impact other healthy trees. This asks if there may be girdling roots, a poorly formed trunk, or crown that may not be considered dangerous but could potentially become dangerous or interfere with other more appropriate trees.
- (c) a look at the related maintenance costs. This is to determine whether a tree has excessive maintenance requirements (e.g. repeated sidewalk repairs, abnormal insect infestation, extreme sap production in parking areas, requires extensive cabling or bracing, etc)
- (d) a look at the existing pattern of tree planting along the street. This could include trees planted in city properties adjacent to the street as well as Street Trees. A negative impact may include removal of a tree on an otherwise treeless street, or removal of a unifying tree species with a proposal to replace with a radically different character tree.

These review factors are not criteria, in the sense that they do not need to all be met, in order to grant the permit. They serve as considerations, and may be in conflict in some cases. They have been developed to inform the Forester's decision and make the City's decisions more consistent and explicit to the public.

Replacement varies from one tree for each smaller tree removed (<20 inches diameter), up to inch for inch when larger trees (\geq 20 inches diameter) or more than four trees \geq 12 inches diameter are being removed. Section 11.40.060 provides additional guidance to determine appropriate mitigation.

- c. Dangerous trees. The City Forester will evaluate the removal request by first evaluating practicable alternatives to the removal. If the City Forester finds either that the cost of the alternatives significantly exceeds the value of the tree, or that such alternatives will not substantially alleviate the dangerous condition, the City Forester will grant the permit.

- B. Standards and Review Factors for Type B Permits for City and Street Trees. Because Type B permits for City and Street Trees are required only for removal; the standards and review factors of this Subsection are specific to tree removal.
 - 1. Standards. The City Forester shall determine that the following standards are met before granting a Type B permit:
 - a. For trees located in one of the overlay zones or plan districts identified in Paragraph 11.40.020 B.3., the proposed removal is exempt or allowed by Title 33, Planning and Zoning;
 - b. The tree is not required to be preserved by a tree plan, a condition of a land use review, provision of this Title or the Zoning Code, or as part of a required stormwater facility;
 - c. Trees removed shall be replaced as specified in Table 40-2.

 - 2. Review Factors. The City, in the absence of extraordinary circumstances, will not permit the removal of a healthy, functioning street tree. Maintenance or replacements of sidewalks or curbs, removal of tree litter, or other minor inconveniences do not constitute extraordinary circumstances. Decisions regarding removal of healthy, functioning street trees are fact-specific, and are made on a case-by-case basis by the City Forester. In determining whether extraordinary circumstances exist that warrant removal of a healthy tree, the City Forester will consider:
 - a. Whether the species of tree is appropriate for its location, and whether it is a nuisance species tree;
 - b. Whether the tree's crown, stem or root growth habit has developed in a manner that would prevent continued healthy growth or is negatively impacting other trees;
 - c. Whether the maintenance of the tree creates an unreasonable burden for the property owner; and
 - d. The impact of removal and replanting on the neighborhood streetscape and any adopted historic or other design guidelines.

Private Tree Permit Standards and Review Factors

This section, adapted from the previous Chapter 20.42.040, reinforces the requirement that permits are required and refers users to Chapter 11.30 for permit procedures. The application procedures are the same for all City, Street, and Private Trees. Two summary tables are provided; the first shows the Type A and Type B permit requirements for Private Trees located in specified overlay zones and plan districts, and the second is for Private Trees located outside these areas.

11.40.050 Private Tree Permit Standards and Review Factors.

Type A and B permit applications for tree related work affecting City or Street Trees shall be reviewed using the following applicable review factors and standards in accordance with the application procedures set forth in Chapter 11.30.

Table 40-3 Summary of Permit Requirements for Private Trees in Specified Overlay Zones and Plan Districts[1]

| Permit Type Required | Activity and Tree Size Threshold (diameter) | Required Replacement (See Section 11.40.060) | Public Notice Required? |
|-----------------------------|--|--|--------------------------------|
| No permit required | Planting Pruning: Outside of c, p, v zones Removal: Trees <6" | None | No |
| A | Pruning: Native trees in c, p, or v overlay zones | n/a | No |
| | Removal: Trees that are <ul style="list-style-type: none"> • Dead, dying, dangerous • Nuisance species • Within 10' of a building or attached structure Up to four trees per year that are at least 6" and less than 20" Note: Tree removal may be further restricted by an overlay zone or plan district. See Title 33. | 1 tree for every tree removed | No |
| B | Removal: <ul style="list-style-type: none"> • Healthy non-nuisance trees ≥ 20" • More than four non-nuisance trees ≥ 12" per site per year Note: Tree removal may be further restricted by an overlay zone or plan district. See Title 33. | Up to inch for inch replacement; determined on case-by-case basis by City Forester | Yes |

Note [1] See Subsection 11.80.020 B.19. for a list of applicable overlay zones and plan districts

Type A Permits - Private Trees

Since Type A Permits are technical determinations involving little discretion, only the applicant may appeal City permit decisions. Examples of Type A permits include removal of dead, dying or dangerous trees, removing trees within 10 feet of buildings, removing up to four trees less than 20 inches in diameter per site per year, documenting removal of emergency trees after the fact, and limited pruning in environmental overlay zone areas. Unlike City and Street Trees, permits are not required to plant, cut roots, or conduct other tree activities.

Pruning. Typically, pruning permits are not required for Private Trees. However, for native trees in environmental or Pleasant Valley Natural Resource overlay zones, a pruning permit is proposed to provide additional flexibility for limited pruning requests. Previously, any pruning that does not meet the specific exemptions outlined in the environmental overlay zone regulations (e.g., exemptions for pruning limbs up to 6 feet off the ground and off the roofs of existing structures) required environmental review. These exemptions have been carried over as exceptions to the pruning permit in Title 11. An additional exception is provided as a safety precaution to allow crown reduction (not "topping") in the Airport Plan District when the trees will project above the aircraft landing zone. Crown maintenance is intended to allow removal of branch structure that could attract wildlife of concern around the airport.

| Table 40-4 Summary of Requirements for Private Trees Outside Specified Overlay Zones and Plan Districts [1] | | | |
|--|---|--|--------------------------------|
| Permit Type Required | Activity and Tree Size Threshold (diameter) | Required Replacement (See Section 11.40.060) | Public Notice Required? |
| No permit required | Planting Pruning Removal: <ul style="list-style-type: none"> • Trees <12" • Trees on single dwelling sites <20" (see Subsection 11.40.020 B.) | None | No |
| A | Removal: Trees that are <ul style="list-style-type: none"> • Dead, dying, dangerous • Nuisance species • Within 10' of building or attached structure • Up to four trees <20" per site per year Trees ≥20" on single dwelling sites (see Subsection 11.40.020 B.) | 1 tree for every tree removed | No |
| B | Removal: <ul style="list-style-type: none"> • Healthy non-nuisance trees ≥20" • More than four non-nuisance trees ≥12" per site per year Note: Removal of trees may be subject to a land use review; See Title 33 | Up to inch for inch replacement; determined on case-by-case basis by City Forester | Yes |

Note [1] See Subsection 11.80.020 B.19. for a list of applicable overlay zones and plan districts

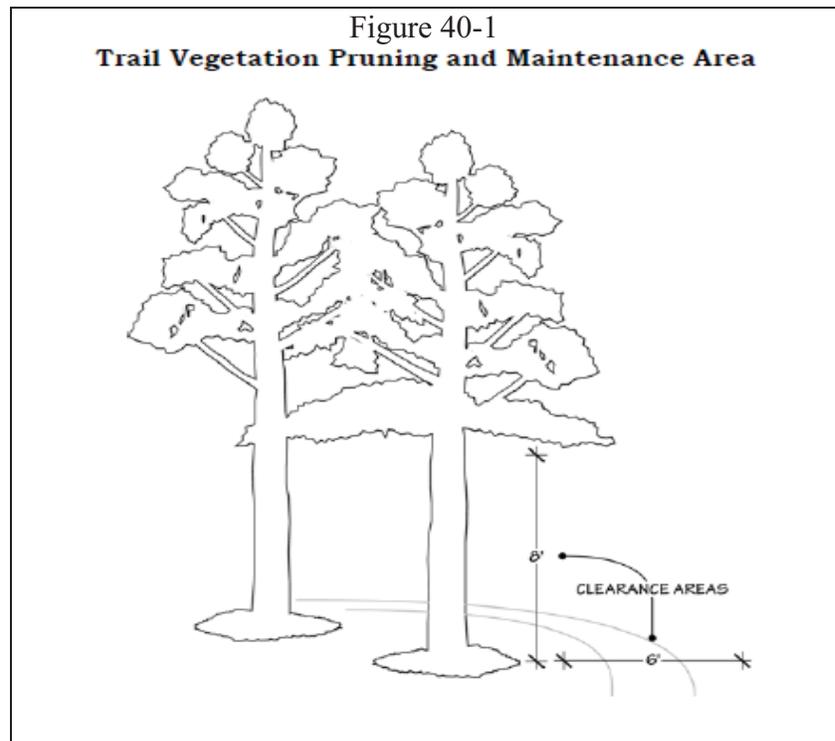
A. Standards and Review Factors for Type A Permits for Private Trees.

1. Pruning. A pruning permit is required only if the tree is a native tree in the Environmental (c, p) or Pleasant Valley Natural Resource (v) Overlay Zones.
 - a. Exceptions. A permit is not required for pruning trees in the following situations:
 - (1) Pruning trees located within 10 feet of a building or attached structure;

COMMENTARY

The standards that apply to non-exempt pruning actions in the environmental and Pleasant Valley Natural Resource overlay zones are intended to allow limited pruning through a Title 11 permit. The standards limit pruning in these area to 5 native trees per 10,000 square feet of site area per year. Pruning non native trees (including nuisance species trees) do not require a pruning permit. Completely exempting non native and nuisance tree pruning was considered, but determined that this would complicate implementation and enforcement. An arborist must prepare a pruning plan and oversee the pruning work. Requests to prune beyond the standards of Title 11 are subject to a review through Title 33. The Pruning Permit should be monitored for a period of time and adjusted as necessary in the future, to either grant additional exemptions (such as for non-native trees), further restrict pruning under this permit, or delete the provision entirely and revert to environmental review procedures.

- (2) Pruning coniferous trees that are within 30 feet of structures, when the structure is within the wildfire hazard zone as shown on the City's Wildfire Hazard Zone Map;
- (3) Pruning to abate an immediate danger;
- (4) Pruning for trail maintenance when not exceeding a height of 8 feet and a width of 6 feet as shown in Figure 40-1; or
- (5) Crown maintenance and crown reduction of trees in the Portland International Airport plan district that project above or will, upon maturity project above the height limit delineated by the "h" overlay zone or are identified as attracting wildlife species of concern.



- b. Standards. The City Forester will grant a Type A Permit for pruning if the applicant demonstrates to the City Forester's satisfaction that the pruning will meet the following:
 - (1) Pruning is limited to 5 native trees per calendar year per 10,000 square feet of site area;

COMMENTARY

Removal

Certain Private Trees may be removed and replaced tree-for-tree, based on confirmation of their status. This includes a broader array of situations than is allowed for City or Street Trees. In addition to dead, dying, and dangerous trees, Type A permits may be granted to allow removal of nuisance species trees, up to 4 healthy non-nuisance trees less than 20 inches in diameter per year, and trees located within 10 feet of a building.

For tree on single dwelling sites (sites developed with a house that are not large enough to divide, and not restricted by overlay zone, plan district or land use conditions), a Type A permit is required to remove any number of trees at least 20 inches in diameter. These permits are intended to be processed quickly, perhaps over the counter, provided adequate documentation is supplied with the application.

Type B Permits - Private Trees

Type B permits are required to remove healthy trees 20 or more inches diameter, or to remove more than four healthy trees at least 12 inches in diameter per year. Similar to City and Street Trees, the City considers a set of review factors when evaluating permit applications to remove healthy Private Trees. For Private Trees, the City will take the property owner's objectives for use and enjoyment of their property into consideration. The City will encourage retention of healthy trees if practical alternatives to the removal that also meet the owner's objectives. The review factors ensure impacts are sufficiently mitigated or avoided. Since the review factors address impacts on the character of the neighborhood, Type B permits for Private Trees may be appealed to ensure that the public has the opportunity to raise concerns about neighborhood character that may not be initially evident to Urban Forestry staff.

Certain standards must be met (tree is not subject to a land use condition of approval or in an area requiring land use review) in addition to determining that significant adverse impacts are avoided or mitigated, in order to grant the permit. The review factors include:

- (a) A look at whether practical alternatives to tree removal exist - alternatives that also meet the owner's objectives. For instance, a desire for more sunlight or better view could potentially be met by pruning the tree. Or perhaps one alternative would be to remove a nuisance species tree in favor of retaining a non-nuisance species tree.
- (b) The species selection and the available root and crown space. This is essentially asking whether this is the "right tree, in the right place". If a tree is crowded and constrained, removal and replacement with a better situated tree may be appropriate.
- (c) A look at the crown, stem or roots to see if the tree will continue to grow healthy or begin to impact other healthy trees. There may root girdling, a poorly formed trunk, or crown that may not be considered dangerous but could potentially become dangerous or interfere with other trees.
- (d) A look at whether the proposed removal will significantly affect public safety (such as mass clearing on a hillside, or removing buffering edge trees of a grove leaving the interior trees more vulnerable to blowing down) or the neighborhood character. A number of factors were included to help provide more clarity to decision makers, applicants, and the public, as to what constitute neighborhood character defining elements, as this has previously been a point of contention in prior appeals.

(3) None of the trees that will be affected by the proposed activity are required to be preserved by a tree plan, a condition of a land use review, provision of this Title or the Zoning Code, or as part of a required stormwater facility;

g. Trees on single dwelling sites. The tree is at least 20 inches in diameter and meets the provisions of Paragraph 11.40.020 B.2.

B. Standards and Review Factors for Type B Permits for Private Trees. Because Type B permits for Private Trees are required only for removal; the standards and review factors of this Subsection are specific to tree removal.

1. Standards. The City Forester shall determine that the following standards are met before granting a Type B permit:

a. For trees located in one of the overlay zones or plan districts identified in Subparagraph 11.40.020 B.3., the proposed removal is exempt or allowed by Title 33, Planning and Zoning;

b. The tree is not required to be preserved by a tree plan, a condition of a land use review, or provision of this Title or the Zoning Code; and

c. Trees removed shall be replaced as specified in Tables 40-3 and 40-4.

2. Review Factors. The City encourages retention of healthy Private Trees where practical alternatives to removal exist, and where those alternatives meet the owner's objectives for reasonable use and enjoyment of the property. Factors are considered to ensure that significant adverse impacts are avoided or mitigated, weighing the broader economic, ecological, and community concerns. These decisions are fact-specific and are made on a case-by-case basis. In making these decisions, the City Forester will consider:

a. Whether there are practical alternatives that meet the owner's objectives without removing the tree;

b. Whether the species of tree is appropriate for its location;

c. Whether the tree's crown, stem, or root growth habit has developed in a manner that would prevent continued healthy growth or is negatively impacting other trees; and

Tree Replacement Requirements

This section establishes the City Forester's authority to require replacement for trees removed in conjunction with a Type A or B permit. Previously, Chapter 20.40 (public trees) allowed the City Forester to require replacement of one tree for any tree removed. Chapter 20.42 (private trees) previously specified that for removal of a healthy tree, the City Forester may require mitigation at up to one caliper inch of new trees for each diameter inch of the tree being removed. This meant that, for instance, a 24" diameter tree may require up to 24 inches of new trees (e.g. 12 two-inch caliper trees or 24 one-inch caliper trees).

Title 11 streamlines and standardizes requirements to replace City, Street and Private trees as follows:

Type A: one tree for each tree removed

Type B: Healthy trees less than 20 inches in diameter - one tree for each tree removed

≥20" diameter or more than four trees ≥12" in a single year - up to inch for inch.

Since the tree replacement requirements are essentially the same for all Type A and B permits (for City, Street, and Private Trees) they are consolidated into one section.

In addition to setting the required quantity of replacement trees, this section includes guidance for the City Forester to use in determining the appropriate quantity of trees or other types of mitigation for permits that trigger "up to inch for inch" mitigation.

- d. Whether the removal will significantly affect public safety or neighborhood character based on the following:
 - (1) The age, size, form, general condition, pruning history and any unique qualities or attributes of the trees;
 - (2) The visibility of the trees from public streets and accessways;
 - (3) The cumulative impacts of current and prior tree removals in the area; and
 - (4) When the tree is associated with a grove, whether removal of the tree will have a significant adverse impact on the viability of other trees or make other trees considerably more vulnerable to windthrow.

11.40.060 Tree Replacement Requirements.

Generally, the City Forester will require replacement of trees removed under a Tree Permit as specified in Subsection A. However, the City Forester may instead allow payment into the Tree Preservation and Planting Fund as specified in Subsection B., or may waive or reduce the replacement requirement as specified in Subsection C.

A. Tree replacement specifications

- 1. Quantity. Specific tree replacement requirements are shown in Tables 40-2, 40-3 and 40-4. Where the requirement specifies "up to inch for inch" replacement, the City Forester will determine the appropriate number of new trees that are required based on the total number of diameter inches of the trees removed. The replacement requirement will compensate for the lost functions of trees removed, and ensure the application meets the applicable standards and review factors.
- 2. Planting. Size, species, location, timing of planting, and on-going maintenance of replacement trees shall be in accordance with the technical specifications in Chapter 11.60.

- B. Payment into Tree Preservation and Planting Fund.** When the City Forester determines that there is insufficient or unsuitable area to accommodate some or all of the replacement trees within the street planting area or site, the City Forester may allow payment into the Tree Preservation and Planting Fund instead of requiring replacement trees. Payment is based on the adopted fee schedule.

COMMENTARY

Waivers

This section also authorizes payments in lieu of planting to the Tree Planting and Preservation Fund, and the City Forester to adjust or waive the tree replacement requirement if the site and adjoining street frontage are sufficiently planted with trees, or to avoid undue burden on low income property owners, similar to previous Subsection 20.42.100 B. It is anticipated that the City Forester will develop administrative rules to establish what qualifies as an undue burden and other guidance for determining appropriate mitigation ratios.

- C. Waivers. The City Forester may waive or reduce the replacement requirement when the City Forester determines:
1. The street frontage and site already meet the tree density standards of Chapter 11.50; or
 2. That the full mitigation required by this Chapter would impose an unreasonable burden on the applicant.

COMMENTARY

CHAPTER 11.45 PROGRAMMATIC PERMITS

Purpose

This chapter contains the provisions applicable to Programmatic Permits. Programmatic Permits are established to address routine tree and site maintenance and operations of public agencies, utilities, or drainage districts. Programmatic Permits are intended to be long-term, cover a broad geographical area, and avoid requiring individual permits for ongoing activities that provide public benefit. These permits, once approved, effectively replace the general Type A or B requirements, provided the tree-related activity is conducted within the parameters set by the programmatic permit.

This chapter is constructed similar to Chapters 11.30 and 11.40, presenting the application submittal requirements, review procedures, and the basis for approval.

Application Requirements

The City Forester reviews Programmatic Permit applications. Applicants are limited to public agencies as the purpose of the permit is to facilitate and improve efficiency in the provision of public services.

Procedures

This section establishes the Programmatic Permit review procedures. The review procedures are somewhat similar to Type A and B permits, and also contain specific decision timelines. The procedures include a public notice (like Type B permits) but no public appeal opportunity.

Notice is provided to recognized associations within the geographic area of the requested permit. This is to provide an opportunity to learn more about the request, supply comments or concerns for the Forester's or Urban Forestry Commission's consideration, or request to be notified of the final decision.

The Forester will make a decision on a requested programmatic permit within 90 days. This longer timeline is to allow sufficient notification time to interested parties, and ensures that adequate weight be given to the consideration of the request.

The permit may be valid for up to 5 years, and the Forester may limit the permit timeframe to a shorter period.

CHAPTER 11.45

PROGRAMMATIC TREE PERMITS

Sections:

- 11.45.010 Purpose.
- 11.45.020 Application Requirements.
- 11.45.030 Procedures.
- 11.45.040 Review Factors.
- 11.45.050 Permit Specifications.

11.45.010 Purpose.

Programmatic Permits may be issued by the City Forester for routine public facility or utility operation, repair, and replacement, on-going maintenance programs, and for resource enhancement programs managed by a public agency. The purpose of a Programmatic Permit is to eliminate the need for individual tree removal, pruning or planting permits for ongoing activities that cover a wide geographic area and may include City, Street, and Private Trees. Programmatic permits are not subject to the standards, review factors, or general procedures of the Type A or B permits, but are instead evaluated to prevent cumulative adverse impacts of the activities and ensure that on balance the activities will meet the goals and objectives of the Urban Forest Plan in a reasonable time period. Tree preservation, protection, removal, and planting when associated with a development permit are subject to the procedures found in Chapter 11.50 and not these tree permit requirements.

11.45.020 Application Requirements.

- A.** Applications for Programmatic Tree Permits shall:
 - 1. Be made in writing or electronically upon forms furnished by the City;
 - 2. Be legible, accurate, and contain sufficient information in order to evaluate the request; and
 - 3. Be accompanied by the correct fee.
- B.** Authority. Programmatic Permits may only be obtained by Public Agencies and Utilities as defined in this Title. Consultation on applicability is encouraged prior to application submittal.

11.45.030 Procedures.

- A.** Requesting Additional Information.
 - 1. If the City Forester requires additional information to review an application, the City Forester will send a notice to the applicant requesting the additional information.

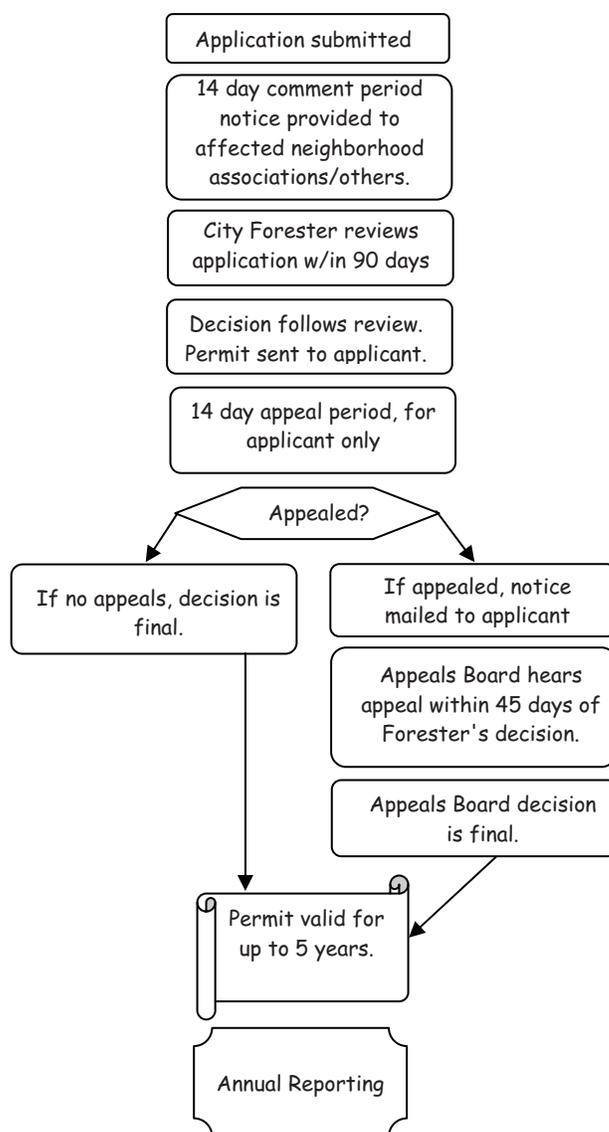
COMMENTARY

Revocation

Applicants who are found to be in violation of their Programmatic Permit, may have the permit revoked, in addition to any specific enforcement action the Forester may opt to pursue. For example an permit holder who removes native trees from an environmental zone under a Programmatic Permit that only allows nuisance species tree removal could face permit revocation in addition to any environmental zone violation process.

The applicant may appeal decisions relating to the permit. This includes the initial decision to deny or approve the permit with conditions, any subsequent changes to the permit specifications, or actions to revoke the permit. Such appeals are processed by the Urban Forestry Appeals Board like Type A appeals, except that the Appeals Board may confer its review authority to the full Urban Forestry Commission.

Summary of Programmatic Permit Process:



2. The applicant will have a maximum of 30 days from the date of the City Forester's notice to submit the additional information.
 3. If the additional information is not received by the City Forester within 30 days from the date of the City Forester's notice, the application will be voided on the 31st day. The City will not refund the filing fee.
- B.** Notice. When the City Forester determines that the application contains sufficient information, the City Forester shall mail notice by US mail or electronically to all recognized organizations within the geographic area affected by the permit request. The notice shall announce the permit application and provide instructions for obtaining additional information, providing comments or to request notification of the City Forester's decision. In addition to the public notice, the City Forester will provide a summary of pending and approved Programmatic Permits to the Urban Forestry Commission.
- C.** Decision. The City Forester shall take action to approve, approve with conditions, or deny a Programmatic Permit request within 90 days of determining an application contains sufficient information. The decision will be based on an evaluation of the request against the applicable review factors in Section 11.45.040.
- D.** Permit duration. The City Forester may approve a Programmatic Permit for a period of up to 5 years. An annual report from the applicant to the City Forester on activity conducted under the permit is required.
- E.** Revocation. The City Forester may revoke a Programmatic Permit upon finding the applicant is not adhering to the limitations imposed or is acting beyond the activities permitted by the Programmatic Permit. Non compliance with the Programmatic Permit may also be cause for any other enforcement action as stated in this Title.
- F.** Appeals. An applicant may appeal a denial, required conditions or specifications of an approval, or the revocation of a Programmatic Permit. Appeals shall be filed on forms as prescribed by the City within 14 days from the date of the written decision. Such appeals shall specifically identify in writing how the decision-maker erred in his/her decision. Appeal Hearings will be conducted as specified in Subsection 11.30.040 D. The Appeals Board may refer the appeal request to the full Urban Forestry Commission.

Review Factors

The first review factor is designed to ensure that, over time, the overall result of the Programmatic Permit will provide a net benefit to the health and functioning of the City's urban forest. This result will be achieved in different ways for different agency programs. For example, programs to prune trees for utility line clearance may also benefit the urban forest by removing hazardous limbs and removing and replacing older senescent trees with the right tree in the right place. For natural resource restoration and enhancement programs, nuisance trees may ultimately be replaced by a mix of trees, shrubs and ground cover instead of tree for tree replacement, since native multi-storied canopies provide healthier forest than trees without functioning understory.

The Urban Forestry Commission was concerned that since work performed under a Programmatic Permit is not routinely inspected by Urban Forestry staff, unconstrained parameters on programmatic permits may lead to abuse. As a result, the second review factor restricts removal of healthy non-nuisance trees larger than 6 inches in diameter. Removal of dead, dying, dangerous, and nuisance species trees of any size would still be eligible under a Programmatic Permit approval. Removal of healthy trees 6 or more inches in diameter would require a permit through Chapter 11.40. This significantly limits the utility and flexibility of this tool; however the limits were deemed appropriate since this type of broad permitting is new to the City. It is envisioned that after monitoring these permits for a period of time, the limitation on healthy tree removal may be revisited.

The final review factor ensures that a notification program is proposed, reviewed, and specified in the permit. Since Programmatic Permits will not generally be site specific, they will be more difficult to monitor through the City's permit system (i.e. you cannot look up a property to see if programmatic tree work has been permitted). Therefore, adequate public notification is envisioned for specified permitted activities to reduce complaints, and inform the public of the need for the work and anticipated public benefits (e.g. removal nuisance holly trees from Forest Park to ensure native trees can grow and benefit native wildlife in the area).

Permit Specifications

The permit specifications section is to document what is authorized under an approved programmatic permit. These specifications include

- A. Effective period. Permits may be valid for up to five years, but may be less.
- B. Affected area. This could be a mapped area of the city, or more generalized description, such as "all streets within the city of Portland" or "all public stormwater facilities".
- C. Types of authorized tree-related activities along with any limitations. This could be tree pruning, or certain tree removal at certain times of the year, etc.
- D. Notification procedures tailored to the type of activity. For example, Street Tree utility pruning operations may use door hangars, invasive species tree removals from a natural area may use signage to inform trail users.
- E. Monitoring and reporting requirements. Each year, each permittee will be required to submit a report to the City Forester inventorying the type and amount of activity that has occurred under the programmatic permit in the previous year.

11.45.040 Review Factors.

The City Forester may approve a Programmatic Permit upon finding that the following review factors are met or will be met with conditions:

- A. The proposed activity will result in a net gain to the urban forest functions and benefits described in the purpose statement of Chapter 11.05, considering the applicants proposed performance measures, proposed tree planting, and other proposed means to improve the overall health of the urban forest.
- B. The programmatic permit will not allow the removal of healthy non-nuisance species trees 6 or more inches in diameter. The City Forester may further limit allowed tree removal in order to meet Subsection A., above.
- C. The applicant's proposed outreach and notification program, if warranted, will adequately and in a timely manner alert neighboring residents, businesses, and the City prior to conducting work authorized under the programmatic permit.

11.45.050 Permit Specifications.

Approved permits shall include the following specifications. The City Forester may modify these specifications during the permit period in order to respond to concerns, changes in regulations, or previously unforeseen issues, provided the applicant is notified in writing and provided an opportunity to appeal the change in accordance with 11.45.030, above:

- A. Duration of permit;
- B. Geographic area covered by the permit;
- C. Permitted activities and any restrictions on the method, number, type, location, or timing of activities;
- D. Procedures and thresholds for informing neighboring residents, businesses, and the City of upcoming permitted activities; and
- E. Monitoring, performance tracking, and reporting requirements. The City Forester may prescribe rules or procedures that specify the manner in which such tracking and reporting occur.

COMMENTARY

CHAPTER 11.50

TREES IN DEVELOPMENT SITUATIONS

This chapter serves as the Tree Title's development review chapter. This chapter is intended to address tree protection, planting and removals on sites and in the streets. The Tree Development Standards include a baseline preservation requirement and a capacity requirement for trees (tree density).

The goal of the baseline preservation requirement is to evaluate all the existing trees for purposes of retaining trees to the extent practicable, while providing sufficient flexibility for applicants to meet other City development requirements.

The tree density requirements are intended to ensure that sites both with and without existing trees will have adequate tree canopy after completion of the development project. Tree density is a function of credits earned by planting a mixture of small, medium or large canopy size trees, credits for preserving healthy trees when not nuisance species, and where there is inadequate room on a site to preserve or plant, credit is earned by paying a fee in lieu of planting the required number of trees so that trees can be planted or preserved elsewhere in the watershed.

Where these Regulations Apply

This section specifies that the development-related tree regulations apply to the incorporated Multnomah County urban pockets. However, since the County Engineer retains jurisdiction over the county roads, the Street Tree related preservation and planting requirements do not apply. For projects in these areas, applicants will need to get approval from the County Engineer for work within the county's rights of way.

When a Tree Plan is Required.

Tree plans are required for a broad array of development situations. Development permits include building permits, zoning permits, site development permits, public works permits and capital improvement projects. New building construction and some additions/ alterations will need to show tree preservation, protection and tree planting. Demolitions as well as clearing and grading activities are included as they will need to show tree preservation.

CHAPTER 11.50

TREES IN DEVELOPMENT SITUATIONS

Sections:

- 11.50.010 Purpose.
- 11.50.020 Where These Regulations Apply.
- 11.50.030 When a Tree Plan is Required.
- 11.50.040 Development Impact Area Option for Large Sites and Streets.
- 11.50.050 Tree Preservation Standards.
- 11.50.060 Tree Density Standards.
- 11.50.070 Tree Plan Submittal Requirements.
- 11.50.080 Changes to Approved Tree Plans.

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.

11.50.020 Where These Regulations Apply.

- A. City of Portland. This chapter applies to all trees within the City of Portland.
- B. County urban pockets. Trees in the "County urban pockets" are subject to all regulations of this chapter except Subsection 11.50.050 B. (tree preservation standards for City and Street Trees) and Subsection 11.50.060 B. (tree density standards for Street Trees). The County urban pockets are areas outside the City of Portland where the Portland Zoning Code and other Portland regulations are administered by the City through an interagency agreement with Multnomah County. The County urban pockets are shown on the Zoning Map.

11.50.030 When a Tree Plan is Required.

- A. A tree plan is required in conjunction with all development permits, unless the site or activity is exempt from both tree preservation and tree density in accordance with Subsections B. and C., below. For tree removal when no development permit is required, see Chapter 11.40. If multiple development permits are required for a development proposal, the same Tree Plan shall be included with each permit.

COMMENTARY

A number of exemptions from the Tree Preservation Standards are listed, including situations where the standards don't apply (trees are smaller than regulated size, or no ground disturbance will occur), preservation is impractical (small sites and sites with high building coverage), or tree preservation has already been addressed through a more intensive discretionary review process (land use and land division reviews).

Projects on sites meeting the Single Dwelling provision in the tree permit chapter (Paragraph 11.40.020 B.2.) are also exempt because absent development the trees on these sites are regulated at a larger size threshold than the development preservation standards. In addition, absent development the regulated trees on these sites are subject only to a Type A permit, requiring replacement with another tree. The imbalance between the regulations prior to and during development would create a loophole whereby applicants would likely apply for a Type A permit just prior to submitting their development permit. These sites are still subject to the tree density standards, which provide an incentive to retain existing trees and require planting of additional trees if sufficient tree canopy is not maintained.

A number of exemptions from the tree density standards are also listed. Demolition and Site Development permits are excluded since these are typically undertaken in preparation for subsequent building permits. Zoning Permits are excluded since they include a wide range of projects where tree planting is not relevant or is already addressed (fences, driveways, parking lot striping, environmental plan checks, etc.) Small additions and some alterations are exempt since these smaller projects would likely trigger a disproportionate need to plant many trees on a site. The alteration thresholds are adapted from existing thresholds in Title 33 and Title 20. Particular uses and sites in particular areas are also exempt as the tree planting is generally inconsistent or would interfere with the use. For public streets, tree planting is exempt when street tree planting areas are not being affected (such as a waterline project in the center of the street), or when there are no available street tree planting spaces. Note that the Forester may still require the creation of tree wells or the widening of a planter strip to accommodate trees, when there is adequate room to do so.

- B.** The following are exempt from the tree preservation standards:
1. Development activities where no ground disturbance will occur;
 2. Sites meeting at least one of the following:
 - a. Contains no Private Trees 12 or more inches in diameter and no City Trees 6 or more inches in diameter.
 - b. Size is 3,000 square feet or less in area;
 - c. Existing or proposed building coverage is at least 90 percent;
 - d. Already developed with a house and qualifies for the Single-Dwelling Provision in Chapter 11.40.020 B.2;
 - e. Specific condition of land use review approval exempts the site from these preservation standards; or
 - f. Tree preservation requirements were addressed through a land division or planned development review under Title 33, Planning and Zoning and the requirements of that review are still in effect.
 3. Street projects where the project area contains no Street Trees 3 or more inches in diameter.
 4. Trees that are dead, dying, dangerous, or a nuisance species, as documented in a Tree Plan per Subsection 11.50.070 B. These are subtracted from the total number of trees to be addressed by the standards.
- C.** The following are exempt from the tree density standards:
1. Development activities associated with the following permits:
 - a. Demolition Permits
 - b. Site Development permits
 - c. Zoning Permits
 - d. Additions less than 200 square feet in size;
 - e. Alterations:
 - (1) Less than \$25,000 in project value are exempt from on-site and Street Tree density standards;

COMMENTARY

- (2) Less than the non-conforming upgrade project value threshold in Chapter 33.258 of Title 33, Planning and Zoning are exempt from the on-site tree density standards only;
2. Sites meeting at least one of the following:
- a. A specific condition of land use review approval exempts the site from these density standards;
 - b. The site is primarily developed with one of the following uses:
 - (1) Railroad Yards;
 - (2) Waste Related;
 - (3) Agriculture;
 - (4) Aviation and Surface Passenger Terminals;
 - (5) Detention Facilities;
 - (6) Mining;
 - (7) Radio Frequency Transmission Facilities; or
 - (8) Rail Lines and Utility Corridors;
 - c. The site is in the Portland International Airport plan district and subject to the Airport Landscape Standards; see Title 33, Planning and Zoning.
3. In public streets:
- a. Additions, alterations, repair or new construction where the project value is less than \$25,000;
 - b. The development activity is limited to the street, and does not modify or create tree wells or tree planting areas; or
 - c. Where physical constraints preclude meeting the Street Tree density requirement because:
 - (1) Existing above or below grade utilities prevent planting street trees; or

COMMENTARY

Development Impact Area Option for Large Sites and Streets

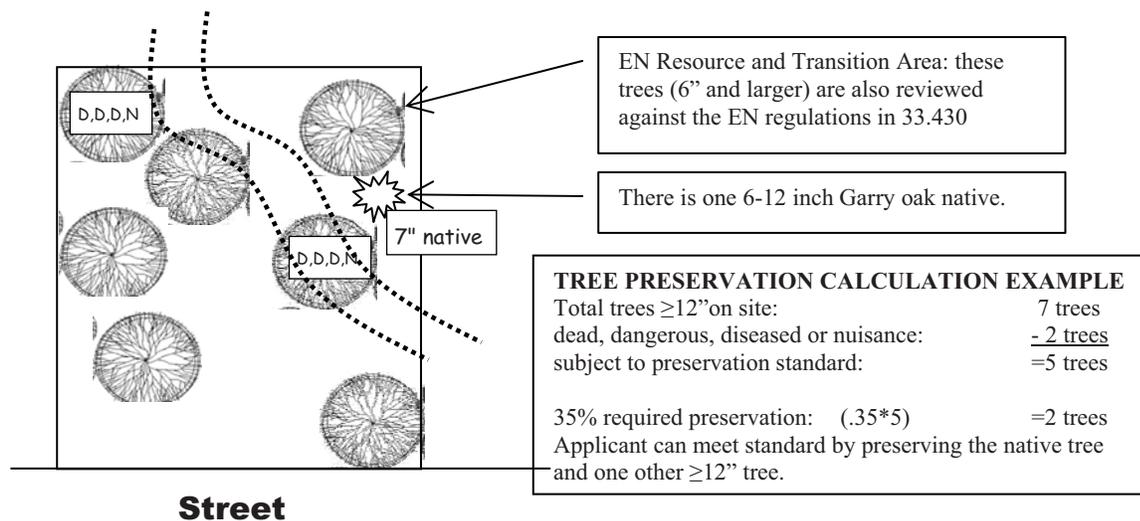
Applicants with projects on large sites (or are developing only in streets) may opt to use a development impact area. This is intended to simplify the review process, by isolating an affected area of a site from the remainder of a site which will be left undisturbed. This is helpful for large institutional uses, campuses, industrial sites, multi-phased centers, etc. Tree preservation and density requirements are based on the area inside the impact area. Trees may be planted on other portions of the site to account for development impact areas where there are no planting opportunities. Payments in lieu of planting are not allowed since tracking the required tree density on subsequent projects would be made more difficult.

Tree Preservation Standards

This section contains the tree preservation standards for Private, Street, and City Trees. Private Trees are subject to preserving 35% of all eligible trees on the site. This is a non-discretionary, clear and objective standard. If the requirement can not be met, then mitigation in the form of a payment in lieu to the Tree Preservation and Planting Fund is required. The payment will cover the City's cost to plant and establish two trees for each tree removed in excess of that allowed by the standard to offset the loss of the established tree and the time lag for new trees to provide benefits. As noted in the exemptions section, dead, dangerous, dying and nuisance species trees are excluded from the initial tree count. Trees preserved to meet Title 33 standards or other requirements may be used toward meeting the preservation standards of this chapter. Certain smaller size (slower growing) native trees between 6 and 12 inches are also excluded from the initial count of trees on the site, but may be preserved to meet the 35% requirement as an additional incentive to retain these ecologically important trees.

The Citywide Tree Project recommends that the native tree incentive be monitored for its effectiveness and use, to determine if additional trees should be added to the list (such as evergreens or other non-native non-nuisance trees) or the provision removed from the code.

Preservation Example for a site with partial environmental overlay zoning



- (2) The design of the street will not accommodate street tree planting because the planting strip is less than 3 feet wide, there is not a planting strip, or there is insufficient space to add tree wells.

11.50.040 Development Impact Area Option For Large Sites and Streets.

Where development is proposed on a site larger than one acre or where work is occurring in the street and is not associated with an adjacent development site, the applicant may choose to establish a development impact area. For sites using the development impact area option, tree preservation requirements shall be based on the trees within the development impact area and tree density will be based on meeting Option B as applied only to the area within the development impact area. Trees may be planted to meet tree density requirement elsewhere on the site. Payment in lieu of meeting the tree density standard is not allowed.

11.50.050 Tree Preservation Standards.

Any Heritage Trees and trees required to be preserved through a land use condition of approval or tree preservation plan cannot be removed using the provisions in this Chapter, but may be counted toward the following tree preservation requirements. Any trees preserved shall be protected in accordance with the specifications in Section 11.60.030.

A. Private Trees.

1. **Tree Retention.** An applicant shall preserve and protect at least 35 percent of the trees 12 inches and larger in diameter located completely or partially on the development site. 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, Pacific Madrone, Pacific Yew, Ponderosa Pine, or Western Flowering Dogwood species are not included in the total count of trees on the site but may be used toward meeting the 35 percent preservation standard.
2. **Mitigation.** For each tree removed below the 35 percent requirement, payment to the Tree Preservation and Planting Fund is required equivalent to the cost of two trees. See Section 11.15.010.

B. City and Street Trees.

1. **Tree Retention.** For development on City owned or managed sites, new public streets, or improvements to existing streets, applicants are required to consult with the City Forester at the preliminary project design phase if City or Street Tree removal is likely to occur to complete the project. The purpose of this consultation is to identify potential impacts and opportunities to retain existing trees, as well as any measures required to protect trees on site, on adjacent sites, or in the street.

COMMENTARY

For Street and City Trees, the clear and objective standards that apply to Private Trees are replaced by a requirement to consult with the City Forester if tree removal is anticipated. The purpose of early consultation with the City Forester on CIP and Public Works projects is to identify significant street or city trees that should be retained and protected if possible during the project. This may mean identifying detailed protection measures or in some cases, altering a project design to accommodate retention of the tree (considering the cost and value of the design change). This is also Forestry's opportunity to ensure adequate space is planned for tree planting and that appropriate trees will be selected. The intention is that this occurs before all the detailed engineering decisions and cost alternatives have been considered, since changes at this point are cumbersome and more expensive, and thus less likely to be accomplished. The Forester will require one tree to be planted to replace any tree 6 inches or more in diameter. This replacement requirement is in addition to any required tree density plantings. Trees may be planted on the site, in the street, or elsewhere in the watershed.

For street improvement projects where the right of way is only partially improved or is completely unimproved, a reduced mitigation requirement is proposed. This emerged from concerns raised by the Planning Commission, in part to recognize the constraints of designing within restricted width rights of way, that these areas may include large numbers of trees, the relative lack of available planting spaces after a street improvement is completed, and the additional cost of mitigation on top of the public improvement cost. In these cases, replacement is only required for trees 12 inches and larger, and trees planted to meet Street Tree density can be used toward the replacement requirement.

Tree Density Standards

The Urban Forest Management Plan (UFMP) sets objectives for canopy targets in different Urban Land Environments (ULE's). Canopy cover is the proportion of an area, when viewed from above that is occupied by tree crowns. Canopy cover is one important indicator of the quantity and health of the urban forest, but it is difficult to use canopy as a metric to evaluate or manage the impacts of proposed development on a site by site basis. Canopy is also a difficult standard to administer for the purposes of planting trees, since new trees take years (15-20 years) to reach their mature canopy potential. However, by calculating and projecting tree growth rates, a proxy has been developed to equate canopy cover to numbers of small, medium, and large trees. For example, according to the UFMP, to attain canopy cover of 35-40%, 1-2 large trees, 2-3 medium trees, or 5-6 small trees must be planted for a 6,200 square foot lot. The required density of trees is based on an assumed average 20 year growth window for these trees.

The tree density standards in this chapter have been established in light of the city's intended development goals for certain types of development and the Urban Forest Management Plan ULE's, so therefore they are not specific to specific base zones (for example residential development may occur in commercial zones, commercial development may occur in industrial or employment zones).

2. Mitigation. Any required mitigation specified below shall occur on the site, in the street planter strip, or in the same watershed either by planting or a payment into the Tree Preservation and Planting Fund. The City Forester may reduce or waive the mitigation requirements.
 - a. Approved Street Tree removal in conjunction with improvements to partially or fully unimproved streets. Each tree at least 12 inches in diameter that is allowed to be removed shall be replaced with at least one tree. Trees planted to meet Street Tree density will be credited toward meeting this requirement.
 - b. Any other Street or City Tree allowed to be removed that is 6 or more inches in diameter shall be replaced with at least one tree in addition to trees required to meet required tree density.

11.50.060 Tree Density Standards.

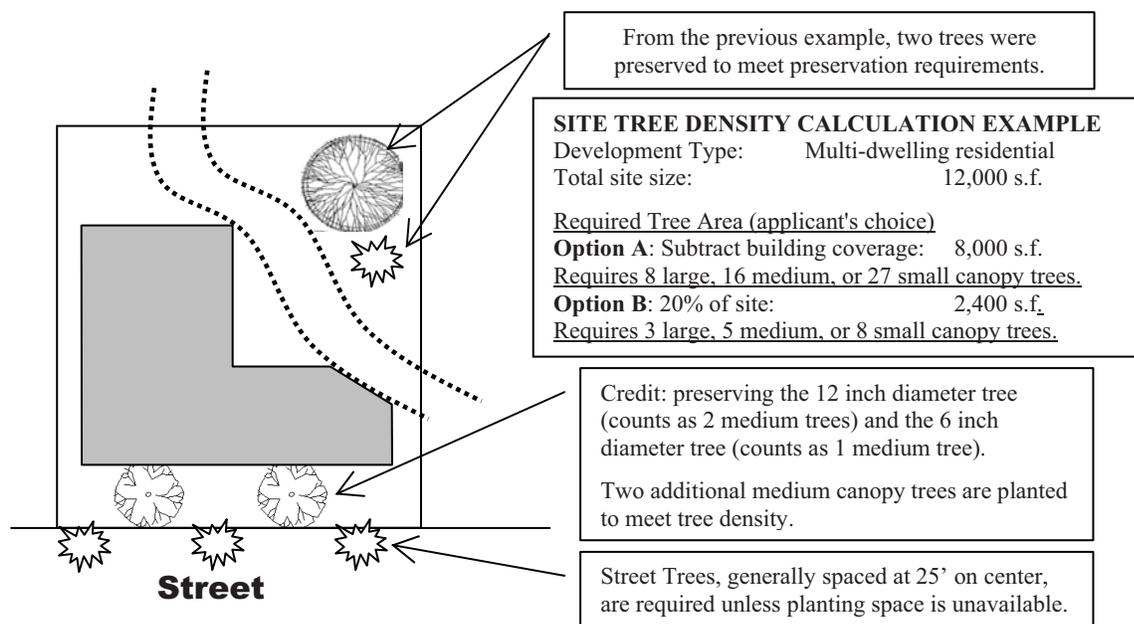
- A. Private and City Trees. Planting on sites shall meet the City specifications and standards in Chapter 11.60 and the following:
 1. The required tree area is based on the size of the site and the type and size of proposed and existing development. The applicant may choose Option A or Option B for calculating required tree area.

Table 50-1 Determining Required Tree Area

| Development Type | Option A | Option B |
|---|--|-------------------------|
| One and Two Family Residential | Site area minus building coverage of existing and proposed development | 40 percent of site area |
| Multi Dwelling Residential | Site area minus building coverage of existing and proposed development | 20 percent of site area |
| Commercial/Office/Retail/Mixed Use | Site area minus building coverage of existing and proposed development | 15 percent of site area |
| Industrial | Site area minus building coverage of existing and proposed development | 10 percent of site area |
| Institutional | Site area minus building coverage of existing and proposed development | 35 percent of site area |
| Other | Site area minus building coverage of existing and proposed development | 25 percent of site area |

COMMENTARY

Applying Tree Density to the previous site example



Tree Density is intended to represent a combination of trees preserved and planted in order to reach a certain level of tree canopy on the site in a 20 year time horizon. Sites with a lot of trees are awarded credits for retaining the existing trees and additional trees may not be needed to meet tree density. Sites without trees will not be required to mitigate for tree removal but more planting is required to meet the base tree density requirement. In support of the City's development goals, building coverage area may be subtracted from the equation to determine the amount of trees required to be on a site. This approach is intended to make application of these standards more equitable between sites with trees and sites without trees, with the ultimate objective of reaching the same desired amount of tree canopy on the site over time. With this system in place, the City should attain the projected goal for tree canopy as it develops and redevelops over time, while the replacement requirements of the non-development tree permits ensure that the canopy is sustained.

Street Trees The street tree planting requirement is adapted from existing Title 20.40 requirements. However, the Title 11 requirement provides a specified quantity of street trees of one tree per each full increment of 25 feet of street frontage. Smaller or larger trees may be utilized depending on the size of the planter strip. This standard establishes the expectation for street tree planting, ensuring that they are considered along with other competing requirements for use of the right of way, rather than at the end when identifying what room is left over to plant trees. Flexibility is still provided should planting not be possible, a payment in lieu of planting may be made.

For projects affecting greater than 200 linear feet, consultation with the City Forester is required to establish the total required new street trees, based on a more qualitative assessment to "maximize" the number of street trees as appropriate to the situation.

2. The required tree area shall be planted with some combination of large, medium or small canopy trees at the following rates:

**Table 50-2
Tree Credits and Minimum Area Requirements**

| Canopy size category (at maturity) | Number of trees required per size of tree area | Min. required area per tree (min. dimension) |
|------------------------------------|--|--|
| Large | 1 per 1,000 s.f. | 150 s.f. (10' x 10') |
| Medium | 1 per 500 s.f. | 75 s.f. (5' x 5') |
| Small | 1 per 300 s.f. | 50 s.f. (3' x 3') |

Refer to Chapter 11.60, Technical Specifications, to calculate tree canopy size categories. When the canopy size category of the tree species is not or cannot be determined, the tree will be considered a small tree.

- B. Street Trees. Any proposed change in width in a public street right-of-way or any other proposed street improvement, including the development of new public streets, shall include areas for tree and landscape planting where practical. Utility connections and specifications for planting such areas shall be integrated into the site plan. Specific locations and species will be determined by the City Engineer and City Forester. Planting in public streets shall meet the specifications in Chapter 11.60 and the following:

1. One Street Tree shall be planted for each full increment of 25 linear feet per side of street frontage. When the required number of trees cannot be planted, a fee in lieu of planting may be required. For City projects, required trees that cannot be planted within the improvement area may be planted elsewhere in the same watershed, instead of paying a fee in lieu of planting.
2. For projects affecting 200 linear feet of frontage or more, the applicant shall consult on the design of such improvements with the City Forester early in the project design phase to identify opportunities to integrate existing trees and maximize new street tree planting considering the planter width, the location of existing and proposed utilities, and visibility requirements.
3. When new streets are being created in association with a land division, Street Tree planting may be deferred until the completion of the building permit on each new lot, subject to City Forester approval.

C. Tree Density Credits

1. Trees planted to meet other requirements. Trees planted on site to meet any required stormwater or other landscaping requirement may be counted toward the City or Private Tree density requirements.

COMMENTARY

For land divisions, street tree planting may be deferred until the building permit stage for each lot. The City Forester may determine whether the trees along these frontages will be planted based on a master improvements plan for the entire project frontage or based on each individual lot frontage, as part of the land division review (see Chapter 33.630)

Tree Density Credits. Tree density may be achieved through planting, preservation, or payments to the Tree preservation and Planting fund in lieu of planting trees. The number of trees will vary based on the assumed canopy area for large, medium, and small trees when they reach maturity. Since larger growing trees encompass so much more canopy area than small trees, fewer of these trees are required to meet the planting standard. This also serves as an incentive to plant larger growing trees. Since the relative cost of purchasing and planting a "small canopy" tree versus a "large canopy" tree are essentially the same, it is more cost effective to plant fewer large canopy trees. Recognizing that large trees don't make sense in every situation, the requirement remains flexible to allow any combination of tree canopy sizes provided the overall tree density is met for the site. The applicant may also pay a fee in lieu of planting when planting on site is not practical or desired.

Non conforming development

requirements are separated into two subsections: street trees, and trees on the development site (City and Private Trees). The upgrade requirements for street trees is triggered at a \$25,000 threshold (same as the previous threshold in Chapter 20.40). Generally, the costs for upgrading a site frontage to include street trees is proportionate to the project value, however, to address disproportionate cost concerns, a provision has been added to cap the expense of the street tree upgrade to 10% of the project value. This will address sites with long frontages when little development is occurring on the site.

Separate from this requirement is the non-conforming upgrades on the site. Title 33 establishes a threshold that is adjusted annually (currently this is at \$132,850). Projects that exceed this value threshold must upgrade various elements of their site if not already in conformance. The upgrades are capped at 10% (unless deferred, in which case full upgrades are required). These elements are in a non prioritized list including bike parking, pedestrian connections, landscaping upgrades in parking lots and elsewhere on site. Tree density is being added to this list.

2. Trees that are retained and protected, including trees preserved per Section 11.50.050, may be credited as follows:
 - a. Trees between 1.5 and less than 6 inches in diameter count as one small canopy size tree.
 - b. Trees 6 or more inches in diameter count as one medium canopy size tree for each full increment of 6 diameter inches.
3. Payments made in lieu of planting to the Tree Fund. The applicant may pay a fee per tree which is equivalent to planting one medium canopy size tree.

D. Nonconforming Development

1. Street Trees. For alterations where the project value is more than \$25,000, the cost of required Street Tree improvements is limited to 10 percent of the value of the proposed development.
2. City and Private Trees. When the value of the alteration is equal to or greater than the non-conforming upgrade threshold identified in Title 33, Planning and Zoning, the required City or Private tree density is subject to Chapter 33.258, Non-conforming Situations.

11.50.070 Tree Plan Submittal Requirements.

A tree plan submittal shall include the following information. The tree plan information may be combined with other relevant plan sheets. The submittal shall include:

- A. Site Plan Requirements. The site plan shall include the following information with sufficient detail to show that the proposal complies with this Title.
 1. Existing improvements;
 2. Proposed alterations including structures, impervious area, grading, and utilities;
 3. Existing trees:
 - a. Trees on the site. Indicate the location and the diameter size of:
 - (1) Any Heritage Trees and trees required to be preserved as part of a condition of land use approval. These shall be clearly labeled.
 - (2) All trees completely or partially on the site that are at least 6 inches in diameter.

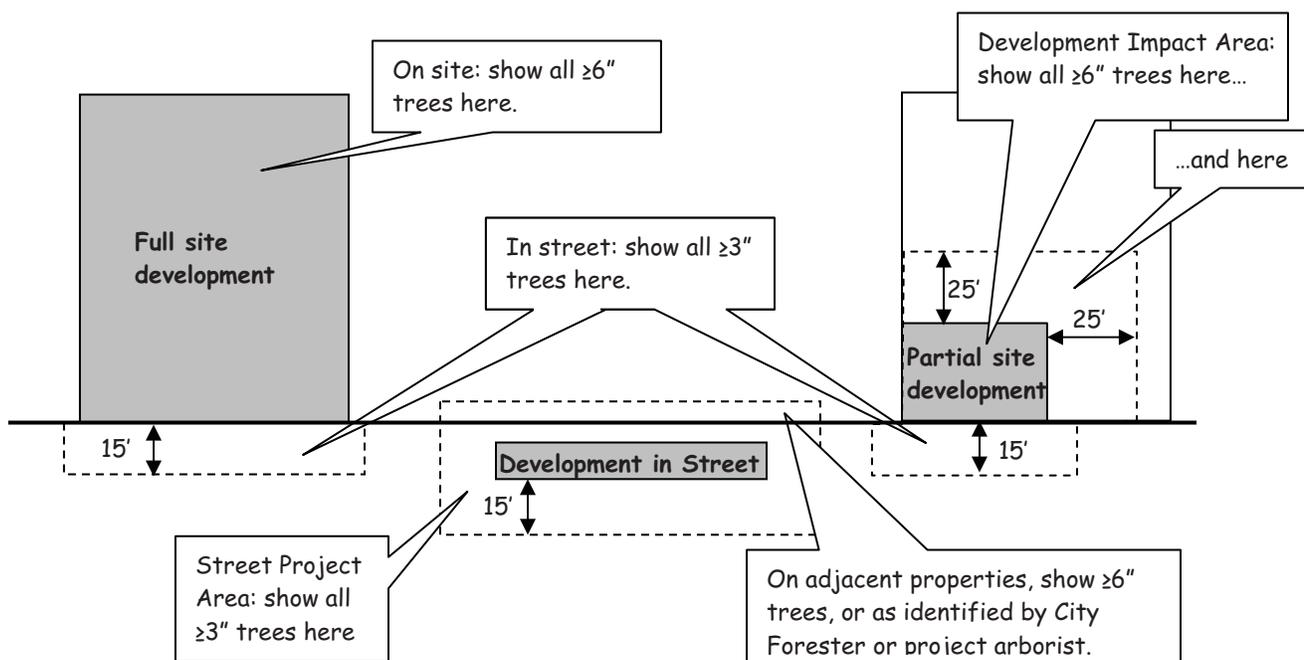
COMMENTARY

Tree Plan Submittal Requirements

Tree plans reflect the full accounting for trees on a development site (preservation, protection, and planting). This information may be shown on an independent plan sheet or combined with other information on other plan sheets (like a clearing and grading or a landscape plan).

The Tree Plan must show existing tree information in order to assess whether the preservation and protection requirements are being met. There are several distinctions for differently situated trees. For on site trees, all trees 6 inches or more in diameter must be shown, unless the site is large and the applicant specifies a "development impact area." In this case, only the trees within the impact area and extending 25 feet beyond the impact area must be shown. This 25 foot buffer is intended to ensure that larger trees outside the impact area receive sufficient root protection.

For trees in the street, all trees 3 inches in diameter and larger must be shown. For street projects not associated with an adjacent site, identification of trees within 15 feet of the development impact is required. A lesser distance is required in the street since tree roots are already either affected or protected by virtue of the pavement.) To address trees outside the right of way, for City projects the City Forester or project arborist may walk the project alignment and identify the potentially affected trees that must be shown on the Tree Plan. The project design engineer will work with the Forester to minimize any impacts.



- (3) Trees smaller than 6 inches in diameter shall be shown when proposed to be retained for tree density credit. On City-owned or –managed sites, the City Forester may require smaller size trees be shown.

Applicants using the development impact area option as described in Section 11.50.070, need only identify the trees on the site inside and 25 feet beyond the edge of the development impact area.

- b. Trees in the street. For the street area adjacent to the development site or development impact area, indicate the location and the diameter size of:

- (1) Any Heritage Trees and trees required to be preserved as part of a condition of land use approval

- (2) All trees within the adjacent street that are at least 3 inches in diameter.

Applicants using the development impact area option within the street when not associated with development of an adjacent site as described in Section 11.50.070, shall identify trees 3 or more inches in diameter inside and 15 feet beyond the edge of the development impact area.

When the 15 foot distance extends onto property outside the street, provide estimates of tree size and location for trees 6 or more inches in diameter on these properties. For City projects, the City Forester or project arborist may determine which trees on adjacent properties shall be identified per this Subsection.

4. Proposed tree activity:

- a. Indicate trees to be retained and proposed tree protection measures meeting the specifications in Chapter 11.60. Trees that are retained but are not protected in accordance with the protection requirements in Chapter 11.60 may not be used to meet preservation or density standards.
- b. Indicate trees to be removed. It is the applicant’s responsibility to obtain the appropriate consent from the adjacent property owner for tree removal when the tree is only partially on the site.
- c. Show location, species, planting size and number of trees proposed to be planted. Trees to be planted shall meet the specifications in Chapter 11.60.

Changes to an Approved Tree Plan

This section states that changes may occur during the course of a development project, but that any such change will be reviewed against the requirements of this chapter to determine whether alternate tree preservation, tree planting or additional payment is required.

Provisions are included to address necessary emergency tree work. Similar to emergency work that is allowed when no development is occurring (Chapter 11.40), applicants must submit information within 7 days to document the emergency. Additionally, the Tree Plan must be modified if tree to be preserved and protected was removed.

B. Narrative requirements

1. If alternative tree protection measures are proposed, documentation addressing the requirements in Section 11.60.030, Tree Protection, shall be included.
2. If a tree is to be exempted from tree preservation standards based on poor tree health or condition, include supporting documentation from an arborist.
3. If a tree is to be exempted from tree preservation standards based on it being listed on the Nuisance Plants List, include supporting documentation from a landscape professional or an arborist.
4. When removing 5 or more trees on a site with an average slope of at least 20 percent, provide a geotechnical engineering report that assesses the stability of the site after tree felling and root grubbing operations. The report shall be in accordance with Chapter 24.70.

11.50.080 Changes to Approved Tree Plans.

- A.** When changes are necessary to an approved Tree Plan and the changes will not affect compliance with any applicable conditions of a land use review, the change may be reviewed as a revision to the approved development permit. Any proposed revisions to the Tree Plan will be approved upon demonstrating the applicable tree preservation and density standards are met. When development activity has already commenced on the site and the applicant is proposing to retain alternate trees not previously shown to be protected, an arborist report will be required that documents the alternate tree is healthy and has not been injured by the development activity.
- B.** Emergency Tree Pruning or Removal. Emergency pruning or removal of trees is regulated by this chapter as follows:
1. If an emergency exists because the condition or location of a tree presents such a clear and present danger to structures or the public that there is insufficient time to obtain a tree permit, the hazardous portion of the tree may be removed without first obtaining a revision to an approved tree plan.
 2. Any person who removes a tree under the provisions of this Section shall, within 7 days of such action, apply for a revision to the approved tree plan. The application shall include photographs or other documentation to prove that an emergency existed. The BDS Director will evaluate the information to determine whether an emergency existed. Failure to submit an application or provide information documenting the emergency nature of the event may be pursued as a violation per Chapter 11.70.

COMMENTARY

CHAPTER 11.60

TECHNICAL SPECIFICATIONS

This chapter has been created as an interim step while the Community Tree Manual is under development. It is envisioned that many of these specifications could be made part of that manual and/or adopted through administrative rule making procedures. The reason for this is that the science and study of arboriculture continues to evolve and best management practices are always improving. Subsequent updates to keep pace with these changes can be made more readily through the rulemaking process as opposed to amending the code. Until such time as the Tree Manual is developed and decisions made regarding the location of these specifications, they are proposed to be codified in Title 11.

By consolidating these requirements into a single chapter, both development and non development related tree activity can refer to these specifications, as applicable.

Where These Regulations Apply

This section clarifies which portions of this chapter apply to the County urban pockets. The relevant portions of the tree maintenance provisions in section 11.60.060 are addressed by County enforcement, and are not under the jurisdiction of the City Forester or City Engineer, therefore that section does not apply to the county urban pockets.

Tree Planting Specifications

These specifications address planting location priorities, and restrictions on placement. The planting restrictions carry over provisions from Title 33 and Title 21.

CHAPTER 11.60

TECHNICAL SPECIFICATIONS

Sections:

- 11.60.010 Where These Regulations Apply.
- 11.60.020 Tree Planting Specifications.
- 11.60.030 Tree Protection Specifications.
- 11.60.040 Tree Pruning and Root Cutting Specifications.
- 11.60.050 Tree Removal Specifications.
- 11.60.060 Tree Maintenance Specifications and Responsibilities.

11.60.010 Where These Regulations Apply.

- A. City of Portland. This chapter applies to all regulated trees within the City of Portland.
- B. County urban pockets. Trees in the "County urban pockets" are subject to all regulations of this chapter except Section 11.60.060, Tree Maintenance Specifications. The County urban pockets are areas outside the City of Portland where the Portland Zoning Code and other Portland regulations are administered. The County urban pockets are shown on the Zoning Map.

11.60.020 Tree Planting Specifications.

The following specifications apply to trees planted to meet a requirement of this Title. These specifications may be combined with other requirements as necessary to ensure trees are properly selected, spaced, and sized.

- A. Location.
 - 1. Generally. For all trees, planting locations shall be suitable for the anticipated size of tree at maturity considering available soil volume and above ground clearance, and avoid conflicts with utilities, buildings or other obstructions to the extent practicable.
 - 2. Prohibited Locations
 - a. In the South Waterfront Plan district area, planting trees is not allowed between the riverfront trail and the river at major or minor viewpoints as designated in Title 33, Planning and Zoning.
 - b. In the Columbia South Shore Well Field Wellhead Protection Area as designated in Title 21, planting trees over the top of polyethylene geomembrane liners installed to meet the requirements of the Columbia South Shore Well Field Wellhead Protection Manual is prohibited.

Planting size

Specifications have been revised to allow smaller size trees as they are more commercially available and better suited to transplanting. The current on site tree size requirement is 1.5" for residential properties and 2" caliper for others. For street trees the current requirement is 2" caliper for residential properties and 3.5" caliper for others.

Exceptions to allow smaller size native trees is included for planting in resource areas, since these will typically not have frequent irrigation and may be more difficult to transport to the planting location. Also, trees in these areas are less susceptible to damage that may be inflicted by traffic, lawnmowers, or vandalism.

Canopy Size Category

This section describes how small, medium, and large canopy trees are categorized including a formula for calculating the canopy size when not listed in the Tree and Landscaping Manual. This method is also repeated in Title 33, Planning and Zoning as well.

- c. Trees may not be planted on or within 25 feet south of the toe of the Marine Drive levee slope.
- B.** Planting size. In general, the following represent the minimum tree planting size standard; however, the City Forester may allow smaller or require larger trees to suit the site conditions.
- 1. Broadleaf trees. Broadleaf trees shall meet the minimum caliper size as determined by the development type listed in Table 60-1:

Table 60-1 Broadleaf Tree Size Requirements

| Development Type | Tree Size | |
|--------------------------------|-----------|--------|
| | On Site | Street |
| One and Two Family Residential | 1.5" | 1.5" |
| Multi Dwelling Residential | 1.5" | 2" |
| All others | 1.5" | 2.5" |

- 2. Coniferous trees. Conifer trees shall be a minimum of 5 feet in height.
 - 3. Native tree exception. The minimum planting size for native broadleaf trees may be reduced to ½" caliper on sites when planted in an environmental (c, p), greenway (n, q or greenway setback and riverward portion of g, i, and r overlay zones), river environmental (e), scenic corridor (s), or Pleasant Valley Natural Resource (v) overlay zone. When planting Garry Oak, Pacific Madrone, or native conifers in these areas, the minimum planting size may be reduced to a 3 to 5-gallon container size. For Street Trees in these areas, the City Forester may approve a smaller planting size for native species.
- C.** Canopy size category. Tree canopy types are categorized as small, medium, or large based on the estimated canopy size at maturity. The canopy size category is calculated according to the following formulas, which incorporate the estimated height and crown spread of a mature specimen and the tree species' growth rate:
- 1. Small trees have a canopy factor of less than 40, Medium trees have a canopy factor from 40 to 90, and Large trees have a canopy factor greater than 90;
 - 2. Canopy factor = (Mature height of tree) x (Mature canopy spread) x (Growth rate factor) x 0.01;
 - 3. The growth rate factor is 3 for fast-growing trees, 2 for medium-growing trees, and 1 for slow-growing trees.

Species requirements

The species diversity requirement includes an exception for the City Forester when developing street tree plans. In general, the City policy is to encourage biodiversity in its street tree and other tree plantings, however, in some cases, explicit design objectives may seek a unified street tree look (e.g. Macadam avenue). In these cases the Forester may allow species uniformity when there is an adopted street or landscape plan. These regulations are largely adapted from existing Title 33 requirements.

Trees listed on the City's adopted Nuisance Plants List may no longer be planted on any City owned or managed property or City rights-of-way. This aligns with the City's Invasive Species Management Strategy and is consistent with the existing Title 33 prohibition on planting nuisance trees and plants in City-required landscaping and mitigation.

In select resource areas, trees must be appropriate native varieties. The Citywide Tree Project deliberated over requiring the use of natives in improved streets in environmental and scenic corridors. However, the selection of appropriate native Street Tree species is very limited (generally conifers are not encouraged as street trees due to the large planting area space required and visibility concerns) so therefore the City Forester may grant an exception to plant non native Street Trees (nuisance trees are prohibited for planting in city streets) when it is impractical to use natives.

Provisions are included to require consideration of adopted, applicable guidelines such as historic or design guidelines when determining appropriate species to plant. This could apply to streets, as well as City or private sites in some cases. The City Forester may find that strict conformance is not practical depending on the specific planting proposal. Available planting space, utilities or other constraints, in addition to other requirements of the Title (such as prohibitions on planting specific nuisance tree species) may make the specific planting request impractical. In these cases the City Forester may approve an alternate species that is consistent with applicable objectives of the guidelines.

The "Portland Tree and Landscaping Manual" suggested plant lists include the size categories recognized for many trees. To determine the size category of a tree not listed in the "Portland Tree and Landscaping Manual", the applicant shall provide an objective source of information about the tree's mature height, crown spread, and growth rate. This information can come from published sources, internet sources, or nursery information such as cut sheets.

D. Species requirements

1. Species diversity. On a single site, if there are fewer than 8 required trees, they may all be the same species. If there are between 8 and 24 required trees, no more than 40 percent can be of one species. If there are more than 24 required trees, no more than 24 percent can be of one species. This standard applies only to the trees being planted, not to existing trees. The City Forester may make an exception to this requirement for Street Trees in order to fulfill or complement an adopted street or landscape plan.
2. Nuisance species. Trees listed in the "Nuisance Plants List" are prohibited for proposed planting or required replacement.
3. Native species. Any trees required to be planted in environmental (c, p), greenway (n, q or greenway setback and riverward portion of g, i, and r overlay zones), river environmental (e), scenic corridors (s), or Pleasant Valley Natural Resource (v) overlay zones shall be native species. Refer to the "Portland Plant List" for information on appropriate native species for the specific site conditions. Planting activities shall be conducted with hand tools, and may not disturb other native vegetation.
In streets, the City Forester may make an exception to allow planting of non-native street trees in these areas when the proposed species of tree will not likely displace native species, and the soil conditions, available growing space, or other site constraints make planting a native tree species infeasible.
4. Adopted guidelines. The City Forester will require species that do not conflict with the requirements of this section and, to the extent practical, are consistent with characteristics set forth in applicable historic design or other adopted guidelines.
5. Street Tree species. Street Tree species shall conform to the City Forester's "Recommended List of Street Trees". The City Forester may approve or require an alternate or unlisted species when the alternate species is an appropriate and viable selection and is consistent with applicable objectives of an adopted area-specific tree plan or guidelines.

The *installation and establishment* section includes general guidance for planting methods, appropriate planting season, and requirements for on going care of the trees.

Tree Protection Specifications

Tree protection measures currently in Title 33 are being relocated to Title 11, to ensure consistent measures are used for tree protection regardless of whether required through a land use review or development permit under this title. Title 33 presently refers to a “standard” root protection zone and an “alternate” root protection zone (RPZ). These terms were updated to reflect that the standard RPZ is prescriptive. This means that applicants may follow the prescribed root protection area standards, without needing to demonstrate (through use of an arborist or other professional) that the protection measures are sufficient. Alternatively, an applicant may hire a professional to demonstrate that other measures will perform adequately to protect the trees.

A notable revision to the prescriptive root protection zone is the added flexibility to encroach into the RPZ. The City of Vancouver, BC and Austin, TX permit minor deviations to required tree protection. While this permissible encroachment affords less protection over the standard RPZ requirement in place today, Urban Forestry staff were comfortable with this limited encroachment allowance, and with the added flexibility, it is felt that builders are more likely to preserve trees where they may have previously requested to remove the trees otherwise.

Some improvements were added to the performance path RPZ, including the factors that an arborist must consider in developing a different protection method. Signage is a standard requirement (but may be tailored for the protection method), a copy of the arborist contract for inspection services may be required, and the arborist’s signature and contact information is required to be placed on the tree plan. Also added is the authority to peer review the proposal, reject it if found to be inadequate, and obtain a performance guarantee if warranted.

Additional information may also be requested to ensure the tree protection plan is feasible. For example, if a tree protection fence was shown over an area where a driveway was proposed, the applicant would need to explain how the driveway could be constructed.

E. Installation and establishment.

1. Installation. All required trees shall be planted in-ground, except when in raised planters that are used to meet Bureau of Environmental Services stormwater management requirements. Plant materials shall be installed to current nursery industry standards and proper arboricultural practices. Plant materials shall be properly supported to ensure survival. Support devices such as guy wires or stakes shall not interfere with vehicular or pedestrian movement.
2. Timing. All trees required or approved to be planted by this Title shall be planted or payment in lieu of planting made prior to the expiration of the permit or City's final acceptance of the project, as applicable. However, planting of trees may be deferred between May 1 and September 30 upon filing a performance guarantee as provided in Section 11.10.060.
3. Maintenance. Maintenance of required trees including meeting the maintenance specifications in this chapter is the ongoing responsibility of the property owner. Trees that die shall be replaced in kind. The cost of the tree and maintenance is the responsibility of the property owner.

11.60.030 Tree Protection Specifications.

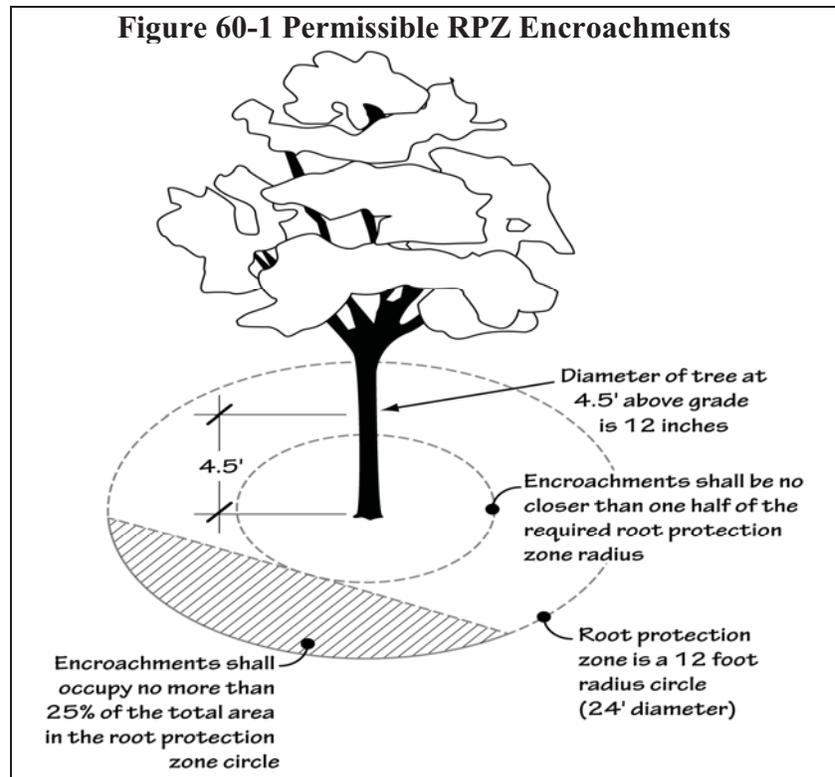
- A. Intent. Tree protection during development helps to reduce the negative impacts of construction. The tree protection regulations keep the foliage crown, branch structure and trunk clear from direct contact and injury by equipment, materials or disturbances; preserve roots and soil in an intact and non-compacted state; and visibly identify the root protection zone in which no soil disturbance is permitted and other activities are restricted. Maintaining these protections through development will lessen undesirable consequences that may result from uninformed or careless acts, preserve both trees and property values, and reduce risks associated with damaged or destabilized trees.
- B. Applicability. These standards apply to any tree that is required to be retained on site or in the street during a development activity subject to Chapter 11.50. Proposed tree protection shall meet the requirements of Subsection C., below, except that the City Forester may approve or require alternate protection methods for Street or City Trees.
- C. Protection methods. The Tree Plan shall show that trees retained are adequately protected during construction using one of the methods described below:

COMMENTARY

1. Prescriptive Path.

a. A root protection zone is established as follows:

- (1) For trees on the development site - a minimum of 1 foot radius (measured horizontally away from the face of the tree trunk) for each inch of tree diameter (see 11.80.020 C, Measurements):
- (2) Street Trees – the City Forester may prescribe greater or lesser protection than required for on-site trees.
- (3) Encroachments into the root protection zone are allowed provided:
 - (a) the area of all encroachments is less than 25% of the total root protection zone area; and
 - (b) no encroachment is closer than 1/2 the required radius distance (see Figure 60-1);



b. Protection fencing consisting of a minimum 6-foot high metal chain link construction fence, secured with 8-foot metal posts shall be established at the edge of the root protection zone and permissible encroachment area;

COMMENTARY

- c. Signage designating the protection zone and penalties for violations shall be secured in a prominent location on each protection fence;
 - d. The following is prohibited within the root protection zone of each tree or outside the limits of the development impact area: ground disturbance or construction activity including vehicle or equipment access (but excluding access on existing streets or driveways), storage of equipment or materials including soil, temporary or permanent stockpiling, proposed buildings, impervious surfaces, underground utilities, excavation or fill, trenching, or other work activities; and
 - e. The fence shall be installed before any ground disturbing activities including clearing and grading, or construction starts; and shall remain in place until final inspection.
2. Performance Path. When the prescriptive path is not practicable, the applicant may propose alternative measures to modify the prescriptive root protection zone, provided the following standards are met:
- a. The alternative root protection zone is prepared by an arborist who has visited the site and examined the specific tree's size, location, and extent of root cover, evaluated the tree's tolerance to construction impact based on its species and health, and identified any past impacts that have occurred within the root zone;
 - b. The arborist has prepared a plan providing the rationale used to demonstrate that the alternate method provides an adequate level of protection based on the findings from the site visit described above;
 - c. The protection zone shall be marked with signage, stating that penalties will apply for violations, and providing contact information for the arborist;
 - d. If the alternative methods require the arborist be on site during construction activity, the applicant shall submit a copy of the contract for those services prior to permit issuance and a final report from the arborist documenting the inspections and verifying the viability of the trees prior to the City's final inspection;
 - e. If the alternative tree protection method involves alternative construction techniques, an explanation of the techniques and materials used shall be submitted;

Tree Pruning and Root Cutting Specifications

A prohibition on topping and excessive pruning is restated for emphasis. This specific language is not included in the previous Chapter 20.42, however "tree cutting" was previously defined to include actions that constitute topping or excessive pruning.

Tree removal specifications

The Urban Forestry Commission expressed their interest in encouraging snag retention based on the benefits snags provide in terms of habitat and food sources, while reiterating the need for fire and general public safety and avoiding pest infestations. Therefore provisions were included to address the appropriateness of snag retention.

f. The arborist shall sign the tree preservation and protection plan and include contact information;

The BDS Director may require the proposed tree protection method to be peer reviewed for adequacy; reject the proposal if deemed insufficient to meet subparagraph C.2.b, above; or require a performance guarantee per Section 11.10.060 in order to ensure the protection methods are properly implemented.

3. Additional information. The City may request additional information regarding the proposed development, including construction management approaches, if the proposed development and tree protection appear to conflict. The purpose of this provision is to ensure that logistical considerations are adequately addressed in order to prevent the need for changes to the tree protection measures during the construction process.

D. Changes to tree protection. Changes to the tree protection measures during the course of the development may be approved as a revision to a permit provided that the change is not the result of an unauthorized encroachment into a root protection zone, and the applicant demonstrates that the tree protection standards of this Section continue to be met. When an unauthorized encroachment has occurred, the city may pursue an enforcement action or other remedy per Chapter 11.70.

E. Tree protection inspections. The City Forester or BDS Director may conduct inspections during the course of project activity to determine compliance with this Title and confirm that tree protection zones are being maintained and root protection methods are effective. No person may refuse entry or access to a permitted development site to any authorized representative of the City who provides proper credentials and requests entry for the purpose of conducting a Tree Protection inspection. In addition, no person may obstruct, hamper or interfere with any such representative while in the process of carrying out their official duties.

11.60.040 Tree Pruning and Root Cutting Specifications.

Pruning or root cutting shall be in accord with proper arboricultural practices, using clean and sharp tools. No tree may be excessively pruned or topped as defined in this Title.

11.60.050 Tree Removal Specifications.

Trees shall be removed in a manner that will not jeopardize the public safety or damage structures including utility lines or services, or adjacent trees. In most cases, trees shall be entirely removed. Where appropriate, standing dead trees, or snags, may be left by cutting them to a height that will not threaten a target such as people or structures. Fire safety and preventing harmful pests should also be considered. However, well situated snags can function as important wildlife habitat providing nesting sites and a food source for foraging birds.

COMMENTARY

Provisions relating to completing tree removal were added to prevent a tree from being approved for removal, but then being topped and left to remain. As a matter of public safety, in general trees should not be partially removed and left standing. Tree stumps may be left in place to hold soil, or as is sometimes the practice of the City Forester, left as a tall stump to avoid trip hazards until stump grinding can occur.

Grinding street tree stumps is currently a required practice of the City Forester, but is not explicitly required by code.

Existing provisions for woody debris disposal are from Title 33 (environmental zones) and Chapter 20.40.

Tree Maintenance Requirements and Responsibilities

This section consolidates many requirements from various city titles. (Title 16 Vehicles and Traffic, Title 17 Public Improvements, Title 20 Parks, and Title 29 Property Maintenance).

General. This subsection reiterates the need to obtain tree permits when any work that may be conducted to meet these maintenance requirements is performed on a regulated tree. This subsection is adapted from Section 20.40.080 which only addressed public trees but the provisions had also been applied to private trees.

Responsibilities are laid out in this section to make it explicit what trees are the property owner's responsibilities (on the owner's property and in the adjacent street planting area), and when the City bureaus are responsible (center medians, and greenstreet facilities)

The City Forester maintains general authority over tree maintenance issues, based on the skill set required to assess the condition of the tree and since the City Forester is the ultimate steward of the urban forest.

- A. Completion. To prevent the creation of hazards from partially removed trees, once work has commenced to remove a tree, this work shall be completed in a timely manner. A tree will be considered completely removed when reduced to a stump no taller than 4.5 feet. The City Forester may grant an exception to this specification to allow snag creation. For street tree removals, the City Forester may direct that the stump be ground out up to 18 inches below grade.
- B. Disposal of wood and woody debris.
 - 1. City and Street Trees. Disposal, use, or reuse of wood and woody debris from City or Street Trees is at the sole discretion of the City Forester including specific disposal methods for infected wood. Cost for disposal is the responsibility of the property owner (or adjoining property owner for Street Trees). If the City Forester determines that the cost of storage or sale of the wood is not commercially feasible, the City Forester may give such surplus wood to the adjoining property owner or other group as the City Forester may so designate. Unless the City Forester has given the wood to a group, organization, or individual, it is unlawful for any person to possess or dispose of any wood from any City or Street Tree.
 - 2. Private Trees. Disposal, use, or reuse of wood and woody debris from Private Trees is at the property owner's discretion, provided storage of wood does not constitute a public health or safety nuisance. In environmental (c, p), or Pleasant Valley Natural Resource (v) overlay zone, large woody debris may be required to remain or portions of trees left standing as snags. If the City Forester has determined that the tree is affected by a pathogen or insect infestation that will likely adversely impact surrounding trees, all portions of the tree shall be removed from the site and properly disposed at the property owner's expense.

11.60.060 Tree Maintenance Specifications and Responsibilities.

The following specifications apply to all trees in the city. The purpose of these provisions is to protect the health, safety and welfare of the public, safeguard public infrastructure assets, and ensure the continued health of the urban forest.

- A. General.
 - 1. Permits required. Any person pruning, removing, or conducting any other work on any Street Tree or City Tree and any person removing any regulated Private Tree in order to comply with the requirements of this Section, shall first obtain a tree permit in accordance with the provisions of Chapter 11.40.

Dead, Dying and Dangerous Trees

This subsection, adapted from section 20.40.090, establishes the City's authority to require removal of dead or dangerous trees from public properties. Similar provisions were carried over for Private Trees from Section 29.20.010.C.4. which requires dead trees to be removed, except in certain cases where such trees are being maintained for habitat purposes, as is the case for snags or root wads. Additional language was included at the suggestion of BDS code compliance and Urban Forestry staff to permit private arborists to make this determination. The City Forester retains ultimate authority, should there be a dispute over the condition of the tree.

2. Responsibilities.
 - a. Property owner. It is the duty of every owner of property to maintain trees located on the property or on the adjacent street planting area in accordance with this Section. Further, the owner shall be responsible for all costs associated with such maintenance, removal and any tree replacement, if required.
 - b. Bureau of Transportation. For trees located in center medians, the Bureau of Transportation is responsible for the requirements of this Section.
 - c. Bureau of Environmental Services. For trees located in green street facilities as described in Title 17, the Bureau of Environmental Services is responsible for the requirements in this Section.
3. City Forester authority for tree maintenance. The City Forester may or may direct others to prune, remove, or treat to control insects and disease for any trees in the streets, parks, other City owned or managed properties, or private properties if the City Forester determines that controlling insect infestations, disease, or dangerous conditions is needed to maintain the public health, safety, or health of the urban forest.
4. Available remedies. In addition to specific remedies cited in this Section, any infractions or violations of these requirements may additionally be corrected or enforced per the provisions in Chapter 11.70.

B. Dead, Dying, and Dangerous Trees

1. All trees which are determined by the City Forester or a private arborist to be dead, dying, or dangerous as defined in this Title are required to be removed to safeguard people or property. The City may require a replacement tree at the property owner's expense.
2. Conflicting determinations. In the case where there are conflicts in the determinations from a private arborist or arborists, the City Forester shall make the final determination.
3. Exceptions. A dead or dying tree that is being maintained as a snag, or does not otherwise result in a public nuisance as described in this Section or Chapter 29.20, Property Nuisances, may remain provided it is not deemed dangerous.

COMMENTARY

Dutch Elm Disease Prevention and Eradication

This particular requirement relating to Dutch Elm Disease treatment and eradication is not currently codified, but is instead an independent ordinance (Ord.#159750). This subsection resolves that omission by including it as part of the maintenance requirements section of the Tree Title. Certain aspects of the ordinance language have been reworked to be consistent with similar code citations, including the abatement procedures, and inspection entry. The limitations on pruning during certain times of the year are from existing policy, but were also not previously codified or included in the ordinance.

C. Dutch Elm Disease prevention and eradication

1. Infected elms and elmwood. All species and varieties of elm trees (genus *Ulmus*) infected with the fungus known as Dutch elm disease (*Ophiostoma ulmi* or *Ophiostoma novo-ulmi*) as determined by laboratory analysis are declared to be a public nuisance. It is the duty of any owner of a lot or parcel where infected elmwood is present to promptly remove any such elm tree or dead elmwood under the supervision and direction of the City Forester.
2. Pruning restrictions. Pruning any species or varieties of elm trees between April 15 and October 15 is prohibited. This prohibition may be waived by the City Forester when such pruning is necessary to remove hazard limbs, provide the clearances otherwise required by this Section or for other causes as deemed necessary by the City Forester. In cases where the City Forester has allowed pruning to occur during the pruning prohibition period, the responsible party shall properly dispose of removed elm wood within 24 hours.
3. Authority to inspect. The City Forester is hereby authorized to enter upon any lot or parcel during business hours for the purposes of inspecting any elm tree or dead elmwood situated thereon, obtaining specimens for the purpose of laboratory analysis or to determine whether such tree because it is dead or substantially dead may serve as a breeding place for the European or native elm bark beetle (genus *Scolytus*). If the City Forester determines that the tree serves such purpose, the City Forester may declare the elm tree or dead elmwood a public nuisance.
4. Determination and action. If, based on analysis of specimens removed from any elm tree, it is determined that such tree is infected, or the City Forester determines that any dead or substantially dead elm trees or dead elmwood may harbor the elm bark beetle, the City Forester will serve a written notice requiring the property owner or responsible party to remove, destroy and properly dispose of such trees or dead Elmwood located on the property or on the adjacent street planting area. If the property owner or responsible party fails, neglects or refuses to remove and destroy, or properly dispose of, such elm tree or dead elmwood within 15 days after service of such notice, the City Forester may abate the nuisance as provided in Chapter 11.70.

COMMENTARY

Clearances

This subsection represents a combination of requirements already stipulated in Section 20.40.080 and 17.52.010. No substantial changes to the provisions are proposed. The first requirement addresses clearances above sidewalks, and is from Chapter 17.52. Second, are clearance requirements above roadways, also from Chapter 17.52.

A change was made to the clearance requirement for utility lines. The previous code makes reference to "utility systems" clearance. This language has been updated to be consistent with those more recent changes in Title 33 to address overhead powerlines. Also, as previously written, the term "Public Utility" was omitted. Since other provisions of Title 20 included authorization for Public Utilities to prune to maintain clearances for their systems, this authority was carried over into this section with a reference to the Programmatic Permit described in Chapter 11.45.

Visibility

This subsection is adapted from section 16.70.800, and reflects no substantive change, apart from clarifying that traffic control devices also includes signage as listed in the Manual on Uniform Traffic Control Devices (e.g. "no left turn" or "do not enter") and not solely stop signs or traffic lights.

Sidewalks and Curbs

This subsection combines the leaf sweeping requirements of Section 17.52.020 with the sidewalk repair requirements of 17.52.040. No substantial change from existing language is proposed other than the requirement to replace any tree removed in the course of performing sidewalk repair.

D. Clearances. The property owner or responsible party is required to prune or remove, if necessary, any tree located on the property or on the abutting street planting area when said trees are not maintained to meet the branch clearances as set forth below:

1. Sidewalk clearance. Branches of trees extending over sidewalks may not be less than 7½ feet above the sidewalk. 2. Roadway clearance. Branches of trees extending into any public or private roadway may not be less than 11 feet above the pavement. Moreover, on any street designated as a Regional Trafficway, Major City Traffic Street, District Collector, or a one-way street where parking has been prohibited, branches shall be trimmed to a height of 14 feet above the crown of the street.
2. Overhead powerline clearance. Branches of any tree may not interfere with any light, pole, or overhead powerline used in connection with or as a part of the City or Public Utility system. In addition to the authority granted to the City to prune or direct property owners to prune trees in violation of this paragraph, a Public Utility operating pursuant to an approved Programmatic Permit may also prune any tree which interferes with the safe operation of the utility system.

E. Visibility. The owner or responsible party shall keep trees located on the property or on the adjacent street planting area from completely or partially obstructing visibility as follows:

1. Visibility of traffic control devices such as directional and informational signs as defined by the Manual of Uniform Traffic Control Devices;
2. Visibility for drivers, bicyclists, or pedestrians; or
3. In any way that presents an unreasonable hazard to the travelling public.

F. Sidewalks and curbs.

1. Obstructions. The owner or responsible party shall keep the sidewalk adjacent to the owner's property clear of branches, leaves, flowers, fruit or other organic matter that may obstruct or render the passage of persons unsafe.

COMMENTARY

Public water lines, storm sewers and sanitary sewers

This subsection is adapted from section 17.52.040 and differs somewhat from the clearance from utility system requirement, by addressing root intrusions as opposed to branch interference. In addition to adding provisions for waterline utilities, provisions were added requiring the City Engineer to consult with the Forester to assess the required root pruning to determine if such pruning will make the tree unstable or unviable. If tree removal is necessary, the tree may be required to be replaced.

2. Repairs. When the curb or sidewalk, or both, abutting any property become damaged or in a state of disrepair because of a tree maintained by the property owner, the repair of the curb or sidewalk, or both, will be treated as other curb or sidewalk repairs in accordance with the provisions of Title 17. The removal of any tree or portion thereof, as the City Engineer in consultation with the City Forester may determine necessary, will be granted through the appropriate tree permit. The City may require alternative construction methods be used in order to retain the tree. If the tree is removed, the City Forester may require that the removed tree be replaced in accordance with the required permit.

G. Public waterlines, storm sewers, and sanitary sewers.

1. Damage from Roots. Whenever the City Engineer finds that roots of any tree have entered any sewer, drain or waterline in the street or City-owned easement, and are stopping, restricting, retarding the flow of sewage or drainage, or causing waterline leakage or believes that removal of the tree is necessary to reasonably prevent future root entry into the sewage, drainage, or water facility, the City Engineer may refer the condition to the City Forester.
2. Remedies. In addition to the remedies described in Chapter 11.70, the City Forester may remedy the violation by directing the property owner or responsible party to prune the roots or remove the tree. If the City Forester believes that the required amount of root pruning will irreparably damage or destroy the tree, the City Forester will notify the owner and require removal and replacement of the tree. Nothing in this Subsection will be construed to limit the City Engineer's authority to separately invoke abatement proceedings.

COMMENTARY

CHAPTER 11.70 ENFORCEMENT

Purpose

The enforcement chapter is an essential part of the Tree Title. While it allows the City to enforce infractions of Tree Rules using existing processes in other Titles in City code, this chapter also includes several remedies and penalties specifically designed to address tree-related matters. The primary objective of these regulations is quicker resolution with reduced process and greater emphasis on timely remediation to speed replanting efforts and keep the process burden to a minimum for the majority of cases. Penalties are developed to escalate for egregious and/or repeat violation scenarios and in order to ensure that it is not less costly to violate than comply with the code.

Where These Regulations Apply

Like previous chapters, this chapter includes a section specifying which provisions apply to the County urban pockets. In general, the enforcement remedies, penalties, and procedures related to development infractions (including general remedies and penalties) are the only applicable sections for the County pockets, since the tree permit, programmatic permit, and tree maintenance specifications do not apply. Additionally, enforcement provisions pertaining to street trees do not apply in these areas.

CHAPTER 11.70

ENFORCEMENT

Sections:

- 11.70.010 Purpose.
- 11.70.020 Where These Regulations Apply.
- 11.70.030 Violations.
- 11.70.040 Enforcement Authority.
- 11.70.050 Prohibited Actions.
- 11.70.060 Inspections and Evidence.
- 11.70.070 Notice and Order.
- 11.70.080 Correcting Violations of this Title.
- 11.70.090 Enforcement Actions.
- 11.70.100 Nuisance Abatement.
- 11.70.110 Summary Abatement.
- 11.70.120 Administrative Review.
- 11.70.130 Appeals to the Code Hearings Officer.
- 11.70.140 Further Appeals.
- 11.70.150 Waivers.

11.70.010 Purpose.

This chapter establishes an enforcement system to prohibit illegal tree activity in order to further the city's goals for optimizing and enhancing the urban forest. The primary focus of this system is to seek corrective action and restoration before seeking more punitive measures. Nevertheless, penalties are necessary to ensure that it does not become less costly to violate the Title than to abide by its requirements. The enforcement actions prescribed herein are established to be effective deterrents for egregious or willing misconduct and are intended to escalate for the severity or repeated nature of the violation.

11.70.020 Where These Regulations Apply.

- A. City of Portland. This chapter applies to all trees within the City of Portland.
- B. County urban pockets. Trees in the "County urban pockets" are subject to all regulations of this Chapter except Subsections 11.70.040 A. through C. and E. through G. (some Subsections of Prohibited Actions); 11.70.050 B. through E. (some Subsections of Inspections and Evidence); and 11.70.070 C. (a Subsection of Correcting Violations of This Title). The County urban pockets are areas outside the City of Portland where the Portland Zoning Code and other Portland regulations are administered. The County urban pockets are shown on the Zoning Map.

Violations

This section specifically identifies the distinction between violations of Title 11 and Title 33. In essence, all illegal tree removal is a violation of Title 11, however, in resource areas, such as environmental or scenic zones, if the tree removal violates the standards in Title 33, the violation is processed as a land use violation, subject to Title 33 remedies. Violations resulting in removal of trees required to be preserved as part of a condition of land use approval, are also processed pursuant to Title 33 as a land use violation. The Citywide Tree Project considered alternative approaches that did not require land use review, however, these two specific types of situations require a greater amount of review to consider other factors besides the trees, such as other vegetation or illegal disturbance in the environmental zones, or layout of lots, building or utilities in land use reviews.

Enforcement Authority

This section assigns enforcement responsibility and authorizes procedures for addressing violations of the Title. Both the City Forester and BDS Director can use similar procedures for obtaining compliance. This is intended to promote a more consistent response to tree violations. Table 70-1 specifies the division of enforcement authority. In general, the City Forester is tasked with tree issues outside the development context and the BDS Director is tasked with trees as part of the development process. However a close coordination role is required for tree issues in select overlay zone and plan district areas. When no development is occurring, the City Forester is the lead enforcement authority and the BDS Director provides input to determine if the violation triggers the need for a Title 33 resolution. If the violation is to Title 33 requirements, or the violation occurs as part of a development permit, the enforcement role reverses, and the BDS Director leads with the City Forester (as steward of municipal trees) providing input for City and Street Tree issues.

For example, a tree is removed from a site within the environmental overlay zone. The inspection reveals that the tree was a street tree fronting a development project. The BDS Director will review the Title 33 environmental zone requirements and determine that removal of the tree is allowed per the standards. The City Forester will then evaluate whether the tree was approved for removal as part of the development permit Tree Plan (Chapter 11.50). If the City Forester did not approve the removal as part of the development permit, then he/she could impose remedies as provided in this chapter.

11.70.030 Violations.

- A. Each specific incident and each day of non-compliance for the following may be considered a separate violation of Title 11:
 - 1. Any failure, refusal or neglect to comply with any provision of this Title;
 - 2. Allowing or causing a tree-related condition that threatens to injure the public health or safety, or threatens to damage public or private property; or
 - 3. Causing or allowing any prohibited actions as cited in this chapter to occur.

- B. The following constitute violations of Title 33, Planning and Zoning and not Title 11:
 - 1. Overlay Zones and Plan Districts. Removal of any tree in Overlay Zones or Plan Districts when the removal is not exempt or allowed by Title 33, Planning and Zoning or has not been otherwise authorized through an applicable development permit or land use review.
 - 2. Conditions of land use reviews. Unauthorized removal of a tree required to be protected as a condition of a land use review while a condition of approval is in effect.

11.70.040 Enforcement Authority.

As stated in Title 3.30, the City Forester and BDS Director are hereby authorized to enforce this Title utilizing Title 3 adopted remedies and any of the remedies prescribed in this Title. Enforcement responsibilities are summarized in Table 70-1. When violations occur that involve trees in overlay zones and plan district areas, the City Forester and BDS Director will consult and coordinate their enforcement action to the degree possible in order to avoid the issuance of multiple or conflicting orders. In cases where multiple violations of City code exist on a property, the City Forester and BDS Director are authorized, but not required, to delegate enforcement authority of this Title to another Bureau to facilitate a coordinated remedy and single agency responsible for obtaining compliance.

Prohibited Actions

This list includes the actions that constitute a violation of the Tree title. Note that these actions apply to all regulated trees: City, Street, and Private Trees.

Failure to maintain trees. This subsection refers to the list of tree maintenance responsibilities (See section 11.60.060), including pruning for clearances, sweeping up leaf litter, fixing trip hazards, removing tree hazards, and treating diseased trees. These maintenance provisions already include provisions for remedying the situations in that chapter, but are included here for clarity.

Conducting regulated activities without a permit. If a permit is required, but one wasn't obtained, that's a violation.

Non compliance with terms and conditions of tree permit or development permit. This mirrors existing language in Section 20.40.090.E. This provision is extended to apply uniformly to all tree permits issued or tree plans approved under this title.

Table 70-1 Summary of Enforcement Authority

| | Heritage Trees | City/Street Trees | Private Trees | Overlay Zones and Plan Districts | |
|---|----------------|-------------------|---------------|----------------------------------|---------------|
| | | | | City/Street Trees | Private Trees |
| Development permit ^[1,2,3] (Ch. 11.50) | BDS/CF | BDS/CF | BDS | BDS/CF | BDS |
| Tree Permit, no development ^[4] (Ch. 11.40) | CF | CF | CF | CF/BDS | CF/BDS |
| Maintenance violations ^[4] (Ch. 11.70) | CF | CF | CF/BDS | CF/BDS | CF/BDS |

CF = City Forester BDS = BDS Director

^[1] For sites in a County urban pocket, enforcement applies only to on-site trees, and is done by BDS.

^[2] Trees specifically required to be preserved by condition of land use approval that have been removed or damaged will be enforced by the BDS Director through Title 33, Planning and Zoning.

^[3] The BDS Director is the lead enforcement authority for violations of development permits issued by BDS. The BDS Director may consult with the City Forester when Heritage, City, or Street Trees are involved. The City Forester is the lead enforcement authority for violations during development not covered under a BDS permit.

^[4] The City Forester is the lead enforcement authority when no development is occurring. The City Forester may consult with the BDS Director when the provisions of Title 29 or Title 33 are also violated.

11.70.050 Prohibited Actions.

Any of the following actions constitute violations of this Title and may be declared a nuisance for the purposes of correcting or abating the unlawful action.

- A.** Failure to properly maintain trees. It is unlawful for any person to fail to comply with any of the tree maintenance specifications set forth in Section 11.60.060
- B.** Conducting regulated activities without a tree permit. It is unlawful for any person to plant, place, prune, alter, remove, destroy, cut, break, or injure any tree without first obtaining a tree permit for said action, except as provided in this Title.
- C.** Non-compliance with terms and conditions of a tree permit. It is unlawful for any person to violate the conditions or time limits imposed upon any tree permit.
- D.** Non-compliance with terms and conditions of a development permit. It is unlawful to fail to adhere to the requirements of a development permit for tree preservation, protection, or planting.

COMMENTARY

Topping and Excessive Pruning. Mirrors existing language in Section 33.248.040.E. This is an existing prohibition for required landscape trees as part of the zoning code, and other trees by virtue of the previous definition of "removal" in Chapter 20.40 and "cutting" in Chapter 20.42:

"removal" means the cutting or removing of 50 percent or more of the crown, trunk or root system of a plant, resulting in the loss of aesthetic or physiological viability

"cutting" is the felling or removal of a tree, or any procedure in which the natural result will lead to the death or substantial destruction of a tree. Such acts include but are not limited to the severe cutting back of limbs to stubs larger than three inches in diameter; and damage inflicted upon the root system of the tree. "Cutting" does not include normal pruning within the bounds of accepted arboricultural practices].

This prohibition reinforces a consistent message about the problems resulting from tree topping. Previous exemptions for utility line clearance and hazard limb removal have been replaced with more up to date references to pruning standards which incorporate these objectives without requiring a tree to be topped. In some cases, topped trees may recover their form and structure with an intensive and vigilant treatment program. These provisions allow the City to require a treatment program in lieu of assessing penalties when the Forester determines that a tree that has been topped is recoverable.

Attachments to Trees. This mirrors existing language in Section 20.40.120. It is not the intention of this section to prohibit rope swings or cable stays designed to mitigate limb hazards, but rather those other types of attachments that are clearly having a deleterious effect on the tree's health, including bark abrasion and incremental girdling (like neglected rope ties, brackets, or fencing). It is anticipated that this type of violation would most often be subject to a correction order and not penalties or fines.

Interference with Tree Grates and Guards. This subsection mirrors existing language in Section 20.40.120 but updates the terminology to distinguish protection devices intended to be permanent like metal grates in sidewalks or upright guards from tree protection measures used during development.

Failure to Install or Maintain Protection Measures. This mirrors existing language in Section 20.40.120. as well as 33.248.040 which require protection measures be in place during construction to prevent injury to trees.

Removal or failure to maintain required trees. This mirrors existing language in 33.248.040 and reinforces the planting specifications in 11.60.060 which stipulates that any tree that was required for landscaping, tree density, or replacement must be maintained or replaced in kind.

- E.** Topping and excessive pruning. It is unlawful for any person to top or excessively prune any tree. Trees shall be allowed to grow in their natural form. A tree that has been topped or excessively pruned may be considered "removed" for the purposes of establishing penalties and any replacement requirements. The City may also require the property owner or responsible party to treat the tree as described in Section 11.70.080.
- F.** Attachments to trees. It is unlawful to attach or keep attached to any City or Street tree, any signs, ropes, wires, chains or other devices whatsoever, when such devices are determined to threaten the viability of the tree or are likely to create a hazard. Any attachments to City or Street Trees are subject to obtaining a tree permit from the City Forester, as stated in Chapter 11.40.
- G.** Interference with tree grates and tree guards. It is unlawful for any person to damage, interfere or otherwise misuse any tree grate or guard set for the protection of any Street Tree, City tree, or Heritage tree. Removal of such devices may only occur as authorized by the City Forester.
- H.** Failure to install or maintain protection measures. It is unlawful for any person to fail to install required tree protection measures prior to commencing any development activity subject to Chapter 11.50. Furthermore, it is unlawful for such person to move any required protection measures, neglect or fail to maintain such measures throughout the development activity, or allow any restricted activity or disturbance to occur within the protection area without prior City approval.
- I.** Removal or failure to maintain required trees. It is unlawful for any person to fail to maintain in a healthy condition, trees required to be planted by virtue of a tree permit or development permit, including landscape trees and trees necessary to meet tree density standards. Any such trees that die shall be replaced.

11.70.060 Inspections and Evidence.

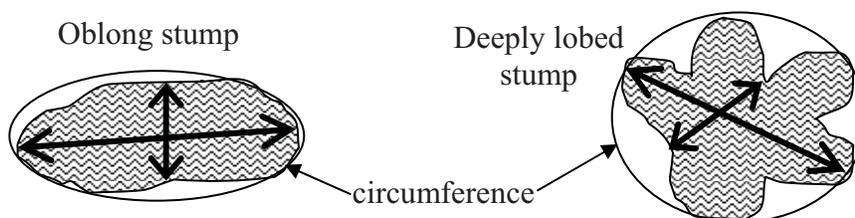
- A.** The City may conduct inspections whenever it is necessary to enforce any provisions of this Title, to determine compliance with this Title or whenever the City has reasonable cause to believe there exists any violation of this Title. Inspections shall occur during business hours. If the responsible party is at the site when the inspection is occurring, the BDS Director, City Forester, or other authorized representative shall first present proper credentials to the responsible party and request entry. If such entry is thereupon refused, the BDS Director or City Forester shall have recourse to any remedy provided by law to obtain entry, including obtaining an administrative search warrant.
- B.** If any tree is removed without a tree removal permit, a violation will be determined by measuring the circumference of the stump at the ground to establish the diameter size of the tree. For purposes of this Subsection, the diameter size of the tree is the circumference divided by 3.14.

COMMENTARY

Inspections and Evidence

This section, adapted from Section 10.50.010 in the Erosion Control Title, establishes the basic form and authority for inspecting complaints and verifying compliance with the terms of tree permits and development approvals. Frequently, inspections related to tree cutting complaints do not occur until after the tree and woody debris have been taken from the site. This makes it very difficult to establish whether a tree permit was required. This section establishes guidance for what constitutes a violation when the main part of the tree has been removed from the area.

When this is the case, the size of the stump is used to determine whether a permit was required. To avoid confusion as to where to measure the stump's diameter when a trunk is oval or oblong or when the stump is not cut flush to the ground, the standard for evidence uses circumference measurements taken at the ground.



When the trunk and leaves of a tree have been removed from a site, it is generally not possible to determine the species of tree or whether it was a nuisance or native tree. When the species cannot be determined, the tree will be considered a non-native non-nuisance tree.

It is difficult to use aerial photographic evidence because it is nearly impossible to establish the trunk size of the tree and therefore prove that a tree permit was required. The City maintains aerial images on an annual basis. The application software (*GARTH*) can calculate the area of polygons. As proposed, the city can assert that a tree with 1600 square feet of associated canopy was a regulated tree. Caution must still be exercised since it is often difficult to distinguish between tree canopy and adjacent tall shrubs or other trees. It can also be difficult to correlate a particular tree on the ground to the canopy in an aerial view. This tool is intended to primarily address removal of either very large trees or many trees. For that reason the square foot canopy size threshold is established as very large.

For clarity, incidents resulting from natural causes are excluded from the list of violations.

Notice and Order

The notice provisions mirror existing language in Title 10.70.020 which comport with Title 29 provisions. The notice is the first step in correcting a violation. The initial notice would include the requested remedy to correct the violation (per 11.70.080).

- C. In cases where a tree stump has been removed, the BDS Director or City Forester may use photographs of the tree including the city's most current aerial images to determine if a violation has occurred. For aerial photographs, when the associated canopy measures 1600 square feet at the edge of the dripline, this may be considered prima facie evidence of a violation of this chapter. Nothing in this Subsection will be construed to limit the introduction of other photographic evidence before the Code Hearings Officer.
- D. When there is insufficient evidence to demonstrate whether a removed tree was a nuisance or native tree species, the tree will be considered as a non-native, non-nuisance tree.
- E. Tree removal, topping, or other injury caused by natural causes or weather will not be deemed a violation of this Title, provided there is no other clear evidence to suggest that the tree was deliberately removed or injured.

11.70.070 Notice and Order.

- A. Notification required. Except in the case of summary abatement or immediate danger, if the BDS Director or City Forester finds one or more violations of the provisions of this Title on a property or adjacent street, the BDS Director or City Forester shall notify the property owner to prune, remove or take any other action as necessary to correct the violations. Notification to the property owner will be accomplished by mailing a notice to the owner, at the owner's address as recorded in the county assessment and taxation records for the property. The notice may be sent via either first class or certified mail. Notice to the property owner may also be accomplished by posting notice on the property. Additional notice to the responsible party, if different than the owner, may also be provided at the City's discretion.
- B. Content of the notice. The notice shall include:
 1. The date of posting (if notice was posted at the property);
 2. The street address or a description sufficient for identification of the property;
 3. A statement that one or more violations of this Title exist at the property with a general description of the violations;
 4. Disclosure that penalties, charges, and liens may result from a failure to remedy the violations;
 5. Specification of a response period during which the property may be brought into compliance with this Title before penalties, charges, or liens will be assessed; and

Correcting Violations of this Title

This section is a key piece of the project proposal. One limitation of the Zoning and other Development Codes is that the remedies are typically geared toward fixing an improperly built structure or adding elements to bringing the site into compliance. This generally means removing an offending or hazardous structure, reconstructing certain elements of buildings, adding facilities that were not provided or had been subsequently removed, and when public safety is jeopardized, halting a particular unlawful activity. For trees, the restorative nature of this compliance approach is still meaningful, however a mature established 24 inch tree cannot typically be replaced with a tree 24 inches in size. A resulting temporal loss in ecological, environmental, and aesthetic benefits occurs. The list of additional remedies and penalties is intended to give compliance staff reasonable discretion to apply site specific solutions to resolve violations based on the level and extent of the impact from the tree loss.

Subsection B provides for standard remedies that may be applied to City, Street or Private Tree violations. These remedies are generally listed in escalating order from least action required to most. Priorities are deliberately not assigned to allow enforcement staff greater flexibility. It is envisioned that administrative rules will be developed to establish when certain remedies are appropriate. Additional remedies for municipal trees (City and Street Trees) and trees involved in development follow in subsequent subsections.

Minor Infractions. If the violation is minor and correctable, like having a prohibited attachment to a tree or neglecting to install protection measures when no work has occurred, the City may simply notify the property owner and/or responsible party and provide an opportunity to correct the infraction. Failing to do so would then result in imposition of other available remedies or enforcement action.

6. Disclosure that the owner's right to request an administrative review to appeal the findings of the notice of violation and a description of the time limits for requesting an administrative review as set forth in this Chapter.
- C. Compliance inspections and penalties. Once a notice has been mailed, the owner will be responsible for all enforcement penalties associated with the property, as described in this Chapter, until the violations are corrected and the City has been so notified. Except in the case of summary abatement, whenever the owner believes that all violations listed in the first or any subsequent notice of violation have been corrected, they shall notify the City.
- D. Time limits. The BDS Director or City Forester may set time limits in which the violations of this Title are to be corrected. Failure to comply with the time limits may be considered a separate violation of this Title.
- E. Information filed with County Recorder. If the City finds violations of this Title on any property, the City may record with the County Recorder information regarding City code violations and possible liens on the property.

11.70.080 Correcting Violations of this Title.

- A. General. The following list of remedies gives the City Forester and BDS Director broad discretion in applying a reasonable and effective means to restore a tree or site where trees have been illegally removed or damaged. The rights and remedies provided in this chapter are cumulative, are not mutually exclusive, and are in addition to any other rights, remedies and penalties available to the City under any other provision of law. The City Forester or BDS Director may adopt administrative rules to establish priorities and guidelines for the following remedies.
- B. Standard remedies. Standard remedies are intended to address a wide variety of violations of this Title. Additional remedies specific to City and Street Trees, and trees in development situations are described in Subsections C. and D. When the City determines that a violation of this Title has occurred, any or all of the standard remedies described in this Subsection, and any applicable additional remedies described in this Section may be required depending on the severity and extent of the violation. If the property owner or responsible party fail to correct the violation within the time provided, the City may invoke the enforcement actions described in Section 11.70.090.
 1. Minor Infractions. For minor infractions that do not result in damage to a tree, the City will first seek to correct the violation without penalties. These infractions may include failing to prune or remove a tree in violation of Chapter 11.60, failing to install or maintain tree protection when prohibited activities have not occurred within the root protection zone, or failing to plant a tree as required by a development permit or condition of granting a tree removal permit.

COMMENTARY

Treatment. Some minor damage and tree injury may be corrected through a treatment program, so this option is also provided. This is especially useful in cases where the tree has not been removed, since removal and replacement may not be the desired option. In these cases, the property owner and/or responsible party may either contract the services of an arborist to diagnose and treat the tree and monitor for a minimum period of one year, or if they prefer, may provide a performance guarantee for the value of removing and replacing the tree for a three year period. After three years, if the tree has survived, the performance guarantee is released. If the tree has died, the guarantee is used to cover costs of removal and replacement.

Tree Replacement. For more serious violations where trees have been removed, the city may require the trees to be replaced on an escalating scale up to inch for inch. This section also authorizes imposition of payments in lieu when the replacement trees cannot be planted or are not desired on the site.

2. Treatment. For trees that are damaged but were not removed and where the City Forester concurs that the tree may still be viable, the violation will not be considered an "illegal tree removal" provided:
 - a. The property owner or responsible party contracts for the services of an arborist to assess the damage and prescribe a treatment regimen;
 - b. The property owner or responsible party enters into a contract with his/her arborist to complete the treatment regimen. The treatment and associated monitoring period shall be at least 1 year, but may be longer; and
 - c. The arborist shall provide the City with updates on the services performed, when they were performed, and the status of the tree's condition at intervals determined by the original treatment regimen. If the tree dies at any time during the treatment and monitoring period, the property owner or responsible party shall remove and replace the tree subject to the tree replacement requirements described in paragraph B.3.
 - d. In lieu of the treatment regimen and monitoring period described above, the City Forester may instead accept a performance guarantee per Chapter 11.10. The performance guarantee shall be sufficient to cover the cost of removing the tree plus the cost of tree replacement as described in paragraph B.3. When the property owner or responsible party selects this option, death of the tree within the 3 year timeframe may be deemed prima facie evidence that the damage was the sole cause of the tree's death.
3. Tree Replacement and Payment in Lieu. The City may require replacement for any trees removed illegally. The City may require greater than tree-for-tree replacement, but may not require greater than inch-for-inch replacement. The amount of replacement trees will be determined by the volume of removed tree canopy. For trees that the City positively determines were dead, dying, or dangerous, the replacement will be limited to one tree. The responsible party shall enter into a replanting and maintenance plan agreement approved by the City. When responsible party is unable to accommodate the required replacement planting on the site or adjacent street, the balance of required inches may be paid as a fee in lieu of planting to the Tree Preservation and Planting Fund.

COMMENTARY

Tree Permit Violation Review. The city may require a responsible party to apply for a tree permit violation review. This would be reviewed with a similar process and criteria as a Type B permit, to allow for public notice and involvement, and to determine appropriate levels of mitigation. The retroactive application serves three purposes. First, the discretionary review allows for site specific tree replacement decisions to occur. Second, the public notification allows interested parties to comment and is an opportunity to add visibility for the tree permit enforcement program. Third, it sets in place a process that is not less burdensome than if the violator had applied for the permit as required. In other words, this prevents someone from bypassing the public review process.

Subsection C provides for additional remedies for City and Street Trees.

Restoration Fees. For egregious violations affecting a City or Street Tree, an additional fee may be imposed based on the size of the tree removed. The restoration fee is intended to be both punitive and restorative, and serves a different purpose from a civil remedy. The funds collected from this fee would be deposited into the Urban Forestry Fund and used for education and outreach, to help prevent other violations from occurring. This fee is also geared to escalate based on the size of the tree and would follow a prescribed schedule. Provisions are included to double the fee in limited circumstances, generally where the level of prior knowledge of the tree requirements would be higher.

Civil Remedies, based on existing language in 20.40.220, allow the City Forester to require payment for the lost value of the tree based on an appraisal. This additional remedy is only available for publicly owned trees. While this may often be substantially higher than the restoration fee, it is also more difficult and time consuming to establish a value or may not be possible if there is not sufficient evidence on which to base the appraisal. The additional language relating to consequential damage to other public facilities was included to address damage to pipes, sidewalks, street signs or curbs as a result of the tree being knocked over. The other provisions have not been changed. The section may be expanded to include other additional remedies in the future.

Subsection D provides for additional remedies for Trees Subject to a Tree Plan. For situations where a site inspection reveals that protection measures were not maintained properly, a correction notice is issued (as provided for in paragraph 1) but this provision allows collecting a re-inspection fee, which must be paid prior to receiving final permit inspection.

4. **Tree Permit Violation Review.** The City may require any person who cuts, removes, or damages any tree without a permit as required by this Title or is in non-compliance with any term, condition, limitation or requirement of a tree permit or Tree Plan, to submit an application for a Tree Permit Violation Review. Trees removed in violation of Title 33, Planning and Zoning requirements may also be processed in accordance with the enforcement provisions of that title.
Tree Permit Violation Applications are processed as Type B permits, and are subject to public notice but not the public appeal procedures of Chapter 11.30. The purpose of this review is to establish appropriate replacement requirements and notify interested parties. Failure to abide by the conditions of the approval will be treated as a repeat offense.
- C. Additional remedies for City and Street Trees.** In addition to the remedies provided by any other provision of this Chapter, when the City Forester determines that a violation of this Title has occurred involving a City Tree or Street Tree, the City Forester may seek additional remedies as described below.
1. **Restoration Fees.** The City may require any person to pay into the City's Urban Forestry Fund a restoration fee for the damaged or removed tree according to the City's adopted fee schedule. The restoration fee may be doubled if any of the following apply:
 - a. The person has been convicted of a previous violation of this Title;
 - b. The tree is a Heritage tree; or
 - c. The tree was subject to the protection requirements of a Tree Plan.
 2. **Civil Remedies.** The City will have the right to obtain, in any court of competent jurisdiction, a judgment against any person removing or causing damage to any City tree or Street Tree in violation of this Title. In any such action, the measure of damages is the actual replacement value of the damaged or destroyed trees as well as any other consequential damage to other public facilities within the street.
- D. Additional remedies for Private Trees Subject to a Tree Plan.** In addition to the remedies provided by any other provision of this Chapter or other Titles, when the BDS Director determines that a violation of this Title has occurred involving a Private Tree shown to be protected on a Tree Plan, the BDS Director may require the property owner or responsible party to correct the violation using any of the following remedies.

COMMENTARY

In cases where a tree is damaged or removed on a site but the tree was not required to be preserved as a condition of land use approval, a Tree Plan Revision may be allowed. This simply means that the applicant must resubmit their Tree Plan for review to reassess if the tree preservation standards and tree density standards will continue to be met. These revisions are processed like other development plan revisions, and may require additional planting or payment in lieu to the Tree Planting and Preservation Fund.

In cases where a tree is damaged or removed on a site subject to a condition of land use approval, the applicant must submit for an additional land use review through Title 33 to resolve the violation (e.g. Tree Review or new land use review)

Enforcement Actions

In cases where the property owner/responsible party fails to remedy the violation, the City may use any of the following enforcement actions to gain compliance.

This section is organized like the remedies section, with standard enforcement action that can be taken for any tree violation, followed by additional enforcement actions specific to City and Street Trees.

Civil Penalties (based on existing section 20.40.215 and 20.42.150) allow the City to fine up to \$1,000 per violation, per day for each day the violation goes uncorrected.

1. Tree Protection Re-inspection Fee. When an inspection of a site subject to development under an approved Tree Plan finds that tree protection measures have not been installed as required or are not properly maintained, the City may issue a correction notice and require the responsible party to pay a Tree Protection Re-inspection Fee. Payment of the fee is required prior to final inspection.
2. Tree Plan Revision. For tree removal or injury which results in removal, and where the tree was not required to be preserved by virtue of a land use approval, the BDS Director may require the applicant to prepare a revision to the approved plans and demonstrate conformance with the applicable tree preservation and tree density standards in Chapter 11.50, including any additional tree planting, payments, or preservation of alternate trees.

11.70.090 Enforcement Actions.

- A. General. The following list of enforcement actions gives the City Forester and BDS Director additional means to obtain compliance with the requirements of this Title, when the remedies previously described are not effective or when a property owner or responsible party refuses to comply within the time limits prescribed by the City Forester or BDS Director. The rights and remedies provided in this chapter are cumulative, are not mutually exclusive, and are in addition to any other rights, remedies and penalties available to the City under any other provision of law. The City Forester or BDS Director may adopt administrative rules to establish priorities and guidelines for the following enforcement actions.
- B. Standard enforcement actions. Standard enforcement actions may be invoked for general violations of this Title, including conducting tree activities without a required tree permit. In addition to these standard actions, the City Forester may take additional actions for City and Street Tree violations as described in Subsection C.
 1. Civil penalties. The City Forester or BDS Director may issue a complaint to any person who cuts, removes, prunes or harms any tree without a permit as required by this Title or is otherwise in non-compliance with any term, condition, limitation or requirement of an approval granted under this Title, and require payment of a civil penalty up to \$1,000 per day. Each tree constitutes a separate violation, and each day that the person fails to obtain a permit or remains in non-compliance with a permit or tree plan may also constitute a separate violation.

COMMENTARY

Initiating a proceeding before the Code Hearings Officer allows the Forester or BDS Director to bring a case to the Hearing Officer when parties fail to respond to the civil penalty above. This allows liens to be assessed in addition to requiring any other corrective action.

Delayed intake of Land Use or Development Applications is a new provision designed to discourage illegal removals prior to submitting a development proposal. This provision requires that the violation be resolved prior to allowing the application to be submitted.

2. Initiating a proceeding before the Code Hearings Officer. The City Forester and BDS Director are each authorized to initiate proceedings before the Code Hearings Officer, as stated in the procedures in Title 22, Hearings Officer, of the City Code, to enforce the provisions of this Section when the responsible person fails to respond to the City Forester or BDS Director's complaint as described in Paragraph B.1, above. The Hearings Officer may order any party to:
 - a. Abate or remove any nuisance;
 - b. Install any equipment or plant trees necessary to achieve compliance;
 - c. Pay to the City of Portland a civil penalty of up to \$1,000 per day. In determining the amount of any civil penalty to be assessed, the Code Hearings Officer will consider the following:
 - (1) The nature and extent of the property owner or responsible party's involvement in the violation;
 - (2) The benefits, economic, financial or otherwise, accruing or likely to accrue as a result of the violation;
 - (3) Whether the violation was isolated and temporary, or repeated and continuing;
 - (4) The magnitude and seriousness of the violation;
 - (5) The City's cost of investigation and remedying the violation;
 - (6) Any other applicable facts bearing on the nature and seriousness of the violation.
 - d. Undertake any other action reasonably necessary to correct the violation or mitigate the effects thereof.
3. Delayed intake of applications for development permits or land use reviews. When a violation of this Title has occurred on a site, the BDS Director may refuse land use or development permit applications until the violation has been satisfactorily resolved.

COMMENTARY

Disqualification from city contracts is a new type of penalty. This allows the City to reject bids for services from companies that have routinely violated the requirements of this title. If a contractor has repeatedly violated these rules, they cannot be deemed qualified to compete for city services. This reinforces the fact that a basic qualification for city contracts is an understanding of the code and a commitment to adhere to its rules.

Removal from the list of local tree care providers list is also a new provision. This would allow the City Forester to remove a contractor convicted of a violation from the City's website list of companies providing services. Contractors who take a course from the City Forester are listed as having completed the basic orientation course. This list, while not a "recommendation" or "endorsement" by the city is a service provided to citizens who are looking for companies that perform associated tree work in the City. While the city is not endorsing any particular company, it would be irresponsible for the city to direct citizens to companies that are prone to violate the code and put their clients at risk of violation.

Abatement is a necessary enforcement action when violations may present a hazard, for instance a tree that is dangerous or obstructs a street sign. The full abatement process is incorporated into Title 11, in order to avoid future conflicts or omissions as the city contemplates moving these provisions out of Title 29. Provisions for low income and elderly waivers which were incorporated in Title 20 are included at the end of this Chapter (section 11.70.150, Waivers).

Stop work orders are presently authorized for the BDS Director, but this authority is expanded to include the City Forester for issues when unauthorized development or unpermitted work is impacting City, Street or Private Trees.

Enforcement penalties may be imposed especially in cases where the violation is not being corrected in a timely manner.

4. Disqualification from City contracts. At their discretion, the City Forester or City Engineer may refuse to consider any arborist, builder, landscaper, contractor, or tree service that has been cited for any tree activity in violation of this Title or submitted a falsified report for the criteria required in this Title, as a responsible bidder for any City contracts for a period of 2 years from the date of violation or falsified report.
5. Removal from City's list of local tree care providers. The City Forester may remove any arborist, builder, landscaper, contractor, or tree service that refuses to correct a violation, has been fined for any tree violation of this Title, or submitted a falsified report for the criteria required in this Title, from the list of contractors providing related services for a period of 2 years from the date of violation or report.
6. Abatement. Whenever a responsible party or property owner conducts a prohibited action per Section 11.70.050, the City may pursue abatement proceedings to remove the nuisance. Whenever the City has declared that such nuisance exists, the property liable for the nuisance will be directed to abate the nuisance by following the notice and abatement procedures outlined in this Chapter.
7. Stop Work Orders. When any work is being conducted in violation of this Title, and public health or safety is threatened, the City Forester or BDS Director may issue a stop work order as stated in the requirements of Section 3.30.080.
8. Enforcement penalty.
 - a. The City may charge a penalty in the form of a monthly enforcement penalty for each property found in violation of this Title that meets the following conditions:
 - (1) The property is a subject of a notice of violation of this Title as described in Section 11.70.070;
 - (2) A response period of 30 days has passed since the effective date of the initial notice of violation; and
 - (3) The property remains out of compliance with the initial notice of violation or any subsequent notice of violation.
 - b. The amount of the monthly enforcement penalty shall be charged as set forth in the Enforcement Fee and Penalty Schedule as approved by the City Council.

Additional Enforcement Actions for City and Street Tree Violations

Subsection C provides for additional enforcement actions for City and Street Tree Violations including criminal penalties (adapted from 20.40.210), and instituting legal proceedings (adapted from 20.40.230) and are carried forward as additional measures the city may take on a particular violation case, depending on the gravity of the situation.

- c. Properties in violation for 3 months from the initial notice of violation will be assessed an enforcement penalty that is twice the amount as listed in the Enforcement Fee and Penalty Schedule as approved by the City Council.
- d. Whenever the owner believes that all violations listed in the first or any subsequent notice of violation have been corrected, they shall notify the Director. Upon receipt of such notice, the Director will promptly schedule an inspection of the property and notify the owner if any violations remain uncorrected.
- e. Once monthly enforcement penalties begin, they will continue until all violations listed in the first or any subsequent notice of violation have been corrected, inspected and approved.
- f. When a property meets the conditions for charging an enforcement penalty as described in this Section, the Director will file a statement with the City Auditor that identifies the property, the amount of the monthly penalty, and the date from which the charges are to begin. The Auditor will then:
 - (1) Notify the property owner of the assessment of enforcement penalties;
 - (2) Record a property lien in the Docket of City Liens;
 - (3) Bill the property owner monthly for the full amount of enforcement penalties owing, plus additional charges to cover administrative costs of the City Auditor; and
 - (4) Maintain lien records until the lien and all associated interest, penalties, and costs are paid in full; and the BDS Director certifies that all violations listed in the original or any subsequent notice of violation have been corrected.

C. Additional Enforcement Actions for City and Street Tree Violations. The City Forester may impose the following additional actions for City or Street Tree violations.

- 1. Criminal penalties. In addition to any other remedy provided in this Chapter, the City Attorney, acting in the name of the City, may seek Criminal Penalties in any court of competent jurisdiction. The court may require that any responsible party violating any provision of this Title will, upon conviction, be fined a sum not exceeding \$1,000 or will be imprisoned for a term not exceeding 6 months.

COMMENTARY

Nuisance Abatement

The process and language for abatement is adapted directly from Title 29, Property Maintenance Regulations.

2. Institution of legal proceedings. In addition to any other remedy provided in this Chapter, the City Attorney, acting in the name of the City, may maintain an action or proceeding in any court of competent jurisdiction to compel compliance with or restrain by injunction the violation of any provision of this Title.

11.70.100 Nuisance Abatement.

- A. Abatement. If, within the time limit set by the City in the notice of violation, any nuisance described in the notice has not been removed and abated, or cause shown, as specified in Sections 11.70.100 through 130 of this Title, why such nuisance should not be removed or abated, or where summary abatement is authorized, the BDS Director or City Forester may cause the nuisance to be removed and abated, including disposal in an approved manner.
- B. Warrants. The BDS Director or City Forester may request any Circuit Court judge to issue a nuisance abatement warrant whenever entry onto private property is necessary to remove and abate any nuisance, or whenever the BDS Director or City Forester has reasonable cause to believe that there exists upon any property any nuisance as described in Section 11.70.040 above.
- C. Grounds for issuance of nuisance abatement warrants; affidavit.
 1. Affidavit. A nuisance abatement warrant will be issued only upon cause, supported by affidavit, particularly describing the applicant's status in applying for the warrant, the statute, ordinance or regulation requiring or authorizing the removal and abatement of the nuisance, the property to be entered, the basis upon which cause exists to remove or abate the nuisance, and a statement of the general types and estimated quantity of the items to be removed or conditions abated.
 2. Cause. Cause will be deemed to exist if reasonable legislative or administrative standards for removing and abating nuisances are satisfied with respect to any property, or if there is cause to believe that a nuisance violation exists, as defined in this Title, with respect to the designated property.
- D. Procedure for issuance of a nuisance abatement warrant.
 1. Examination. Before issuing a nuisance abatement warrant, the judge may examine the applicant and any other witness under oath and shall be satisfied of the existence of grounds for granting such application.

Summary Abatement

This section was separated from the nuisance abatement section, since these provisions are intended to address immediate matters of public concern. Whereas with nuisance abatement procedures where the property owner or responsible party is given advance notice and a period in which to comply, summary abatement would be performed by the City, and the costs would be billed to the property owner. This process is seldom used but is important to retain to respond to immediate public threats. For example this might be useful for a very large tree that is failing and threatening to break a public water main, and the tree's owner is either unavailable or does not respond to the city's notification efforts.

2. Issuance. If the judge is satisfied that cause for the removal and abatement of any nuisance exists and that the other requirements for granting the application are satisfied, the judge will issue the warrant, particularly describing the person or persons authorized to execute the warrant, the property to be entered, and a statement of the general types and estimated quantity of the items to be removed or conditions abated. The warrant will contain a direction that it be executed during business hours, or where the judge has specially determined upon a showing that it cannot be effectively executed between those hours, that it be executed at any additional or other time of the day or night.
3. Police assistance. In issuing a nuisance abatement warrant, the judge may authorize any peace officer, as defined in Oregon Revised Statutes, to enter the described property to remove any person or obstacle and to assist the representative of the bureau in any way necessary to enter the property and, remove and abate the nuisance.
4. Return. A nuisance abatement warrant shall be executed within 10 working days of its issue and returned to the judge by whom it was issued within 10 working days from its date of execution. After the expiration of the time prescribed by this Subsection, the warrant unless executed is void.

11.70.110 Summary Abatement.

- A. When summary abatement is authorized by this Title, the decision regarding whether or not to use summary abatement will be at the City's discretion. In the case of summary abatement, notice to the owner or occupant of the property prior to abatement is not required.
- B. Following summary abatement, the BDS Director or City Forester, as applicable, shall post upon the property liable for the abatement a notice describing the action taken to abate the nuisance violation. In addition, a Notice of Summary Abatement shall be mailed to the property owner. The notice shall include:
 1. The date the nuisance on the property was abated;
 2. The street address or description sufficient to identify the property;
 3. A statement of the violations of Title 11 that existed at the property and were summarily abated;
 4. Disclosure that penalties, charges and liens will result from the summary abatement; and
 5. Disclosure of the owner's right to appeal the findings of the notice as set forth in this Chapter.

Administrative Review.

Since the City Forester or BDS Director may delegate their authority to their staff, this section provides for the case to be reviewed to ensure that staff has not erred in their determination or assessment of the violation or required remedy. This is an important step before an appeal to the Hearings Officer, since these appeals are expensive (both to the city and the violator), and allows for the case to be prepared and discussed before hand. This language is adapted from Title 29 requirements, but adds the City Forester.

Appeals to the Code Hearings Officer

This allows the administrative review determination to be further appealed. This language is also adapted from Title 29 requirements.

Further Appeals.

This states that the Hearings Officer decision can only be appealed to court. This language is also adapted from Title 29 requirements.

Waivers.

The BDS Director or City Forester may develop an alternate enforcement resolution by granting a waiver. This provides a transparent process so that others (namely those who may have filed the original complaint) can see how the violation was adjudicated. It is the intent of this section to provide enforcement relief to low income or other persons with hardships while continuing to obtain compliance and restitution through a negotiated settlement.

11.70.120 Administrative Review.

- A. Whenever a property owner or responsible party has been given a notice as required by this Chapter and has been directed to make any correction or to perform any act and the owner or responsible party believes the finding of the notice was in error, the owner or responsible party may have the notice reviewed by the BDS Director or City Forester, as applicable. If a review is sought, the owner or responsible party shall submit a written request to the City within 15 days of the date of the notice. Such review will be conducted by the BDS Director or City Forester, as applicable. The owner or responsible party requesting such review will be given the opportunity to present evidence. Following the review, the BDS Director or City Forester, as applicable will issue a written determination.
- B. Nothing in this Section limits the authority of either the BDS Director or City Forester to initiate a proceeding under Title 22, Hearings Officer.

11.70.130 Appeals to the Code Hearings Officer.

A determination issued as stated in Section 11.70.120 may be appealed to the Code Hearings Officer, as provided for in Chapter 22.10 of City Code.

11.70.140 Further Appeals.

All appeals from the Code Hearings Officer's determination in accordance with Section 11.70.140 will be by writ of review as authorized by Section 22.04.010 of the City Code and ORS 34.010 - 34.100.

11.70.150 Waivers.

The BDS Director or City Forester may grant an exception when the enforcement of the requirements of this Title would cause undue hardship to the owner or occupants of the affected property, or whenever the BDS Director or City Forester deems it necessary in order to accomplish the purpose of this Title.

- A. To carry out the intent of this Section the BDS Director and City Forester shall establish written policies in the form of waivers to explain the exceptions available to property owners. Waivers will include the following information:
 - 1. An explanation of the purpose of the waiver and a list of the requirements the owner shall meet in order to qualify for the waiver;
 - 2. An explanation of the period of time during which the waiver will be in effect;
 - 3. A list of the actions the owner shall perform to fulfill their responsibilities to maintain the waiver and to prevent the waiver from being cancelled.
- B. The owner shall apply for a waiver in writing. This Section may not be construed so as to evade the provisions of Title 22, Hearings Officer.

COMMENTARY

CHAPTER 11.800 DEFINITIONS AND MEASUREMENTS

The general terms chapter is located at the end of the title for easier referencing of specific definitions and methods of measuring.

Defining Words

This section clarifies how certain terms are used in the code. This is consistent with existing language in Title 33, Planning and Zoning.

Definitions and Measurements

A number of new definitions have been added while others have been slightly revised as noted below.

Appeals Board - this is a new review body, whose roles and duties are described in 11.20.

Arboriculture - existing term from 20.40.020

Arborist - existing term from 33.900.010. The professional certifying organizations have been added for clarity.

BDS Director - is a new reference but not a new review authority. For the purposes of this Title this refers to the Director of Development Services or his or her designee, including staff.

Building Coverage — refers to the amount of area encumbered by the building (for purposes of calculating required tree density).

Business Hours - are defined for purposes of describing when inspections may occur.

City — existing term from 20.40.020

City Engineer - refined the existing "Engineer" term from 20.40.020 to be consistent with recent changes to "Responsible Engineer" in Title 17. This term includes his or her designee, including staff.

CHAPTER 11.80

DEFINITIONS AND MEASUREMENTS

Sections:

- 11.80.010 Defining Words.
11.80.020 Definitions and Measurements.

11.80.010 Defining Words.

Words used in the tree code have their normal dictionary meaning unless they are listed in Section 11.80.030 below. Words listed in Section 11.80.030 have the specific meaning stated, unless the context clearly indicates another meaning.

11.80.020 Definitions and Measurements.

- A. Information about the use of terms in the tree code is contained in Section 11.10.030.
- B. The definition of words with specific meaning in the tree code are as follows:
1. "Appeals Board" is the Urban Forestry Appeals Board. The duties and composition are in Section 11.20.030.
 2. "Arboriculture" refers to the horticultural focus on the study and care of trees and other woody plants.
 3. "Arborist" means a professional listed as a certified arborist by the International Society of Arboriculture or a consulting arborist registered with the American Society of Consulting Arborists.
 4. "BDS Director" is the Director of the Bureau of Development Services or the BDS Director's designee. The duties of the BDS Director are in Section 11.10.010.
 5. "Building Coverage" has the same meaning as in Title 33, Planning and Zoning.
 6. "Business Hours" means 7:30 am to 5 pm, during working days.
 7. "City" is the City of Portland.
 8. "City Engineer" For the Bureau of Transportation this is the City Engineer, for the Bureau of Environmental Services this is the Chief Engineer of the Bureau of Environmental Services, and for the Portland Water Bureau this is the Chief Engineer of the Portland Water Bureau. Each City Engineer may delegate their authority and duties to another employee in the same bureau. The duties are as prescribed in Section 11.10.010.

COMMENTARY

City Forester - is from 20.40.020 but added his or her designee, including staff.

Commission - existing term from 20.40.020 with an added reference to their duties and included the acronym, UFC.

Diameter - replaces "DBH"- which is an existing term from 20.40.020. Also added a reference to the measurement section.

Days - this term is included to clarify that time periods for required notice and review are calendar days not "working" days. Working Days are also described to be used in conjunction with the definition of "Business Hours".

Development Impact Area - a new term used for defining or limiting an area that is subject to a tree plan and to identify trees subject to preservation and protection requirements on large sites and for street projects. This area encompasses the limits of ground disturbance during a construction project. This area is also used for the purposes of establishing required tree density.

Development Permit - is defined to include numerous types of permits to avoid the need to repeat the list in the regulatory language. A number of city issued permits are not considered development permits such as sign permits and tree permits.

Development Types - is defined to ensure consistency with the use categories in Title 33. These terms are used for establishing required tree density on development sites. Single dwelling is distinguished from One and Two Family Residential, because the Single Dwelling site provisions for non development related tree permits only apply to a single family house, but tree density standards apply to single family houses and duplexes, consistent with zoning code provisions. Note that a single dwelling may also include an accessory dwelling unit and still be considered a "single dwelling"

9. "City Forester" is the Manager of Urban Forestry, or the Manager's designee. The duties of the City Forester are in Section 11.10.010.
10. "Commission" means the Urban Forestry Commission, also referred to as the UFC. The duties and composition are in Section 11.20.020.
11. "Diameter" is to the cross-sectional size expressed in inches of a tree measured 4.5 feet above the ground. See Subsection 11.80.020 C, Measurements.
12. "Days" means calendar days, unless specifically stated as working days. Working days include Monday through Friday, excluding holidays as identified in Section 4.16.080 of Title 4, Personnel.
13. "Development Impact Area" is the area on a site affected by proposed site improvements, including buildings, structures, parking and loading areas, landscaping, and paved or graveled areas., and. The development impact area also refers to areas devoted to storage of materials, or construction activities such as grading, filling, trenching, or other excavation necessary to install utilities or access.
14. "Development Permit" refers permits issued by the City as building permits, zoning permits, site development permits, public works permits and capital improvement projects.
15. Development Types:
 - a. "Single Dwelling" refers to a house, attached house, or manufactured home with or without an accessory dwelling unit located on its own lot or parcel as those terms are defined in Title 33, Planning and Zoning
 - b. "One and Two Family Residential" refers to a house, attached house, duplex, attached duplex, or manufactured home on one lot or parcel as those terms are defined in Title 33, Planning and Zoning
 - c. "Multi-Dwelling Residential" refers to more than two dwelling units on a single lot or parcel, as well as Group Living, and Single Room Occupancy housing as defined in Title 33, Planning and Zoning.
 - d. "Commercial/Office/Retail/Mixed Use" means development that includes one or more of the following primary uses. The uses refer to the Use Categories in Title 33, Planning and Zoning: The uses are: Household Living, Commercial Parking, Quick Vehicle Servicing, Office, Retail Sales And Service, Self-Service Storage, and Vehicle Repair.

Injury - new term used to encompass a number of types of actions that are considered detrimental to trees. A more detailed list of types of injuries was also developed. Many of these definitions are based on definitions in the Palo Alto Tree Technical Manual and adaptations of other existing terms from Title 20.

Disturbance - general term

Excessive Pruning - defines forms of pruning which are detrimental to trees. Compare with "*Proper Arboricultural Practices*"

Removal - combines existing definitions of 'removal' from 20.40.020 and 'cutting' from 20.42.020.

Smothering - is a new term to be inclusive of soil compaction and other actions which deprive roots of oxygen and/or water.

Topping - existing term taken from 33.910.030, but supplemented with reference to ANSI standards

- e. "Industrial" means development that includes one or more of the following primary uses. The uses refer to the Use Categories in Title 33, Planning and Zoning. The uses are: Industrial Service, Manufacturing And Production, Warehouse And Freight Movement, and Wholesale Sales.
 - f. "Institutional" means development that includes one or more of the following primary uses. The uses refer to the Use Categories in Title 33, Planning and Zoning. The uses are: Colleges, Community Service, Daycare, Medical Centers, Parks and Open Areas, Religious Institutions, and Schools.
 - g. "Other" means development that includes one or more of the following primary uses. The uses refer to the Use Categories in Title 33, Planning and Zoning. The uses are: Commercial Outdoor Recreation, Major Event Entertainment, and Basic Utilities.
16. "Injury" means a wound inflicted upon a tree resulting from any activity, including trenching, excavating, altering the grade, smothering within the root protection zone of a tree, bruising, scarring, tearing or breaking of roots, bark, trunk, branches or foliage, herbicide or poisoning, or any other action leading to the death or permanent damage to tree health including the following:
- a. "Disturbance" is the various activities from construction or development that may damage trees.
 - b. "Excessive Pruning" is removing in excess, one-fourth (25 percent) or greater, of the functioning leaf, stem or root area in a single growing season. Exceptions are when clearance from overhead utilities or public improvements is required or to abate a hazardous condition or other public nuisance. Excessive pruning does not include normal pruning that follows ANSI standards, see "Proper Arboricultural Practices," and "Pruning"
 - c. "Removal" is felling, cutting or removing 50 percent or more of the crown, trunk or root system of a tree, resulting in the loss of aesthetic or physiological viability, or any procedure in which the natural result will lead to the death of the tree, including girdling, poisoning, topping or drowning the tree.
 - d. "Smothering" is the result of compaction or compression of the soil particles or texture that may result from the movement of heavy machinery and trucks, storage of construction materials, structures, paving, or any other means that creates an upper layer that is impermeable within the root protection zone.

COMMENTARY

Land Use Review—existing term from Section 20.42.020 and updated to delete reference to Title 34 since that title has since been repealed.

Nuisance Plants List - is defined to provide a reference to the Portland Plant List, rather than stating “the list of nuisance species plants found within the Portland Plant List”.

Overlay zones and plan districts - are included to indicate where the additional overlay zone and plan district requirements apply. In some cases, only portions of the overlays or plan districts are regulated as described in the definition.

- e. "Topping" means the inappropriate pruning practice used to reduce tree height by cutting to a predetermined crown limit without regard to tree health or structural integrity. Topping does not include acceptable pruning practices as described in the American National Standards Institute (ANSI) "A-300 Pruning Standards" and companion "Best Management Practices for Tree Pruning" published by the International Society of Arboriculture, such as crown reduction, utility pruning, or crown cleaning to remove a safety hazard, dead or diseased material. Topping is considered "removal".
- 17. "Land Use Review" is a procedure for a specific use or development required under Title 33, Planning and Zoning.
 - 18. "Nuisance Plant List" is a list within the "Portland Plant List" that identifies nuisance trees and plants.
 - 19. "Overlay Zones and Plan Districts" refer to any of the following overlay zones or plan districts as shown on the Official Zoning Map, unless the specific regulation states otherwise:
 - a. Environmental Overlays shown on the Official Zoning Map with a "c" or "p".
 - b. River Environmental Overlay, shown on the Official Zoning Map with an "e".
 - c. Pleasant Valley Natural Resource Overlay, shown on the Official Zoning Map with a "v".
 - d. Willamette River Greenway Overlay Zones, as applied to the Natural "n", or Water Quality "q", overlays and only within or riverward of the greenway setback portion of the Recreational "r", General "g" and Industrial "i" overlays, as designated on the Official Zoning Map.
 - e. Scenic Resources Overlay, for trees located within scenic corridors, shown on the Official Zoning Map with an "s".
 - f. Johnson Creek Basin Plan District, only applied to the South subdistrict, to areas within the special flood hazard area, and to sites that abut the Springwater Corridor.
 - g. Portland International Airport Plan District
 - h. Rocky Butte Plan District.
 - i. South Auditorium Plan District

COMMENTARY

Person - existing term from 20.40.020 and combined with 20.42.020. See also "responsible party"

Proper Arboricultural Practices - Previously, chapter 20.42 used the term "accepted arboricultural practices" but never defined it. This provides reference to nationally developed standards of practice for planting and pruning..

Pruning - is defined to exclude certain minimal pruning activities. Chapter 20.40 regulated pruning any size branch on any size tree. This provision allows people to prune sucker shoots growing at the base of the tree and small branches (up to $\frac{1}{4}$ inch, or about the size suited for most hand pruners) without needing a pruning permit.

Public agency - is defined for the purposes of establishing who may apply for programmatic permits

Recognized organization - also defined in Title 33, includes all ONI listed organizations and is used in the context of permit notification and code amendment procedures.

Responsible Party - new term used to describe the person who is accountable for actions performed on or to a tree, including street trees. More broad than "person", as it may include contractors or others hired on behalf of an owner.

Site —is defined in Title 11 to have the same meaning as Title 33 (i.e. all property under an ownership, except as described for land divisions). Multiple lots or lots of record under the same ownership are treated as a single site.

Street - existing term from 20.40.020, as defined here, 'street' does not include private streets.

Treatment - is defined for its use in the enforcement chapter

Tree Area - is defined for its use in the tree density requirements of Chapter 11.50. It is the basis of land area used to determine the number of small, medium, and large canopy trees required to be planted to meet tree canopy goals for the particular development type.

Tree Plan - describes what elements are included in a tree plan and references the specific requirements in Chapter 11.50.

20. "Person" includes any individual, property owner, firm, association, corporation, agency, entity, or organization of any kind.
21. "Proper Arboricultural Practices" refers to the methods employed during tree planting or cutting or removing any part of the branching structure of a plant in the crown, trunk or root areas in accordance the most recent edition of the American National Standards Institute (ANSI) "A-300 Standards" and published "Best Management Practices" of the International Society of Arboriculture.
22. "Pruning" is the removal or reduction of parts of a tree that are not requisite to growth or production, are no longer visually pleasing, or are injurious to the health or development of the tree.
23. "Public Agency" means any public agency or public utility as defined in ORS 757.005, or drainage district as defined in ORS 174.116.
24. "Recognized Organization" is a neighborhood, community, business, or industrial association, or organization recognized or listed by the Office of Neighborhood Involvement (ONI). Recognized organization also includes the ONI district offices.
25. "Responsible Party" is a person in control of property in fee ownership or tenancy where a tree is located or property adjacent to a street tree. The responsible party may include the owner or owners, lessees, tenants, occupants or other persons in charge. In cases of violations, the responsible party may also include the person, partnership, or corporation who violated the provisions of this Title.
26. "Site" has the same meaning as in Title 33, Planning and Zoning.
27. "Street" has the same meaning in Section 9-101 of the City Charter.
28. "Treatment" is the application of therapeutic remedies or corrections to site conditions when injury to trees has occurred to improve the chances of long term viability. Generally these measures should occur only under the direction of an arborist. Treatment measures include compensatory or corrective pruning, fertilization, inoculation, soil fracturing, grade restoration and supplemental irrigation.
29. "Tree Area" is the amount of area on a development site that is used to calculate the required number of trees to be planted to meet tree density standards.
30. "Tree Plan" is a site plan showing trees to be preserved and protected, planted, or removed. Specific requirements for Tree Plans are in Chapter 11.50.

COMMENTARY

Tree Related Terms

City Tree - replaces the term 'public tree' used in Chapter 20.40. This change does not affect the type of trees previously regulated under Chapter 20.40, it is simply a more accurate descriptor. The City already regulates trees on other types of publicly owned lands (e.g. county offices, schools) as private property trees.

Dangerous trees - include trees that are causing damage to structures such as lifting sidewalks or damaging building foundations. Dangerous trees also include trees that due to a structural defect in the roots, trunk or crown are prone to failure and likely to hit a target (such as a person, car, or building). If the danger can be alleviated (e.g. by pruning) then it is not considered a dangerous tree.

Dead Tree - existing term modified from 20.42.090.A.1.a. to describe when a tree will be considered dead.

Dying Trees - are those afflicted by a pathogen or pest infestation that is not salvageable through treatment.

Heritage Tree - term already in use (20.40.150), however the distinction here is that heritage trees are defined to also include "Historic Trees" and "Historic Landmark Trees" so that all of these trees fall within the same program.

Native Tree - refers to any one of the trees listed as Natives on the Portland Plant list:

| Common Name | Scientific Name | Common Name | Scientific Name |
|------------------|------------------------------------|---------------------------|----------------------------|
| Big-leaf Maple | Acer macrophyllum | Pacific Willow | Salix lucida sp. lasiandra |
| Bitter Cherry | Prunus emarginata | Pacific Yew | Taxus brevifolia |
| Black Cottonwood | Populus balsamifera sp.trichocarpa | Ponderosa Pine | Pinus ponderosa |
| Black Hawthorn | Crataegus suksdorfii/douglasii | Quaking Aspen | Populus tremuloides |
| Cascara | Rhamnus purshiana | Red Alder | Alnus rubra |
| Douglas Fir | Pseudotsuga menziesii | Rigid Willow | Salix rigida v.macrogemma |
| Garry Oak | Quercus garryana | Scouler Willow | Salix scouleriana |
| Grand Fir | Abies grandis | Western Flowering Dogwood | Cornus nuttallii |
| Madrone | Arbutus menziesii | Western Hemlock | Tsuga heterophylla |
| Oregon Ash | Fraxinus latifolia | Western Red Cedar | Thuja plicata |

Non-native non-nuisance tree - is any tree that is neither on the list of nuisance species or native species trees.

Nuisance Tree- refers to any one of the nuisance trees listed as on the Portland Plant list:

| Common Name | Scientific Name | Common Name | Scientific Name |
|------------------|---------------------|-----------------------|----------------------|
| Tree of Heaven | Ailanthus altissima | Black locust | Robinia pseudoacacia |
| Norway maple | Acer platanoides | Cutleaf birch | Betula pendula |
| White poplar | Populus alba | European mountain ash | Sorbus aucuparia |
| English hawthorn | Cratageous monogyna | Siberian elm | Ulmus pumila |
| English holly | Ilex aquifolium | Golden chain tree | Laburnum watereri |
| Sweet cherry | Prunus avium | Princess tree | Paulonia tomentosa |
| English laurel | Prunus laurocerasus | | |

Protected Tree - new term.

Private Tree - new term referring to trees on private property or trees on public properties not owned or managed by the city. This also clarifies how to classify a tree that straddles private property and city property or street right of way.

31. Tree Related Terms:

- a.** "City Tree" is a tree within City limits that is on property owned or managed by the City. A tree that straddles a property line between private property and City-owned or -managed property is a Private Tree, shared by the City and adjacent property owner. A tree on a property line between City-owned or managed property and the street is a Street Tree.
- b.** "Dangerous Tree" is one where the condition of the tree presents a foreseeable danger of inflicting damage that cannot be alleviated by treatment or pruning. A tree may be dangerous because it is likely to injure people or damage vehicles, structures, or development, such as sidewalks or utilities.
- c.** "Dead Tree" is a tree that is dead or has been damaged beyond repair or where not enough live tissue, green leaves, limbs, or branches exist to sustain life as determined by an arborist.
- d.** "Dying Tree" is a tree in an advanced state of decline because it is diseased, infested by insects or rotting and cannot be saved by reasonable treatment or pruning, or must be removed to prevent spread of the infestation or disease to other trees or is imminently likely to become a danger or die.
- e.** "Heritage Tree" is a tree designated as a Historic Landmark Tree, a Historic Tree, or a Heritage Tree.
- f.** "Native Tree" is a tree listed on the "Portland Plant List" as native to the Willamette Valley.
- g.** "Non-Native Non-Nuisance Tree" is a tree that is not identified on the Portland Plant List as a native species or a nuisance tree.
- h.** "Nuisance Tree" is a tree of a species listed on the "Nuisance Plant List".
- i.** "Protected Tree" is a tree that shall be retained and protected because of a condition of approval on a land use review, a tree plan, or because it is a Heritage Tree.
- j.** "Private Tree" is a tree on property that is not owned or managed by the City. A tree that straddles a property line between private property and City-owned or -managed property is a Private Tree, shared by the City and adjacent property owner. A tree that straddles a private property line and the street is a Street Tree.

COMMENTARY

Street Tree - new definition for a term already in use. This definition also includes clarification to simplify identifying the type of tree for areas with vague right of way boundaries. This definition also clarifies that if the trunk straddles the street and adjacent property, then the tree is considered a Street Tree

Tree Grove - A new term to determine when a group of trees constitutes a grove. The definition applies to groupings of native trees, but recognizes that other trees may be interspersed with the natives. A grove is described as non-linear to ensure that are situations such as hedgerows and street trees are not included in the definition of grove. It is also noted that a tree grove can be identified by a qualified professional based on the function of the grouping of trees. This is intended to allow some additional flexibility in determining whether specific groupings of trees should be considered a grove.

Utility - existing term from 20.40.020

Watershed - new definition for a term already in use in Title 33 and relates to where expenditures of the Tree Preservation and Planting Fund may occur. The watershed boundaries coincide with BES' subarea watershed maps. Clarifications were added to address areas of the city not within a BES designated watershed area, and to note that due to the size of Tryon Creek and Fanno Creek watershed areas, these are managed as a single watershed unit.

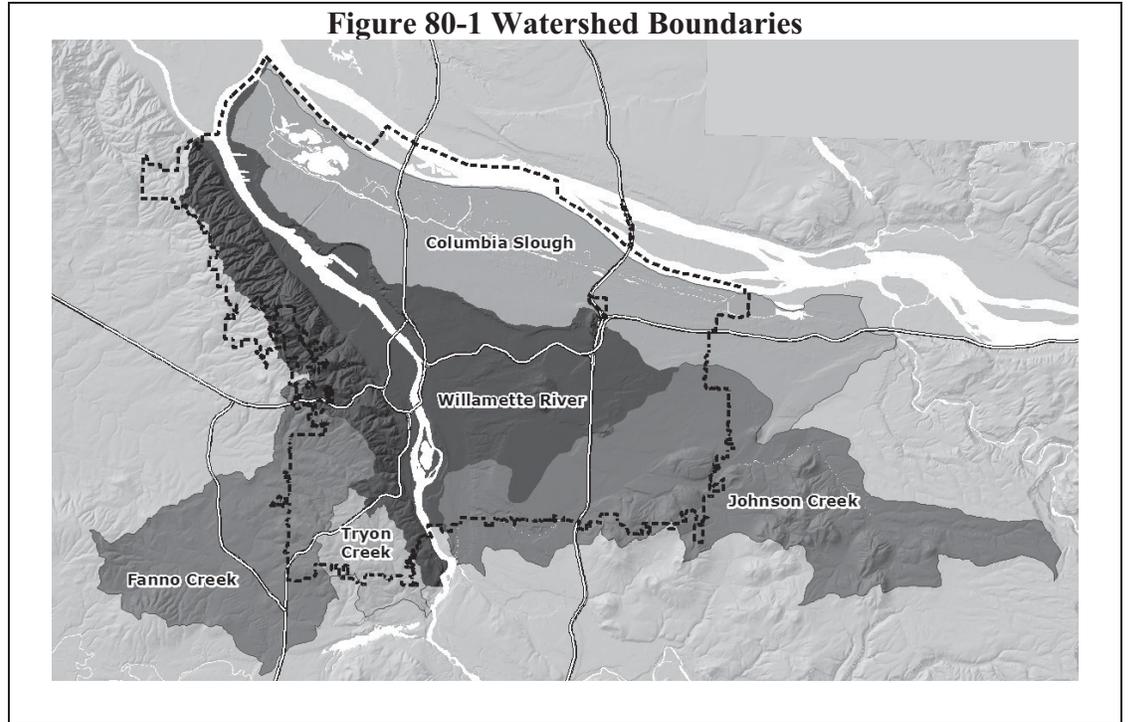
- k. "Street Tree" means any tree growing in or upon any city managed street. In some cases, property lines lie several feet behind the sidewalk or edge of road pavement. Where a street is not fully improved with curbs or sidewalks but is paved, a tree may be considered a Street Tree if it is located within 15 feet of the edge of pavement, unless a survey by a licensed surveyor or property boundaries can clearly establish otherwise. For completely unimproved streets, the actual property line will be used to demarcate between Private Trees and Street Trees. A tree that straddles a private property line and the street is a Street Tree.
 - l. "Tree Grove" is a group of six or more native trees at least 12 inches in diameter, or Oregon white oak trees or Pacific madrone trees that are at least 6 inches in diameter and that form a generally continuous canopy, or are spaced as appropriate for that species or species assemblage. Groves are generally non-linear. Other trees and understory vegetation located within the grove are considered part of the grove and are counted as part of the canopy area. A tree grove may be identified by a qualified professional, such as an arborist or environmental scientist, based on the types, configuration, or functions of a grouping of trees. Functions include structural support and wind protection for the trees within the grove, microclimate and shade, and habitat such as nesting, foraging, and cover for birds and other wildlife.
32. "Utility" is a public utility, business, or organization that supplies energy, gas, heat, steam, water, communications, or other services through or associated with telephone lines, cable service and other telecommunications, sewage disposal and treatment, and other operations for public service. It does not include transportation service, railroad operations, or service otherwise licensed under City Code
33. "Watershed" –One of the five following areas as shown in Figure 80-1 and further defined by the Bureau of Environmental Services. For the purposes of establishing planting within a specific watershed as part of this title, watersheds end at the City limits and the following apply:
- a. Columbia Slough – sites on Hayden Island are included in this watershed
 - b. Willamette River – sites in Northwest Portland that are west of the Willamette River watershed are included in this watershed
 - c. Fanno Creek/Tryon Creek – these two watersheds are managed as a single watershed unit

Measurements

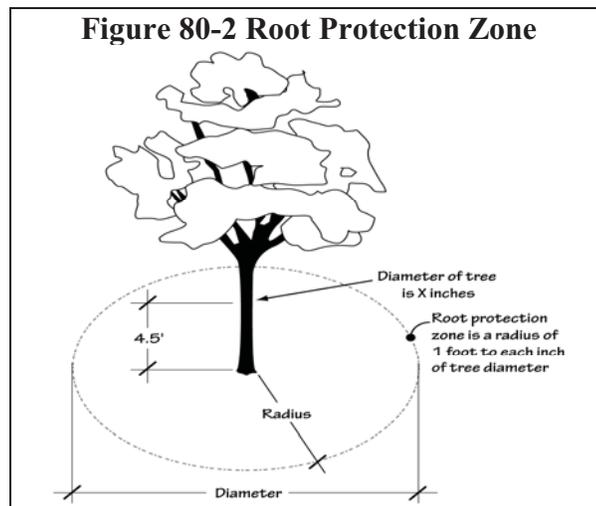
This section mirrors Title 32 and 33 where illustrations are important to the clear description of the proper method of measurement.

The Root Protection Zone figure illustrating the dimensions of prescriptive path is adapted from section 33.930.140.

- d. Johnson Creek – all sites within the Johnson Creek watershed

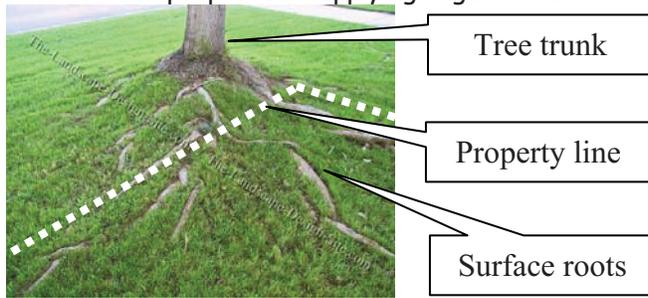


- C. Measurements. For the purposes of establishing distances and other types of required measurements, the following methods are applied.
 - 1. Root Protection Zone (Prescriptive Path). To determine the required root protection zone, measure the size of the tree to be protected. For each diameter inch of the tree, measure one foot away from the tree to establish the radius of the circle surrounding the tree. Each 1 inch diameter of tree requires 1 foot radius for the root protection zone. See Figure 80-2



COMMENTARY

Tree Location - is included to clarify what part of the tree determined the actual location of the tree for purposes of applying regulations.

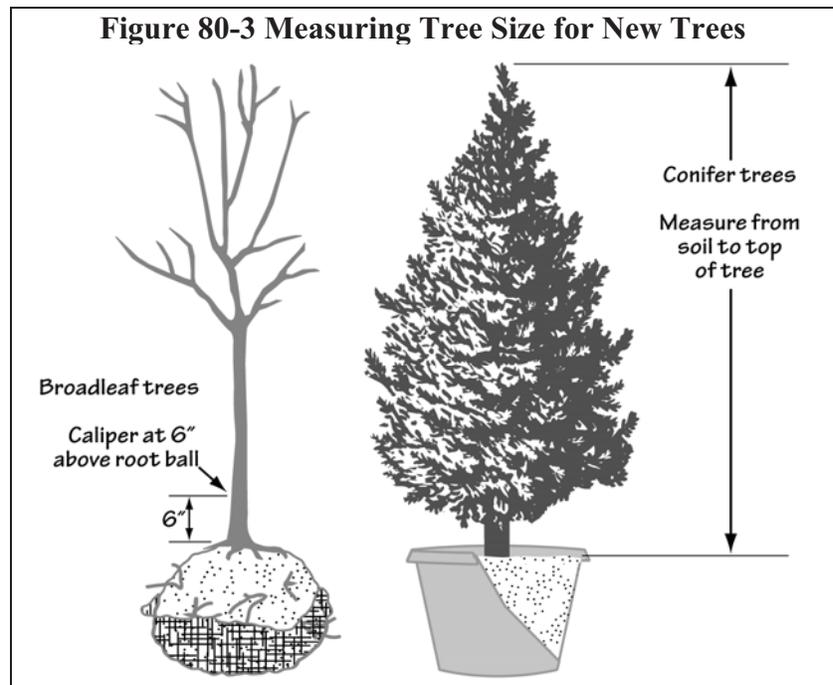


Tree Size

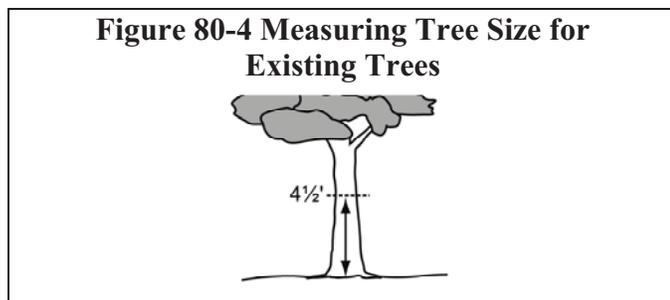
New tree measurement is adapted from Section 33.930.130. Broadleaf trees are expressed in terms of "caliper inches" and are measured about 6 inches from the base of the tree. For conifers, the trees are expressed in terms of height measured from the ground to the tip of the leader.

Existing trees are a bit more complicated. There have been many discussions about how to properly measure trees since the current code describes measuring trees at 4.5 feet above grade (DBH or "diameter at breast height"). This is fairly intuitive for situations like that in Figure 80-4. However, when the tree or ground slopes, or splits into multiple trunks the precise form of measurement is subject to some disparity. The precise method is less important than maintaining consistency between measurements. Therefore, it was necessary to prescribe a standard of measurement to resolve disputes for the most common types of cases. These figures and descriptions were adapted from the *Guide for Plant Appraisals*, 9th edition.

2. Tree Location. A tree's location for purposes of establishing the applicable requirements of this Title is determined by the trunk at the point where it meets the ground. Surface roots extending from the trunk are not used to determine the tree's location.
3. Measuring Tree Size
 - a. New trees. New trees are measured in caliper inches, which is the diameter of the trunk 6 inches above the soil or root ball for bare root trees. For coniferous trees, tree height is used. See Figure 80-3.

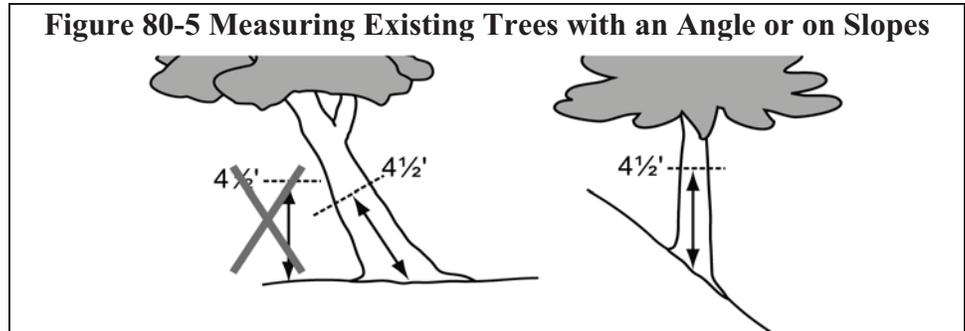


- b. Existing trees.
 - (1) Existing trees are generally measured in terms of diameter inches at a height of 4-1/2 feet above the ground. See Figure 80-4. The diameter may be determined by measuring the circumference of the tree trunk and dividing by 3.14.

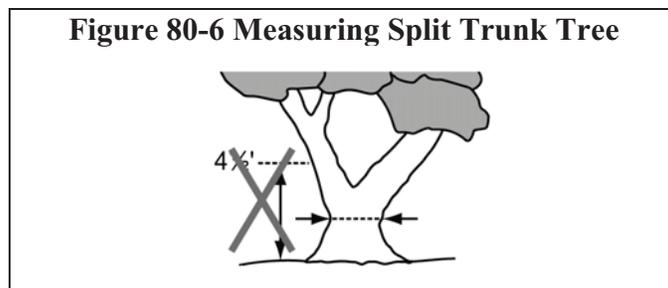


COMMENTARY

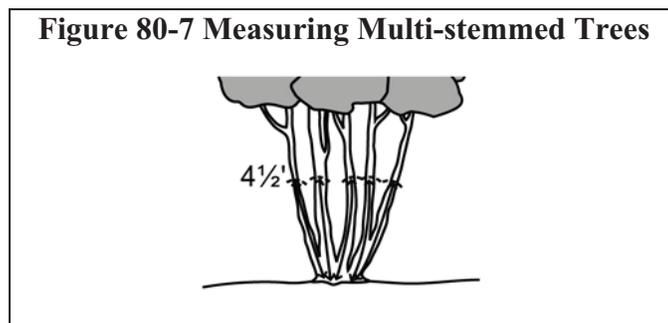
- (2) When the trunk is at an angle or is on a slope, the trunk is measured at right angles to the trunk 4.5 feet along the center of the trunk axis, so the height is the average of the shortest and the longest sides of the trunk; see Figure 80-5.



- (3) When the trunk branches or splits less than 4.5 feet from the ground, measure the smallest circumference below the lowest branch. See Figure 80-6.



- (4) For multi-stemmed trees, the size is determined by measuring all the trunks, and then adding the total diameter of the largest trunk to one-half the diameter of each additional trunk (see Figure 80-7). A multi-stemmed tree has trunks that are connected above the ground and does not include individual trees growing close together or from a common root stock that do not have trunks connected above the ground.



End of Recommended Title 11 Code



Exhibit B

Amendments to Titles 3, 8, 14, 16, 17, 20, 24, 29, 31

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Title 3, Administration

Title 3 includes provisions establishing the administrative authority of numerous City bureaus and offices, including the Parks Bureau and Bureau of Development Services. In addition to the authority granted, certain provisions assign responsibilities for carrying out particular tasks or programs.

Chapter 3.26 describes the Parks Bureau roles and includes numerous outdated references to staff positions, divisions, and facilities. However, these proposed amendments are targeted only at the provisions which need to be updated as a result of the Citywide Tree Project, specifically the creation of Title 11 and resulting programmatic changes.

Section 3.26.040 updates the reference to the 'Nuisance Section' of the Parks Bureau to a general reference to Title 11 rules and the City Forester's authority.

Section 3.26.090 is a remnant section that was not deleted when provisions relating to the Solar Access Permit were deleted from Chapter 3.111 Office of Sustainable Development. In the proposed amendments to Title 11, the City Forester is assigned a broader role to develop recommended tree lists for a larger range of purposes in addition to solar compatible trees, such as street trees and food producing trees.

**CHAPTER 3.26
BUREAU OF PARKS**

Amend Section:

3.26.040 Nursery and Planting Division.

Delete Section:

3.26.090 Solar Friendly Trees.

3.26.040 Nursery and Planting Division.

The Nursery and Planting Division, supervised by a Director of Park Plantings or other competent person, shall have control over the gardening and nursery functions and properties of the Bureau of Parks, including the greenhouse, nursery, golf courses, and floral displays.

~~Removal of trees, permits for removal of trees, removal of limbs of trees and reports in regard to trees shall be subject to the rules and requirements of Title 11. all be in the Nuisance Section, except that removal of trees shall be subject to the approval of the Superintendent of the Bureau of Parks or his designated representative. The City Forester shall be responsible for the application and enforcement of provisions of the Tree Regulations in Title 11, as further specified within that Title.~~

~~**3.26.090 Solar Friendly Trees.**~~

~~(Added by Ordinance No. 157993, effective Feb. 18, 1986.) The City Forester, in consultation with the Energy Office, shall recommend a methodology to the Tree Advisory Committee for determining the relative solar friendliness of trees. The City Forester shall use the methodology to create and maintain lists of all trees known to be either solar friendly or non solar friendly.~~

~~Solar friendly trees shall be those deciduous trees which, by the determination of the City Forester, shall have a combination of low winter branch density and long period of wintertime defoliation, and as such, shall result in minimal loss of incident solar radiation during the heating season if planted or allowed to grow.~~

COMMENTARY

Chapter 3.30 describes the Bureau of Development Services roles and enforcement responsibility. A subsection was added to include enforcement of Title 11 regulations that pertain to BDS' role as prescribed by that title. Since it is conceivable that the relative roles and responsibilities of BDS and the City Forester may change in that title over time, a more general reference to Title 11 is used. Specific administrative and enforcement roles are included in that title. The reference to Title 11 is added ahead of the other subsection since Title 11 comes numerically before the other titles listed.

CHAPTER 3.30
BUREAU OF DEVELOPMENT SERVICES

Amend Section:

3.30.010 Duties of the Bureau of Development Services.

3.30.010 Duties of the Bureau of Development Services.

The Bureau of Development Services shall be responsible for:

- A. The administration and enforcement of provisions of the Tree Regulations, Title 11, as further specified in that Title.

[Reletter A-G to B-H]

Title 8, Health and Sanitation

The powers and duties of the Bureau of Insect Control were delegated to Multnomah County per 3.46.010. The county is charged with vector control.

To facilitate mosquito and other pest eradication, standing water should be free of brush and undergrowth to facilitate the application of pesticide oils. However, this existing language is very broad and gives carte blanche authorization to remove all trees that are lower than 19 feet above sea level or other trees in flood plains, including large trees and trees in environmental or greenway zones. To address this, while maintaining the County's ability to perform its duties, additional language was added which requires a property owner to obtain tree permits for tree removal. It is through this permit process, that limitations or alternatives to tree removal may be explored.

The reference to the "Police Code" was replaced by an updated reference to Title 29 Property Maintenance Regulations, since the nuisance abatement process is described here. This does not transfer enforcement authority of this provision to the Bureau of Development Services, it merely specifies the form and procedure that should be used for abating the nuisance.

**CHAPTER 8.44
INSECT CONTROL**

Amend Section:

8.44.030 Brush to be Removed - Nuisance - Abatement - Lien.

8.44.030 Brush to be Removed - Nuisance - Abatement - Lien.

The owner, his agent, or the person in possession of any lot, tract or parcel of land so situated that it lies within 19 feet elevation above sea level, or which is flooded by the overflow from the Willamette River when at an 18 foot river level or stage, or so situated that during certain periods of the year water accumulates thereon, which facilitates the breeding of mosquitoes or other noxious insects, shall cut and remove, and keep cut and removed therefrom, all brush and undergrowth which may hamper or prevent the free spread of oil on such water. Any pruning or removal of trees shall be subject to the applicable requirements of Title 11. Nothing herein contained shall be considered to apply to bushes, trees, shrubbery and/or other vegetation grown for food, fuel, ornament or commercial purpose, or for the production of food, fuel, ornament or commerce, provided that the health and convenience of the public is not endangered by the maintenance of such growth or vegetation. Upon failure to keep such brush cut and removed, the owner, his agent, or the person in possession of such land, shall be subject to the penalties provided by this Code.

The existence of such brush or undergrowth upon such land is hereby declared to be a public nuisance. If such nuisance be found to exist a notice shall be posted as provided in ~~the Police Code~~ Title 29, Property Maintenance Regulations. If such nuisance is not abated within the time provided by the notice so posted the Bureau of Insect Control shall abate such nuisance and charges for such abatement shall be made against the property and entered in the lien docket as there provided. The owner of any lot, tract, or parcel of land may notify the Bureau of Insect Control in writing that he desires the City to remove such nuisance and agrees to pay the reasonable and necessary expense thereof including 10 percent for overhead and with such notice deposit \$5 as a guaranty for such payment.

Title 14, Public Order and Police

Title 14 includes rules and regulations pertaining to the Police Bureau and to prevent and prohibit certain types of conduct. In addition to a listing of prohibited conduct, Chapter 14C.30 describes the Police Bureau's authority for responding to and carrying out particular enforcement tasks.

One particular issue is responding to night and weekend tree cutting complaints. The Citywide Tree Project is proposing a 24 hour tree hotline staffed initially by Bureau of Environmental Services staff in coordination with Development Services and Forestry staff. There may be instances when additional support is required by BES staff, or there may be instances when the police may need or want to intercede.

This amendment is not intended to transfer enforcement of Title 11 to the Police Bureau, (Title 11 enforcement is primarily the role of BDS and the City Forester) but rather this reference enables the Police Bureau to intercede in limited cases. This enforcement authority does not reflect a change from current code, since the existing provisions of Title 20 currently includes the tree permit requirements for public and private property.

**CHAPTER 14C.30
GENERAL PROCEDURES AND
AUTHORITY OF THE BUREAU OF POLICE**

Amend Section:

14C.30.020 Other Police Officers Authorized to Arrest, Cite, or Take Other Enforcement Action for Violations of City Code Provisions.

14C.30.020 Other Police Officers Authorized to Arrest, Cite, or Take Other Enforcement Action for Violations of City Code Provisions.

Police officers, as defined in this Title, are authorized to arrest, issue a citation, or take other enforcement action for violations of the following City Code provisions:

- A. All provisions of Title 11, Tree Regulations;
- AB. All provisions of Title 14, Public Order and Police;
- BC. All provisions of Title 16, Vehicles and Traffic;
- CD. All provisions of Title 18, Noise Control; and
- DE. All provisions of Title 20, Parks and Recreation.

Title 16, Vehicles and Traffic

The requirements to maintain visibility for the traveling public (i.e. motorists, bicyclists, and pedestrians) by pruning or removing trees have been incorporated into Title 11. Section 16.70.800 will still need to remain in Title 16 to address other types of vegetation and serve as a cross reference to Title 11.

One change that has generally been incorporated throughout includes the change of terminology from 'street trees' to 'trees' since trees on private properties may also obstruct visibility.

Title 20 will no longer contain relevant provisions for trees or visibility (this will be replaced with Title 11) and there are no relevant provisions in Title 18, Noise Control. Consequently, these references are being removed from this section.

**CHAPTER 16.70
MISCELLANEOUS REGULATIONS**

Amend Section:
16.70.800 Visibility.

16.70.800 Visibility.

(Amended by Ordinance Nos. 165987 and 173369, effective May 12, 1999.)

- A. It is the responsibility of the owner or occupant of any property to prevent any vegetation including trees ~~or street tree~~ on the property or the abutting public right-of-way from partially or wholly obstructing the visibility of traffic control devices, the visibility of or for drivers, bicyclists, or pedestrians, or in any way presents a safety hazard.
- B. The person who owns or occupies said property is liable to any person who is injured or otherwise suffers damage by reason of the failure to remove or prune such vegetation as required by Title 16 or any other Title of the City Code. Furthermore, said person is liable to the City of Portland for any judgment or expense incurred or paid by the City, by reason of said person's failure to satisfy the obligations imposed by this or any other Title of the City Code.
- C. Any ~~street-tree~~ removal or pruning required by this Title ~~must~~ shall be done in accordance with the provisions of ~~Title 20~~ Title 11, including the need to obtain tree permits for removal and pruning.
- D. Vegetation, including trees, in green street or other public stormwater management facilities, shall be trimmed only by the City or under the authorization of the Bureau of Environmental Services (BES).
- E. Any vegetation or ~~street-tree~~ not removed or pruned as required in this Title is hereby declared to be a public nuisance and may be summarily abated as provided in Title 29.
- F. Whenever the provisions of this section conflict with those of any other section of this code, including but not limited to Titles 11, 16, 17, ~~18, 20,~~ and 33, the stricter provisions shall govern.

Title 17, Public Improvements

Title 17 includes provisions relating to public infrastructure and is primarily under the authority of the City Engineer. This title currently includes several provisions relating to trees. Some of these provisions point to Title 20 for tree regulations, and some of these provisions address basic maintenance responsibilities for street trees, sidewalks and other public infrastructure.

Chapter 17.42 addresses property owners' responsibilities for maintaining streets. In general, if the street is already improved to City standards, the city accepts maintenance responsibility for the street (but not the street trees, these remain the responsibility of the adjoining property owner). For streets that have not been accepted by the City for maintenance, the adjoining property owners are responsible for street maintenance. Certain activities related to that maintenance are prescribed in this chapter.

Section 17.42.025 specifies certain activities that are allowed without permit in conducting street maintenance. Whereas this provision included a general reference to Title 20 for tree removal, the amended language indicates that a Tree Permit is required and directs readers to the new location for these permit procedures in Title 11. A specific chapter reference is not provided since the removal may be part of a development permit, capital project, or not associated with a particular development permit at all.

**CHAPTER 17.42
PROPERTY OWNER
RESPONSIBILITY FOR STREETS**

(New Chapter added by
Ordinance No. 172051,
effective March 11, 1998.)

Amend Section:
17.42.025 Maintenance Restrictions.

17.42.025 Maintenance Restrictions.

(Added by Ordinance No. 177124; amended by 177750, effective August 6, 2003.)

- A. Notwithstanding anything to the contrary in this Title 17, residents and property owners are not required to obtain a permit to maintain public streets abutting their properties if those streets have not been accepted for maintenance by the City or any other jurisdictions, provided the following conditions are met:
1. – 6. [No Change]
 7. Trees in the public right-of-way are not removed or pruned unless a tree permit has been obtained ~~except~~ as provided in ~~Section 20.40.090~~ Title 11, Trees; and
 8. Speed bumps or other types of devices intended to slow traffic are not constructed.
- B. – C. [No Change]

COMMENTARY

After moving all the other provisions relating to trees from Chapter 17.52, the requirements for placing tree tubs (i.e. planter boxes) in rights of way remained. Since the issue regarding tree tubs is more about placing the containers in the right of way, and less about the tree within those containers, they were not appropriate to include within Title 11. Title 11 exempts such trees in above ground containers from tree permit requirements. Also the City Engineer is the one responsible for issuing the "tree tub" permit. Therefore, the proposal is to replace the current tree tub provisions in Chapter 17.52 with references in Chapter 17.44 which essentially treats them as another type of structure in the street area, like advertising benches or other street furniture. These provisions already include requirements for permits which are tied to the abutting property owner, and are revocable.

CHAPTER 17.44
STREET OBSTRUCTIONS, ADVERTISING BENCHES

Amend Section:

17.44.015 Revocable Permits to Construct and Maintain Structures in the Street Area.

17.44.015 Revocable Permits to Construct and Maintain Structures in the Street Area.

- A.** Except as otherwise provided in this Code, permits to construct, install and/or maintain privately-owned structures including tree tubs in dedicated street area may be issued by the City Engineer only to the owner of the property abutting the half of the street area in which the structure is proposed to be built or placed. Such permits shall be revocable at any time as provided in Section 17.44.017. The burdens and benefits of any such permit shall run with the property abutting the half of the street area in which the structure is proposed to be built and all such permits shall be recorded against the title of the benefitting property except as otherwise specified below. All cost of such recordings shall be borne by the permittee. Upon sale or other disposition of the property, the permit shall automatically transfer to any new property owner, unless the permit specifically states that it is nontransferable.
- B.** Permits may be issued to parties other than the owner of the abutting property only under the following circumstances:
- 1.** the City Engineer has determined that the permittee is an organization with public responsibilities and is of sufficient permanence to carry insurance, liability and maintenance responsibilities for the full life of the permit; or
 - 2.** the permittee is the owner of a benefited property against which the permit is recorded, and the underlying property owner of the right-of-way has agreed to issuance of the permit; or
 - 3.** as otherwise provided for in Section 17.24.010 and Chapter 17.56.
- C.** The benefits and burdens of permits issued to parties other than the owner of the abutting property shall run with the party or property specified in the permit, other portions of this code notwithstanding

COMMENTARY

Chapter 17.48 includes the requirements for moving buildings on City streets.

Section 17.48.030 includes the specifications for obtaining a moving permit. One of these requirements is that an applicant must deposit a security to cover the cost of any necessary repair or restoration to the street or other public improvements. The proposed amendment specifies that such deposit must also include the cost of replacing damaged or injured Street Trees.

**CHAPTER 17.48
MOVING BUILDINGS**

Amend Sections:

17.48.030 Moving Permit.

17.48.040 Regulations.

17.48.030 Moving Permit.

(Amended by Ordinance Nos. 140207, 173627, 180917, 182389 and 182760, effective June 5, 2009.)

A. – C. [No Change]

D. A moving permit shall not be issued until the applicant has deposited with the Treasurer a sum sufficient, in the judgment of the City Engineer, to cover the cost of repairing any and all damage or injury to street or streets, or the improvements therein including Street Trees, which may result from the moving operation, and also such sums as the Bureau of Transportation and Portland Fire & Rescue, and any other City bureau involved, may require to cover the cost of moving, repairing, restoring or replacing any wires, signals, trees or other properties or installations which may be necessary in preparation for or in consequence of any moving operation. Upon completion of the moving operation, the bureau or bureaus which may have required such deposit and the City Engineer shall submit to the Treasurer a statement of the costs of any operations, repairs or replacements occasioned by or as the result of the moving operation, and other information as the Treasurer may request, in order to reimburse the proper account from the money so deposited, and shall authorize the Treasurer in writing to refund the remaining portion of such deposit, if any, to the depositor. If the cost exceeds the amount deposited, the depositor shall promptly reimburse the affected bureau or bureaus for such additional cost.

COMMENTARY

Section 17.48.040 is amended to include a cross reference to Title 11.

In general this means that a permit must be obtained for pruning Street Trees, or for removal of Private, City, or Street Trees.

17.48.040 Regulations.

(Amended by Ordinance No. 182760, effective June 5, 2009.)

The moving of a building or structure under a moving permit shall be continuous day-by-day during all the hours specified by the City Engineer until completed, with the least possible obstruction to the streets occupied. It is unlawful for any person moving a building or structure under a moving permit to leave said building or structure or any portion thereof stationary in the street, road or highway area for a period in excess of 2 hours during the hours of the day specified by the City Engineer, unless an emergency exists by reason of unforeseen difficulties encountered in cutting wires, trees, or removing obstructions in the course of the route selected. Removal and pruning of trees shall be conducted in accordance with the provisions of Title 11 including the need to obtain tree permits. All movement in the street area ~~must~~shall be completed within an elapsed time of 36 hours unless application is made for a longer period of time and permission specifically granted therefore by the City Engineer prior to the commencement of any movement; provided, however, that if any unforeseen difficulties are encountered and an extension of time necessitated thereby is requested from the City Engineer prior to the expiration of 36 hours from the commencement of the moving operation, the City Engineer may extend the 36 hour time by specific additional time as deemed necessary.

Red lights or other warning devices sufficient to warn and protect traffic shall be displayed in conspicuous places at or on a building or structure being moved during the hours in which streetlights are lighted. The City Engineer may require additional warning devices based on findings that the warning devices displayed by the mover are insufficient.

COMMENTARY

Chapter 17.52 previously addressed the various tree maintenance requirements for trees located in or projecting into public rights of way. These maintenance provisions have all been consolidated with tree maintenance requirements from other titles into Title 11. Chapter 17.52 is therefore deleted.

Cross references are included below to show the new location for these provisions.

| | |
|--|---------------|
| 17.52.010 Clearances..... | See 11.60.060 |
| 17.52.020 Sidewalks to be Kept Cleaned of Leaves and Organic Matter..... | See 11.60.060 |
| 17.52.030 Interference with Sewer by Tree Roots..... | See 11.60.060 |
| 17.52.040 Curb or Sidewalk Damage from Ornamental Trees..... | See 11.60.060 |
| 17.52.050 Tree Tubs..... | See 17.44.015 |
| 17.52.060 Trimming For or By City..... | See 11.60.060 |

CHAPTER 17.52

TREES

(New Chapter substituted by Ordinance No.
134329, effective May 8, 1972.)

Sections:

~~17.52.010 Clearances.~~

~~17.52.020 Sidewalks to be Kept Cleaned of Leaves and Organic Matter.~~

~~17.52.030 Interference with Sewer by Tree Roots.~~

~~17.52.040 Curb or Sidewalk Damage from Ornamental Trees.~~

~~17.52.050 Tree Tubs.~~

~~17.52.060 Trimming For or By City.~~

[This chapter is deleted]

Title 20, Parks and Recreation

Chapter 20.12 includes the types of activities that are prohibited in parks. Note that there is an existing provision (Section 20.12.070) which prohibits climbing of trees in parks. Since this activity has more to do with safety than with trees, it is appropriate to leave this type of requirement with the general park regulations and not move this to the Tree Title.

Chapter 20.12.100 describes vandalism which includes removal, damage, or destruction of vegetation and trees. Further, this specifies that a permit is required for these actions in accordance with Chapter 20.40. Since the City Forester is not presently nor is proposed to be authorized to grant permits to destroy or remove vegetation (other than trees) in parks, this statement was changed to be a straightforward prohibition. A separate statement was added to specifically address permit requirements for trees in parks, including planting permits. The reference is also updated to reflect that these permits are addressed in Title 11.

CHAPTER 20.12
PROHIBITED CONDUCT
(Replaced by Ordinance No.
180743, effective February 23, 2007.)

Amend Section:

20.12.100 Vandalism; Protection of Park Property and Vegetation.

20.12.100 Vandalism; Protection of Park Property and Vegetation.

- A.** No person shall take, remove, destroy, break, cut, injure, mutilate, or deface in any way or attach any thing to, any structure, monument, statue, vase, fountain, wall, fence, railing, gate, vehicle, bench, or other property in any Park. No person shall remove, destroy, break, injure, mutilate, or deface in any way in any Park any ~~tree~~, shrub, fern, plant, flower, or other vegetation. No person shall plant, prune, remove, destroy, break, injure, mutilate, or deface in any way in any Park any tree without a permit from the City Forester under the provisions of ~~Chapter 20.40~~ Title 11. This provision shall not prohibit authorized work done for, by or on behalf of the City.
- B.** [No change]

COMMENTARY

Chapter 20.40 primarily regulates 'public' trees, meaning trees in public rights of way (i.e. Street Trees) and trees in parks and public areas owned by the city (i.e. City Trees). This entire chapter is proposed to be deleted, and replaced by various provisions and chapters within Title 11. Cross references are included below to illustrate where these provisions have been adapted. Sections noted as "removed" are cross referenced to the relevant sections of Title 11 where the reasons for removing the provision are provided.

Chapter 20.40 included provisions relating to administration, maintenance, permitting, abatement, and enforcement. Also folded into this chapter are the Urban Forestry Commission and Heritage Tree program. The inclusion of these latter two topics is peculiar since they address trees in a broader context than just public trees. While Urban Forestry and the Heritage Tree program were initially focused on public tree assets, the role of private trees as an integrated component of the urban forest has received greater understanding and interest since these programs were initially established in the 1970's. Their inclusion in the broader Tree Title emphasizes this integrated approach.

| | |
|---|--------------------------------|
| 20.40.010 Purpose. | See 11.05.010 |
| 20.40.020 Definitions. | See 11.80.020 |
| 20.40.030 Urban Forestry Commission..... | See 11.20.020 |
| 20.40.035 Technical Assistance. | See 11.20.040 |
| 20.40.040 Urban Forestry Master Plan..... | See 11.20.050 |
| 20.40.045 Superintendent. | Removed see 11.10.010 |
| 20.40.050 City Forester. | See 11.10.010 |
| 20.40.070 Planting of Trees. | See 11.40, 11.50 and 11.60.020 |
| 20.40.080 Maintenance of Trees. | See 11.60.060 |
| 20.40.090 Removal of Trees. | See 11.40 and 11.60.050 |
| 20.40.100 Permit Requirements and Conditions. | See 11.30 and 11.45 |
| 20.40.105 Major Improvements. | See 11.50.060 |
| 20.40.110 New Land Division. | See 11.50.060 |
| 20.40.120 Protection. | See 11.50.050 and 11.60.030 |
| 20.40.130 New Streets..... | See 11.50.060 |
| 20.40.140 Liabilities and Responsibility for Costs. | See 11.05.110 and 11.60.060 |
| 20.40.150 Heritage Trees. | See 11.20.060 |
| 20.40.160 Disposition of Wood from Trees. | See 11.60.050 |
| 20.40.170 Nuisances - Abatement Procedure. | See 11.70.100-150 |
| 20.40.180 Abatement by Owner, Administrative Review, Appeal to the Code Hearings Officer. | See 11.70.100-150 |
| 20.40.185 Administrative Review. | See 11.70.100-150 |
| 20.40.190 Abatement by the City. | See 11.70.100-150 |
| 20.40.195 Notice of Assessment..... | See 11.70.100-150 |
| 20.40.200 Personal Liability of Owner. | See 11.70.100-150 |
| 20.40.205 Cost of Abatement; Low Income, Elderly Persons. | See 11.70.100-150 |
| 20.40.210 Criminal Penalty. | See 11.70.090 |
| 20.40.215 Civil Penalties. | See 11.70.090 |
| 20.40.220 Civil Remedies. | See 11.70.080 |
| 20.40.230 Institution of Legal Proceedings. | See 11.70.090 |
| 20.40.235 Notification to Planning Commission. | See 11.10.040 |
| 20.40.240 Severability. | See 11.05.100 |

CHAPTER 20.40
~~STREET TREE AND OTHER PUBLIC TREE REGULATIONS~~
(Added by Ord. 134330; New Chapter substituted
by 159490; Mar. 12, 1987.)

- ~~20.40.010 Purpose.~~
- ~~20.40.020 Definitions.~~
- ~~20.40.030 Urban Forestry Commission.~~
- ~~20.40.035 Technical Assistance.~~
- ~~20.40.040 Urban Forestry Master Plan.~~
- ~~20.40.045 Superintendent.~~
- ~~20.40.050 City Forester.~~
- ~~20.40.070 Planting of Trees.~~
- ~~20.40.080 Maintenance of Trees.~~
- ~~20.40.090 Removal of Trees.~~
- ~~20.40.100 Permit Requirements and Conditions.~~
- ~~20.40.105 Major Improvements.~~
- ~~20.40.110 New Land Division.~~
- ~~20.40.120 Protection.~~
- ~~20.40.130 New Streets.~~
- ~~20.40.140 Liabilities and Responsibility for Costs.~~
- ~~20.40.150 Heritage Trees.~~
- ~~20.40.160 Disposition of Wood from Trees.~~
- ~~20.40.170 Nuisances – Abatement Procedure.~~
- ~~20.40.180 Abatement by Owner, Administrative Review,
Appeal to the Code Hearings Officer.~~
- ~~20.40.185 Administrative Review.~~
- ~~20.40.190 Abatement by the City.~~
- ~~20.40.195 Notice of Assessment.~~
- ~~20.40.200 Personal Liability of Owner.~~
- ~~20.40.205 Cost of Abatement; Low Income, Elderly Persons.~~
- ~~20.40.210 Criminal Penalty.~~
- ~~20.40.215 Civil Penalties.~~
- ~~20.40.220 Civil Remedies.~~
- ~~20.40.230 Institution of Legal Proceedings.~~
- ~~20.40.235 Notification to Planning Commission.~~
- ~~20.40.240 Severability.~~

[This chapter is deleted]

COMMENTARY

Chapter 20.42 includes provisions regulating tree cutting on private properties. Like the provisions from Chapter 20.40, these provisions have been incorporated into Title 11, primarily Chapters 11.300 and 11.400. Note that the tree permit procedures and standards for public and private trees have been consolidated in the new Title. The entire Chapter 20.40 is therefore deleted. Cross references are included below between Title 20 and Title 11. Refer to the commentary in Title 11 for additional discussion.

| | |
|--|------------------------|
| 20.42.010 Purpose..... | See 11.05.010 |
| 20.42.020 Definitions..... | See 11.80.020 |
| 20.42.030 Applicability..... | See 11.40 |
| 20.42.040 Tree Cutting Without Permits Prohibited..... | See 11.70.050 |
| 20.42.050 Tree Cutting on Unregulated Property..... | Removed, see 11.40.050 |
| 20.42.060 Application for Permits..... | See 11.30.030 |
| 20.42.070 Fees..... | See 11.10.070 |
| 20.42.080 Review of Applications..... | See 11.30.040 |
| 20.42.090 Criteria for Issuance of Permits..... | See 11.40.040-050 |
| 20.42.100 Mitigation Requirement..... | See 11.40.060 |
| 20.42.110 Notice of Tree Cutting Permit..... | See 11.30.040 |
| 20.42.120 Appeal..... | See 11.30.040-050 |
| 20.42.130 Evidence of Violation..... | See 11.70.060 |
| 20.42.140 Criminal Penalties..... | See 11.70.090 |
| 20.42.150 Civil Penalties..... | See 11.70.090 |
| 20.42.160 Nuisances..... | See 11.70.100-150 |
| 20.42.170 Institution of Legal Proceedings..... | See 11.70.090 |
| 20.42.180 Remedies Cumulative..... | See 11.70.090 |
| 20.42.190 Severability..... | See 11.05.100 |

**CHAPTER 20.42
TREE CUTTING**

(Replaced by Ordinance No. 170775,
effective Jan. 10, 1997.)

Sections:

- ~~20.42.010 Purpose.~~
- ~~20.42.020 Definitions.~~
- ~~20.42.030 Applicability.~~
- ~~20.42.040 Tree Cutting Without Permits Prohibited.~~
- ~~20.42.050 Tree Cutting on Unregulated Property.~~
- ~~20.42.060 Application for Permits.~~
- ~~20.42.070 Fees.~~
- ~~20.42.080 Review of Applications.~~
- ~~20.42.090 Criteria for Issuance of Permits.~~
- ~~20.42.100 Mitigation Requirement.~~
- ~~20.42.110 Notice of Tree Cutting Permit.~~
- ~~20.42.120 Appeal.~~
- ~~20.42.130 Evidence of Violation.~~
- ~~20.42.140 Criminal Penalties.~~
- ~~20.42.150 Civil Penalties.~~
- ~~20.42.160 Nuisances.~~
- ~~20.42.170 Institution of Legal Proceedings.~~
- ~~20.42.180 Remedies Cumulative.~~
- ~~20.42.190 Severability.~~

[This chapter is deleted]

Title 24, Building Regulations

Title 24 includes various provisions relating to building regulations as well as additional requirements for private infrastructure construction, such as private streets and sewers.

Chapter 24.15 includes definitions that apply to the Title. The term "Tree Cutting" has been changed to "Tree Removal" for consistency with Titles 11 and 33. The term is used on Chapter 24.70 where a separate and additional tree permit had been required to remove trees on slopes greater than 25%.

While the proposed definition in Title 11 is approximately the same as the existing definition of tree cutting in this section, the Title 11 definition is more specific and is described as a type of injury (to include for instance "partial removal" where the result is a non-viable tree):

- ***Removal is felling, cutting or removing 50 percent or more of the crown, trunk or root system of a tree, resulting in the loss of aesthetic or physiological viability, or any procedure in which the natural result will lead to the death of the tree, including girdling, poisoning, or drowning the tree. (emphasis added)***

The term is amended in order to cross reference Title 11 terms to ensure consistency with the proposed Title 11 definition and any subsequent changes.

CHAPTER 24.15
DEFINITIONS

Amend Section:

24.15.215 ~~Tree Cutting~~ Removal.

24.15.215 Tree Cutting Removal.

(Added by Ordinance No. 168340, effective Dec. 7, 1994.)

~~Tree cutting means the removal, felling or destruction of 50% or more of a tree, but does not include trimming branches for tree maintenance purposes.~~

Tree Removal shall have the same meaning as “Removal” as defined in Title 11, Trees.

COMMENTARY

Chapter 24.70 is currently called "Clearing, Grading, and Erosion Control". However, the requirements for erosion control were moved to Title 10 as part of Ordinance No. 173979, effective March 1, 2000. Therefore the chapter heading should be amended to omit the reference to erosion control.

Similarly section 24.70.010 includes references to regulating erosion control on private property. While the chapter does include provisions aimed at preventing and limiting erosion as part of reviewing clearing and grading proposals, erosion control is regulated by Title 10.

References to tree cutting regulations in Title 11 have been included. Note that the reference to 25% slopes is replaced with a requirement for geotech reports for tree removal on 20% slopes in Chapter 11.500, Trees in Development Situations. This change from 25 to 20% slopes was done for consistency with other provisions of Title 24 (Wildfire Hazard, Chapter 24.51) and Title 33 (base zone design exemptions, setback reductions for steeply sloping lots, and modifications to density in the Johnson Creek Plan District), which consider 20% to be steeply sloping.

Section 24.70.020 specifies when permits are required. Clarification has been added for proposed tree removal where a clearing or grading permit is not required (such as clearing less than 5,000 square feet or excavations less than 2 feet deep). In this situation, a separate tree cutting permit is still required. For development permits, separate tree cutting permits are not issued. Instead, authorization to remove trees is issued in conjunction with the tree plan issued with the development permit.

Amend chapter title:

CHAPTER 24.70
CLEARING AND, GRADING ~~AND EROSION CONTROL~~

Amend sections:

24.70.010 General.

24.70.020 Permits.

24.70.050 Information on Plans and in Specifications.

24.70.010 General.

(Amended by Ordinance Nos. 165678, and 168340, effective Dec. 7, 1994.)

The provisions of this Chapter shall regulate clearing, grading, and earthwork construction, ~~erosion control~~ on private property. Tree removal, whether associated with clearing, grading, earthwork construction or conducted separately shall be regulated pursuant to Title 11, Trees. Erosion control is regulated by Title 10, and shall include tree cutting on natural and finished slopes with gradients in whole or in part which exceed 25%

24.70.020 Permits.

(Amended by Ordinance Nos. 165678, 168340 172209, 173532 and 173979, effective March 1, 2000.)

Permits for clearing and, grading ~~and tree cutting~~ are required as specified in this section. Where a specific activity does not require a clearing or grading permit, a separate tree permit may still be required, as specified in Title 11, Trees. Where a clearing or grading development permit shows trees to be removed and has been reviewed and approved by the City, a separate tree permit is not required in conjunction with the clearing or grading permit. An erosion, sediment and pollutant control plan if required by Title 10 shall be submitted with clearing or grading permit applications. Applicants for permits made in conjunction with land divisions shall be responsible for all clearing, grading, tree ~~cutting~~ removal and erosion control within the land division, even where a specific activity is exempt from an individual permit.

A. – B. [no change]

C. ~~Tree Removal-cutting permit. Removal of trees six-inches and larger in diameter shall be reviewed with the clearing or grading permits as part of the Tree Plan review pursuant to Title 11. A tree cutting permit is required for tree cutting (except Christmas trees) and root grubbing operations on slopes with gradients which, in whole or in part, exceed 25%. This regulation applies when more than five trees of six inch diameter are to be cut or if the area to be cleared is greater than 2,500 square feet. This applies in all areas except those designated environmental zones under the provisions of Title 33. Tree cutting permits shall be issued in accordance with Section 24.10.070.~~

COMMENTARY

Requirements for a geotechnical report to be submitted with tree cutting on steep (20%) slopes are included in Chapter 11.500. Therefore, they have been deleted from this paragraph.

Provisions referencing the need for submitting an erosion control plan when required by Title 10 have been adapted and added to the general requirements for clearing and grading permits, rather than limited solely to tree removal.

Section 24.70.050 specifies the required plan information. Paragraph 6 is amended to include a requirement that trees be shown on these plans. This requirement was added for consistency with Tree Plan requirements and is intended to help reviewers identify conflicts between required tree protection and clearing or grading operations. Currently, the clearing, grading and tree permit submittal requirements do not require trees to be shown on a site plan.

- ~~1. Plans and specifications showing the scope of proposed tree cutting operations, together with a geotechnical engineering report assessing the stability of the slope(s) after both tree felling and root grubbing operations shall be submitted to the Director along with the permit application.~~
- ~~2. Stripping of vegetation or other soil disturbance on the slopes shall be done in a manner which will minimize soil erosion and expose the smallest practical area at any one time. An erosion control and mitigation plan outlining how this is to be achieved and what erosion control measures are proposed to be implemented shall be submitted to the Director for approval.~~
- ~~3. The permit applicant shall also identify the owner's agent who will be responsible for ensuring compliance with these requirements.~~

D. Permits required under this Chapter shall be obtained before the commencement of any tree cutting removal, root grubbing or soil disturbance takes place.

24.70.050 Information on Plans and in Specifications.
(Amended by Ordinance No. 173532, effective June 30, 1999.)

Plans and specifications shall be submitted in accordance with Section 24.10.070 and in addition shall comply with the following:

A. Plans shall be drawn to scale upon substantial paper or cloth and shall be of sufficient clarity to indicate the nature and extent of the work proposed and show in detail that they will conform to the provisions of this Title and all relevant laws, ordinances, rules, and regulations. The first sheet of each set of plans shall give the location of the work and the name and address of the owner and the person by whom they were prepared. The plans shall include the following information.

1. – 5. [No change]

6. Location of any buildings or structures on the property where the work is to be performed and the location of any buildings or structures on land of adjacent owners or trees in the adjacent rights-of-way ~~which~~ that are within 15 feet of the property or which may be affected by the proposed grading operations.

7. – 10. [No change]

B. [No change]

COMMENTARY

Chapter 24.95 addresses special provisions for constructing five story wood framed apartment buildings as an appended authorization to the uniform building code. An important component of this chapter includes adequate fire fighter access and access for fire trucks. Tree preservation is sometimes a casualty of imposing requirements late in the site design and review process. Adding a consideration to locate these access roads outside of root protection zones for protected trees raises the need to examine alternatives earlier in the project design to avoid conflicts later. The standard is not intended to prevent necessary fire access, but instead provide some consideration of trees in the design and location of these roads.

Paragraph 4 gives Portland Fire and Rescue and the Director of BDS authority over the placement of trees between a fire access road and building façade. These trees may be required as part of a landscape requirement (buffer or parking lot trees) in Title 33, in which case, an adjustment is required to omit them. They may also be part of the overall total of trees planted to meet tree density per Title 11, in which case, they can be planted elsewhere on site or a payment made in lieu of their planting

Section 24.95.070 includes provisions for the applicant to meet with Portland Fire and Rescue. One such provision is the requirement for a 'per'-application design meeting. The proposed language corrects this spelling error.

**CHAPTER 24.95
SPECIAL DESIGN STANDARDS
FOR FIVE STORY APARTMENT
BUILDINGS**

Amend sections:

24.95.060 Fire Fighting Access.

24.95.070 Permit Application.

24.95.060 Fire Fighting Access.

(Amended by Ordinance Nos. 176955, 180917 and 181136, effective August 17, 2007.)

Access to the building for fire fighting, rescue and related purposes shall be provided as follows:

- A. Fire fighting access required. Subject to the approval of Portland Fire & Rescue, fire department vehicle access shall be provided that meets the following standards:

1. – 2. [No change]

3. Design standards for access road. An access road shall be provided as follows:

a. [No change]

b. Location.

(1) – (2) [No change]

(3) Access roads shall be designed and situated to avoid tree root protection zones as defined in Title 11 to the extent practical, considering road grade, turning radii, and width.

c. – f. [No Change]

4. Location of planted trees. Any trees planted between the edge of an access road and building facades with apartments having reachable windows as described in Subsection 24.95.050 A.2. above, shall be subject to the approval of Portland Fire & Rescue and Director. In cases where the location or number of trees is required by virtue of a landscape requirement per Title 33, an Adjustment shall be required. In cases where the number of trees is required by Title 11, and the trees cannot be located elsewhere on site, a payment in lieu of planting shall be required; and

COMMENTARY

5. [No change]

B. – D. [No change]

24.95.070 Permit Application

(Amended by Ordinance Nos. 176955, 180917 and 181136, effective August 17, 2007.)

A. [No change]

B. Pre-application Conference. As early as practicable in the design process, the applicant shall have a ~~per~~pre-application design conference with the Director and Portland Fire & Rescue.

C. [No change]

Title 29, Property Maintenance Regulations

Title 29 includes provisions relating to minimum maintenance requirements for buildings and property. Chapter 29.20 describes the maintenance requirements for outdoor areas, including trees and hazardous tree removal on private property. These requirements will be included in this title (to address other types of vegetation as well as trees) and Title 11.

Subsection 29.20.010.D specifies removal of brush, vines, overgrowth and other vegetation located within 10 feet of a structure. This is consistent with allowances under a Type A permit to remove trees when located within 10 feet of structures.

The proposed amendments to this title include replacing the term 'dying' with language which is more consistent with Title 11 describing "diseased, dead, or dangerous" trees. A reference is also included to point readers to Title 11 for specific tree removal and permitting requirements.

Additional language has also been added to require disposal of elmwood, since retaining this woody debris may harbor or attract insects which carry Dutch Elm Disease (DED). DED infected wood must be specially disposed of, i.e. not composted. Specific DED program authority is provided in the enforcement chapter of Title 11.

Maintenance requirements addressing obstructions in the right of way are stated in the maintenance specifications of Title 11. Provisions are repeated here since Title 29 applies to any obstruction including but not limited to trees. Additional standards relating to higher clearances for certain types of streets was added for consistency with previous Title 17 requirements, which are now contained in Title 11. A reference is included here to direct readers to Title 11 for permit requirements.

**CHAPTER 29.20
PROPERTY NUISANCES**

Amend section:

29.20.010 Outdoor Maintenance Requirements.

29.20.010 Outdoor Maintenance Requirements. [no change]

A. – G. [no change]

H. Trash and debris. Remove, and keep removed, unless specifically authorized by ordinance to do otherwise:

1. - 3. [No change]

4. All trees which are dead, dying or dangerous and are determined by the City Forester or a private certified arborist to require removal in order to safeguard people or property per the provisions in Title 11;

5. - 6. [No change]

I. Storage of non-trash items. Remove and keep removed, unless specifically authorized by ordinance to do otherwise:

1. [No change]

2. Any woody debris from Elm trees and All firewood that is not stacked and useable. “Useable” firewood has more wood than rot and is cut to lengths that will fit an approved fireplace or wood stove on the property. Elmwood which is infected with Dutch Elm Disease must be properly disposed of at the direction of the City Forester, per the provisions in Title 11, Trees.

3. - 8. [No change]

J. [No change]

K. Obstructions to sidewalks, streets, and other rights of way. [no change]

COMMENTARY

1. Sidewalks. All sidewalks must be clear of obstructions by earth, rock, or vegetation from edge to edge and to an elevation of 7-1/2 feet above sidewalk level. For example, bushes that encroach on or over any part of a sidewalk area must be cut back or removed and limbs of trees that project over the sidewalk area at an elevation of less than 7-1/2 feet above the sidewalk level must be removed. Pruning Street Trees and tree removal is subject to the requirements of Title 11, Trees.

2. Improved streets. on any improved street designated as a Regional Trafficway, Major City Traffic Street, District Collector, or a one-way street where parking has been prohibited, branches must be trimmed to a height of 14 feet above the crown of the street. Moreover, any other ~~All~~ improved streets must be clear of obstructions to vehicle movement and parking from edge to edge and to an elevation of 11 feet above street level. For example, bushes that encroach on or over any part of a street must be cut back or removed; limbs of trees that project over a street at an elevation of less than 11 feet above street level must be removed; and no wires or other things shall be maintained over the street level at any elevation less than 11 feet. Pruning Street Trees and tree removal is subject to the requirements of Title 11, Trees.

3. Alleys and unimproved rights of way. [No change]

COMMENTARY

This Chapter includes general requirements that may be associated with implementation of the Property Maintenance Regulations. Section 29.50.010 includes a reference that any structural alteration that is required to meet this Title is subject to applicable building permit requirements. To reinforce a similar requirement to obtain tree permits, the reference to Title 11 is added here as well.

**CHAPTER 29.50
OTHER REQUIREMENTS**

Amend section:
29.50.010 Permits Required.

29.50.010 Permits Required.

No person, firm or corporation shall construct, alter, repair, move, improve, or demolish any structure without first obtaining applicable building permits as required by City code.

No person, firm or corporation shall prune or remove a tree without first obtaining applicable tree permits as required by Title 11, Trees.

Title 31, Fire Regulations

This project is not proposing specific changes to fire apparatus access standards, nor is the Fire Chief directed to adopt changes to these standards, since the scope of that review is outside of this project. However, one of the issues raised during the stakeholder process related to conflicts between fire access and tree preservation. In particular, there have been cases where the fire access required during permitting was in conflict with the tree preservation plan that was approved as part of prior land use review. There are no provisions that require the Fire Bureau to avoid trees when possible. This additional language gives some guidance when applying the fire access standards but does not explicitly require that trees not be removed, since fire safety is a paramount priority. This language seeks to optimize tree retention where possible, similar to provisions added to Chapter 24.95. relating to fire access for 5-story apartment buildings.

**CHAPTER 31.30
DEVELOPMENT AND BUILDING REQUIREMENTS**

Amend section:

31.30.010 Fire Chief Authorized to Establish Access Standards.

31.30.010 Fire Chief Authorized to Establish Access Standards.

The Fire Chief shall prescribe standards for streets and roadways that provide access for fire department apparatus. Such standards shall apply to every building hereafter constructed. Standards shall prescribe minimum unobstructed width, turning radius, load capacity, clearance, grade and other criteria deemed necessary for apparatus access. Application of these standards shall include considerations for designing and locating access in a manner that minimizes tree removal and meets the tree protection specifications of Title 11, Trees, to the extent practical. Where practical the adopted standards shall be consistent with development standards for public and private streets.

A. – B. [No change]

**End of Proposed Amendments to
Titles 3, 8, 14, 16, 17, 20, 24, 29, 31**

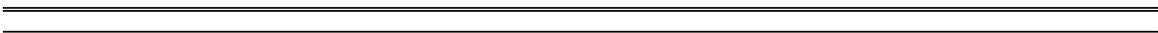


Exhibit C

(Excerpt from Volume 1 - Recommended Draft Report to City Council)

Customer Service and Community Access

The proposals presented in this section are critical components of the overall Citywide Tree Project recommendation package. Proposals for future projects to develop a Community Tree Manual and to establish a single point of contact for tree related inquiries were strongly supported by the project Stakeholder Discussion Group, along with a proposal to develop a 24-hour Tree Hotline. There was also significant interest in exploring ways to plan for and manage trees at a neighborhood scale, rather than site by site. During their work sessions, the Planning and Urban Forestry Commissions also expressed a desire to allow public access to tree permit records and activity through an on-line portal such as PortlandMaps. These proposals are presented below for consideration.

Community Tree Manual

The Citywide Tree Project Stakeholder Discussion Group, the Planning Commission, and the Urban Forestry Commission strongly supported the development of a “Community Tree Manual” (or “Tree Manual”) to complement the tree regulations.

Initially the Tree Manual was envisioned primarily as a document that translates the tree regulations into “plain English.” Development community representatives expressed interest in placing technical specifications in the Tree Manual as administrative rules, which can be more readily updated than the code. While there is still interest in converting some of the technical standards and specifications to administrative rule, the Tree Manual concept has evolved to focus on providing a community educational and informational resource rather than a regulatory document.

Neighborhood representatives warmed to the Tree Manual concept as a tool to provide information about the benefits of urban trees, tree care, and best management practices. There is also interest in creating a tool to educate children about the importance of trees, and foster their appreciation and understanding of trees in their neighborhoods and schools.

City staff and stakeholders also want the Tree Manual to be a “living resource” that would be housed and maintained on a new Tree Website. While there will likely be specific printed products, the primary focus will be on the development of user-friendly on-line products and tools.

As a community resource the Tree Manual will help support and complement other public initiatives and investments. For example, through the Grey to Green Initiative, the City initiated an aggressive rethink of its infrastructure policy, and has begun investing millions of dollars in green infrastructure facilities. In addition to the existing urban forest canopy that faces the pressure of development, 50,000 street trees and 33,000 yard trees will be planted by the city over a several year period. Providing information to help Portlanders maintain existing tree assets is important to protect this investment in planting new trees.

As envisioned, the Tree Manual will serve the following purposes and goals;

1. Raise community awareness of trees and benefits of Portland’s urban forest
2. Provide information and case examples to assist Portland residents, arborists and developers in selecting, planting, caring for, and preserving/protecting trees
3. Provide simple and illustrative information to help property owners and developers understand and work with City tree regulations (graphics, standard operating procedures, example site plans and applications, etc.)

The Tree Manual will address the following topics:

Portland’s Trees, Tree Programs and Benefits of Trees

The Community Tree Manual would provide information on Portland’s urban forest and the ecological, social and economic benefits of trees in the city. It would describe the functions of trees and how they contribute to public, economic, and watershed health and welfare. The manual would also provide information on special trees and programs such as the City’s Heritage Tree program and native trees in environmental zones. The manual would also identify City bureaus that implement urban forestry and other tree-related programs, and provide program information and appropriate links. The manual would provide information on community organizations such as Friends of Trees and local watershed councils, and ways citizens can participate in tree related community programs or events.



Tree Care and Topics of Interest

The Tree Manual would provide basic information to help Portlanders understand how trees work and how to care for their trees. The manual would also provide information

and guidance on particular topics of interest. The format would rely on photos and graphics to help illustrate key points and encourage tree planting and maintenance.

- Basic tree care – planting, mulching and watering, pruning, removal, preventing hazards
- Trees and utilities
- Fire resistant trees and/or landscapes
- Trees and solar access
- Trees and stormwater
- Food bearing trees and edible landscapes
- Trees and wildlife – native trees; habitat trees, providing food and cover, preventing hazards
- Trees and views
- Alternative sidewalk and building construction to preserve trees
- Trees and groves – preservation in the long term – easements, tracts, neighborhood agreements
- Neighborhood tree plans

Tree Code Primer – “Tree Rules Made Simple”

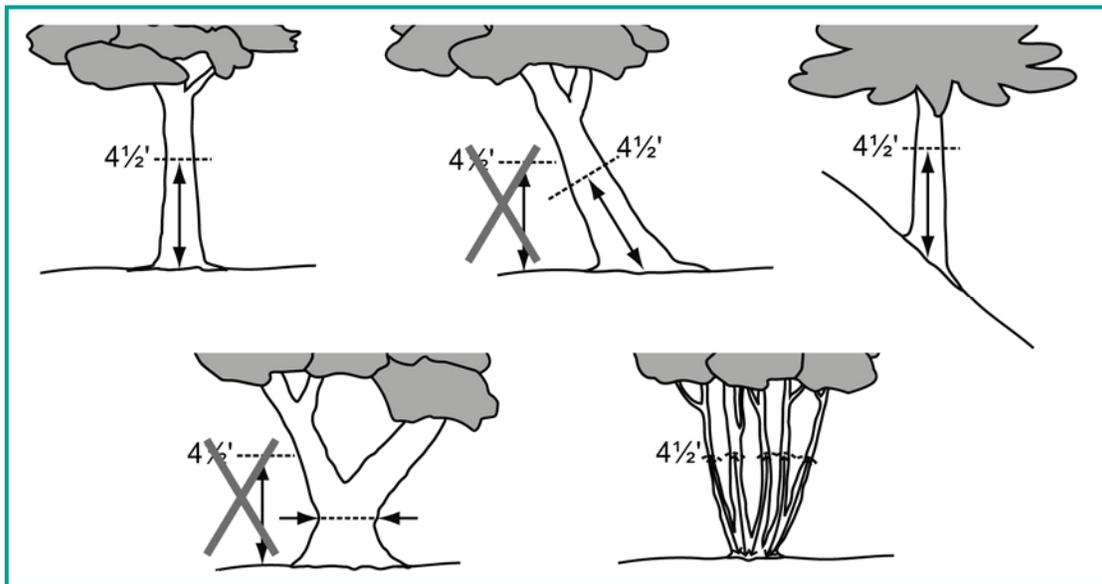
The Tree Manual would present user-friendly information, instructions, and examples to help people understand and comply with the tree regulations. The manual would outline City and property owner roles and responsibilities. The Tree Manual could provide updated forms and worksheets, and tips or example site plans with required tree information to assist in meeting development application submittal requirements.

The manual could also contain information and potentially technical specifications relating to tree protection, replacement, etc. Like the City’s Stormwater Management and Erosion Control Manuals, the Tree Manual would feature ‘lay language’ information, diagrams and illustrations to foster creative site design and construction methods. The Tree Manual could potentially integrate information and guidelines contained in the City’s existing “Tree and Landscaping Manual”. The Tree Manual could be readily updated to reflect the ongoing evolution in urban forestry management guidance and technologies. The contents might look something like this:

City tree regulations - how to stay out of trouble!

- Tell me what I can (and can’t) do – allowances, prohibited activities such as topping or harming active migratory bird nests

- When do I need a permit? - in development and non-development situations; trees on public, city and private property;
- What's a Tree Plan? – tips and examples for producing Tree Plans and producing complete project applications
- When should I hire an arborist? – to plant, prune and remove trees; to prepare tree reports when development is proposed
- Designing with Trees – innovative examples and approaches to integrate trees into proposed development and the payoff
- Measuring Trees - dealing with straight trunk; trunks on angle or slope, split trunk; canopy density



- Protecting Trees – fencing requirements; avoiding compaction in the root zone; alternative methods for root protection; subsurface root protection
- Tree planting requirements – tree canopy size, tree spacing, tree replacement and mitigation, recommended species
- Tree appraisal methods
- Standards and specifications - distance from utilities, clearance and visibility
- Forms

Potentially the Tree Manual could incorporate elements of the Tree and Landscaping Manual and, along with potential future administrative rules relating to trees, could complement other City manuals including:

- Water Bureau Developer's Manual - ARB UTL-4.02
- BES Stormwater Management Manual - ARB ENB-4.01
- BES Sewer and Drainage Facilities Design Manual - ARC ENB-4.14
- BDS Erosion and Sediment Control Manual - ARB ENB-4.10
- PBOT Design Guide for Public Street Improvements - ARB TRN-1.10
- Fire and Rescue - Design Manual for Fire Protection Systems and Processes - ARB FIR-2.01

A basic project work plan is presented below. Currently, it is envisioned that the project will be coordinated by the Urban Forestry program staff, in close collaboration with the Bureaus of Development Services and Environmental Services. The bureaus of Planning and Sustainability, Transportation, and Water will also be called on to assist or review draft products. The existing Urban Forest Action Plan Coordinating Committee will be consulted during the project.

| Tasks and Products by Fiscal Year (FY) | |
|--|--|
| 1 | FY 2010 - 2011 |
| 1a | <p>Hone project work plan</p> <p>Products:</p> <ul style="list-style-type: none"> - Tasks, timelines, products - Stakeholder input - ID partners and other funding sources |
| 2 | FY 2011 - 2012 |
| 2a | <p>Project Management</p> <p>Products:</p> <ul style="list-style-type: none"> - Work plan (tasks/timeline)/budget - Project website development and maintenance - Interbureau coordination - Stakeholder involvement strategy development/coordination - Grant and contract management |
| 2b | <p>Tree Benefits – Ecosystem Services/Watershed Health</p> <p>Products:</p> <ul style="list-style-type: none"> - chapters/brochures and website: - video? |
| 2c | <p>Tree Care ‘module’</p> <p>Products:</p> <ul style="list-style-type: none"> - chapters/brochures and website: <ul style="list-style-type: none"> - tree planting and establishment - tree maintenance (pruning, etc.) - root protection methods |
| 2d | <p>Tree ‘Topics of interest’</p> <p>Products:</p> <ul style="list-style-type: none"> - chapters/brochures and website <ul style="list-style-type: none"> - trees and wildlife/habitat - fruit and nut trees - trees and solar energy systems |
| 2e | <p>Tree Code Primer</p> <p>Products:</p> <ul style="list-style-type: none"> - handouts explaining tree codes for development and non-development situations (scenarios, guidance) - forms w/ examples of complete permit applications, supporting documentation, trees on site and tree plans, etc. - instructions for accessing tree permit information |
| 3 | FY 2012 - 13 |
| 3a | <p>“Designing with trees”</p> <p>Products:</p> <ul style="list-style-type: none"> - case studies - illustrations - land divisions, developments, small sites |

Proposed Tree Manual Products and Budget

City staff have started compiling information to produce the Tree Manual. The Tree Manual will be primarily maintained on-line, with targeted printed products. Other types of products may include videos or K-12 grade curriculum. The Tree Manual would be produced in a manner that supports City sustainability and waste reduction goals, and that makes the information accessible to the public at little to no cost. The manual will be readily accessible on-line as an interactive hyperlinked document. People seeking information would be able to get answers to questions on line, or could print the pertinent sections of the manual rather than purchasing a complete document.

The estimated cost and time needed to produce the Community Tree Manual will vary depending on staffing, funding availability and the extent of community involvement. Staffing is needed to coordinate the project, including coordination with bureaus, stakeholder involvement, contract and grant management, and product development. Staffing or other professional services are needed to develop the technical products, including producing text and graphics, creating and maintaining an interactive website, video production, and translation of materials for non-English speakers.

Currently the proposed budget for the Tree Manual includes the following one-time allocations from the general fund in FY 2011-12:

- \$48,000 for 0.5 Botanical Specialist II in the Bureau of Parks and Recreation
- \$47,000 for 0.5 City Planner II in the Bureau of Development Services
- \$40,000 professional services contract(s) to assist in website development, graphics, etc.
- The Bureau of Environmental Services intends to staff the project using existing staff resources.

In order to hone the project scope and costs, and to ensure public acceptance and “ownership” of the Community Tree Manual, the next step is to engage City bureaus and community stakeholders in the project scoping process. This collaboration would help hone the scope of the Tree Manual, identify key audiences and users of the products, identify potential partnership and funding opportunities.

SINGLE POINT OF CONTACT AND 24-HOUR TREE HOTLINE PILOT PROJECT

Overview

To complement the adoption of the new, consolidated tree code (Title 11) and updates to the Zoning Code (Title 33), the project recommendations include the establishment of a

single point of contact to field public inquiries, answer basic questions, and direct people to the appropriate City program staff, for various tree related regulations and procedures. This position will also help administer tree permits, including providing information to applicants, initial permit screening and logging into the permit tracking system, and reviewing applications for completeness. This position may be authorized to issue Type A permits or pruning permits where documentation from a qualified professional is included with the application.

Given these important functions, the single point of contact position will serve as a bridge between Urban Forestry and Development Services for customers and the public, to seamlessly integrate tree requirements for both development and non-development situations and negate the need to navigate through two separate bureaus to obtain tree information. Since a majority of inquiries will be coming in via the phone and the new tree website, the physical location of the staff fulfilling the screening function is not critical. Currently an Office Support Specialist II (OSSII) at Urban Forestry field public inquiries determines if they need to talk to BDS or Urban Forestry staff. The proposal is to add a Botanic Specialist I to work closely with the OSSII at Urban Forestry staff at Delta Park to answer the more complicated and difficult questions, help develop informational materials, and assist in tree permit research and administration.

In addition, the proposal includes establishing a 24-hour hotline to field questions and reports of tree cutting after normal City business hours and on weekends. Tree cutting after normal business hours and on weekends was a key concern outlined in the Southwest Tree Committee report, and was also raised during Citywide Parks Team meetings and other forums.

The Citywide Tree Project Stakeholder Discussion Group strongly supported establishing the single point of contact to assist the public by connecting them with the right bureau and expertise for their questions. Strong support was also voiced for the 24-hour hotline to improve customer service, help prevent inadvertent or intentional tree cutting violations, and to provide information during non-business hours. The Inter-bureau Project Team worked together to develop the following proposal and cost estimates.

OBJECTIVES

- The Single Point of Contact (SPoC) will be readily accessible to the public, providing prompt responses to questions on the full range of City tree programs. The SPoC will be well versed in City programs and regulations various tree-related permitting issues. The SPoC will have the ability to refer citizens to tree care and permit related information.

- The 24-Hour Tree Hotline pilot project will utilize the Bureau of Environmental Services' 24-hour Spill-Response line to facilitate processing of citizen complaints, confirm existence of a permit for a subject property, and collect information at the site when active tree cutting may be in violation of City regulations. Public awareness about the hotline after hours staff response should help deter egregious illegal tree cutting activities. It should be noted that the effectiveness of the tree hotline will likely depend on the establishment of the standardized tree removal permit system and upgrade of the tree permit information into TRACS.

These two services in combination will achieve the following benefits:

- Coordinated cross-referral with existing after hours phone lines and services
- Increased efficiency of City staff by utilizing automated telephone routing technology to help direct citizens to the appropriate City program.
- Improved customer service by providing automated responses acknowledging submittal of an inquiry. Automated responses may be programmed to be multi-lingual as well to reach a wider audience. Standard operating procedures may be later developed to establish timelines to respond to these inquiries.
- Enhanced routing of calls to the responsible bureau and program. Urban Forestry would be the entry point for questions about trees and tree permit requirements when no development is occurring, while BDS would be the entry point for tree requirements during development.
- Efficient technical and administrative support to ensure that tree permits are processed consistently and in a timely manner, and to support and facilitate the work conducted by City tree inspectors.
- Enhanced data and evidence collection on after-hours illegal cutting.
- Increased opportunities to raise public awareness of trees in neighborhoods, to deter violations, and to educate citizens about how they can access tree permitting information.

Portals - Tree Phone Line and Website

Tree Telephone Contact Line. A telephone contact line will be established provide an entry point for public inquiries and tree complaints. During normal work day hours, the single point of contact will field questions relating to tree programs, or route calls and emails to appropriate bureaus. This will be a live response. The single point of contact will be available by phone, email, or in person. Permit applications can be picked up at either the DSC or Delta Park Urban Forestry office,

and returned by mail or in person to Delta Park or by email. It is also envisioned that permits may one day be applied for online.

At the conclusion of each workday, the daytime telephone line would shift to “after hours mode”. The system could route calls by using a touchtone menu operating system, for example the system could route callers as follows:

- For emergencies “hang up and dial 911.”
- For trees obstructing or threatening to fall into the street, “press 1”. The caller would be routed to the existing Bureau of Parks and Recreation Urban Forestry response crews called out by Stanton Yard.
- Callers concerned about possible illegal tree removal currently taking place, “press 2,” to be routed to an after hours voicemail message.

The caller could leave a detailed message including the site address, whether the tree is on private property or in the planting strip or other public property, the type of tree removal activity, and questions/concerns. Callers would also be asked to leave their name and contact number so that a staff person can return the call “within the next 30 to 60 minutes.”

For the duration of the pilot project, these after-hours calls will be automatically routed to the existing Bureau of Environmental Services (BES) Spill Response Hotline, 823-7180. BES staff would verify through the City’s permit tracking system whether a tree removal permit has been issued or if a Tree Plan has been approved as part of a development proposal.

If there is no permit on record and there is a reasonable chance of stopping the tree cutting, staff could conduct a site visit to inquire whether the responsible party had the proper permits or to collect documentation of the potentially illegal cutting (e.g., photos). If there is not a reasonable chance of stopping the illegal tree cutting, the caller would leave information for subsequent follow up. All confirmed un-permitted or otherwise illegal tree cutting activities would be routed to Urban Forestry or BDS staff for enforcement.

Callers inquiring about general permit requirements or other general tree questions could automatically obtain additional information regarding the permit program and office hours would be played, and the caller could leave a message, which would be returned during the next 24 to 48 hours.

Tree Website

In addition to the telephone line portal, the bureaus plan to create a new City website specifically for trees. The website would provide the following types of functions:

- Access for the public to apply online for a tree permit (rather than making a trip to Delta Park or BDS)
- Prompts to help users determine which permits are needed
- Phone numbers to call with questions during and after normal business hours
- Links to BDS brochures regarding the tree regulations
- Resources and links to the community tree manual and information to learn more about trees and tree care, how to preserve trees through the development process, selecting the right tree for the right location, the value of trees, etc.

Program Monitoring

The 24-Hour Tree Hotline pilot project will last one to two years. During this period staff will monitor activity, evaluate the demand for the service, and determine if the program should be continued, modified or terminated. The following information should be collected and assessed:

- Number of complaint calls, number of calls resulting in an enforcement case, and number of site visits made to address after hours illegal tree cutting.
- Effectiveness of technology used to route and process different tree-related situations.
- Satisfaction of callers using the Single Point of Contact and automated phone system.
- Additional resources needed to support continuing these customer services, especially after-hours efforts.

Costs

- Single Point of Contact – This position would be staffed by a Botanical Specialist I, Forestry Specialty at 1 FTE. BDS and Parks will further develop the job description in preparation for the fiscal year 2012-13 budget process. The ongoing cost range for this position at the top of the payscale and with benefits would be approximately \$90,000.

- Phone Tree System Install – BTS estimates that this request is within the existing calling system. Assume \$1,000 for any incidental line costs and up front work.
- After Hours Response – Assume 3 after hours calls a week, on-call fees already being paid by BES, and ½ hour of research per tree call. Assume every 4th call needs a site visit which takes 2 hours. Assume overtime rate 1.5 at the top of the Environmental Tech II wage rate (\$30.72x 1.5 = \$46.08) and 15% overhead.

| | |
|--------------------------------------|----------------|
| 156 calls x ½ hour x \$46.08 = | \$3,594 |
| 39 site visits x 3 hours x \$46.08 = | \$5,391 |
| Overhead = | <u>\$1,348</u> |
| TOTAL | \$10,333 |

PERMIT TRACKING SYSTEM & PUBLIC ACCESS TO PERMIT INFORMATION

Overview

The City currently maintains a permit tracking software system (TRACS) that was established for development and land use-related case activity. This system has since been expanded to track public works permits, property nuisance abatement, and more recently Urban Forestry’s tree permits.

The current tree permit tracking system has been designed primarily to respond to City and Street tree permit activity, not to track permits for trees on private property. Due to budget limitations the current system is not set up to process fees or to involve other bureau reviewers.

The proposal is to upgrade the City’s permit tracking system to support the City tree permit system as proposed by the Citywide Tree Project before the updated tree permit regulations go into effect. Updating the permit tracking system will require revising forms and letters to reflect new code citations and requirements. Type A permits, Type B permits and Programmatic Permits will need to be incorporated into the types of Urban Forestry permits that TRACS handles. Additional information fields will help streamline the permit reviews and make reporting more meaningful. The system will also need a field so that reviewers can confirm that the proposed tree removal will not violate any zoning requirements or land use conditions.

In addition to process and reporting efficiencies gained, the Permit Tracking system allows posting of information online at PortlandMaps. Applicants, neighbors, and others can obtain information on the status of permit applications or enforcement actions in the area. This tool will help the City investigate complaints as well. Future improvements to PortlandMaps may even allow the system to notify individuals when

tree permits are applied for in their neighborhood. At present the tree permit system is designed for internal city use, making it difficult for the public to access the information. The system needs to be set up to process permit fees, and to allow the public to access information on the status and scope of tree permit applications via PortlandMaps

OBJECTIVES

- The proposed upgrades to the Permit Tracking system will coordinate and speed tree permit reviews, enable faster payment processing, allow payment by cash, check, or credit card.
- Make the permit system more transparent and accessible to permit applicants and the public. Applicants will be able to obtain real-time information on their application status. Interested parties can research tree-related activity in their neighborhoods, information on posted public notice of pending tree removals, and confirm that permits were obtained before calling in a complaint.
- Changes to the tree permit system will enable remote access to this information which is essential for the after-hours tree hotline to function.
- Provide the ability to track and analyze trends in tree removal and replacement citywide.

PROPOSAL

The Bureau of Development Services recently received City Council approval to convert TRACS to a new permitting software system (Accela). The conversion is expected to take two years or longer to complete. While tree permit tracking system improvements could potentially be integrated into the system-wide conversion to Accela, the new system might not be ready before the Title 11 regulations become effective.

To avoid this problem, the proposal is to contract for services to complete the necessary improvements to TRACS during FY 2011-12 to ensure that the system is ready by the time the new regulations go into effect. This upfront investment should offset costs to the Accela conversion project by readying the TRACS Tree Permits for the conversion as opposed to trying to integrate these system improvements concurrent with the conversion process.

Program Monitoring

With the permit tracking system the City can track:

- Number of permits
- Number of enforcement cases

- Number and size of trees removed
- Type of tree removed – evergreen vs. deciduous
- Number of mitigation inches planted
- Number of mitigation inches paid in lieu of planting
- Number of appeals

Costs

- The cost to upgrade TRACS for Tree Permits will depend on the amount of time required to program and test the changes to the system. Initial Bureau of Technology (BTS) Services staff believe that the following estimates are conservative based on their familiarity with TRACS programming for other types of permits. Since BTS will be largely occupied with the Accela conversion, this work will need to be contracted to a qualified service provider.

Assume 320 hours at \$100 per hour.

$$320 \text{ hours} \times \$100 = \$32,000$$

- The costs for adding Tree Permit information to PortlandMaps should be negligible and can be addressed as part of future work assignments with the Accela conversion project. No additional cost is assigned to this task.

NEIGHBORHOOD TREE PLAN

Introduction

The Bureau of Parks and Recreation Urban Forestry Program is interested in advancing the concept of a Neighborhood Tree Plan. The Neighborhood Tree Plan concept was also supported by the Citywide Tree Project Stakeholder Group.

The Neighborhood Tree Plan would provide a mechanism for the City and community to work as partners in setting priorities for trees in specific neighborhoods or areas of the city. The plan could be entirely non-regulatory, providing a “vision,” goals and set of priority projects and timelines. The Neighborhood Tree Plan could also potentially be “endorsed” by the City Council, providing a tool to use in seeking public or private funding for implementation.

The Neighborhood Tree Plan could also serve as a kind of “master plan,” like the current Natural Resource Management Plans, with the purpose of to allowing tree related activities or projects with lesser or more streamlined permitting requirements.



Tree planting

Benefits

The Neighborhood Tree Plan offers unique benefits that cannot be obtained through individual tree permits and site-by-site tree preservation, maintenance and replacement. Benefits include the ability to:

- Establish tree preservation and planting goals for large sites or specific areas or neighborhoods
- Promote protection and enhancement of tree groves or corridors spanning larger areas or multiple properties
- Integrate objectives and activities for trees on public and private property, within and outside environmental resource areas (e.g., environmental and greenway overlay zones), and in development and non-development situations
- Focus tree planting on tree-deficient areas and community spaces (e.g., schools)
- Improve diversity of tree ages and species, and foster removal and replacement of nuisance trees, over time
- Generate opportunities to address other goals for stormwater management, traffic calming, solar access for energy systems and community or private gardens, integration of fruit and nut trees, etc.
- Opportunity to reduce conflicts between utility location and public works projects, and trees

- Leveraging funds and provide economies of scale (e.g., community tree planting projects)
- Fostering partnerships among neighbors

If the Neighborhood Tree Plan were adopted like a master plan, benefits might include:

- Offering ‘tree credits’ or ‘advance mitigation credits’ for proactive tree planting to increase ecosystem services
- Reducing the public and private costs associated with administering individual tree removal permits

Questions

While staff and stakeholders support this approach, the following questions should be considered:

- How should the Neighborhood Tree Plan be administered, including tracking tree preservation, removal, planting and maintenance activities over time?
- How would the Neighborhood Tree Plan be integrated with regulations pertaining to vegetation removal and planting in resource overlay zones or plan districts where tree removal and/or planting is governed by the Zoning Code?
- How would the Neighborhood Tree Plan interface with rules pertaining to trees in development and non-development situations?
- Which persons or entities would be responsible for implementing Neighborhood Tree Plans?
- What kind of agreements might be helpful, given that the plan would address multiple properties and a mix of public and privately owned land?
- What are some approaches to develop Neighborhood Tree Plans? Should they be endorsed by City Council? Used as a framework to allow future projects without permits or with more streamlined permitting?

Demonstration Projects

It is recommended that the City continue to pursue funding for Neighborhood Tree Plans. It would be beneficial to develop one or two demonstration projects, and in the process develop a general approach and protocol that could be used in future projects. The protocol could be included as a section in the City’s Community Tree Manual.

The Urban Forestry Program would collaborate with other bureaus and Neighborhood Coalitions to identify one or more potential “demonstration neighborhoods.” It might be

possible to involve students, such as students in planning or landscape architecture fields, in partnership with the City and a 'demonstration neighborhood.'

The demonstration project would involve:

- Developing tree related goals and priorities for the neighborhood, including priorities for preservation or enhancement of trees, groves, and corridors, canopy quantity, quality, and distribution, tree age and species diversity, stormwater management, food source, habitat, solar access or other objectives as appropriate
- Generating an implementation plan, and identifying one or more entities that would be individually or collectively responsible for monitoring and tracking plan implementation
- Identifying allowed and required tree removal, planting and maintenance activities, clearly describing how these allowances and requirements would supersede and/or interface with other relevant regulations for development and non-development situations, and on public and private property

Funding

It is recommended that the City further develop the project scopes and explore potential grant or other funding options to carry them out. The City should seek potential partners including local academic institutions and public utilities to participate in the projects.

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Exhibit D

(Excerpt from Volume 1 - Recommended Draft Report to City Council)

Tree Canopy Benefits, Financial Impacts and Budget Proposal

The previous sections of this chapter present the Citywide Tree Project proposal to update, refine, and strengthen existing City tree regulations and related programs and customer service activities.

This section presents the estimated tree canopy benefits and costs to implement the project, and the current budget proposal. Additional information about the financial impacts of the project is provided in the Financial Impact Statement (exhibit to the ordinances)

Tree Canopy Benefits

Introduction

As described in previous chapters, implementing the Citywide Tree Project Recommended Draft proposal will enhance the quantity and the quality of Portland's trees and associated canopy, and helps ensure that current and future tree canopy is distributed and sustained throughout the city.

Specifically, new Title 11 Tree Preservation and Tree Density Standards will encourage preservation of large healthy trees through new development standards and the updated tree permit system. Preserving existing trees will contribute to the management of this important City asset and help protect and reinforce City and community investments in tree planting. Title 11 will also ensure that a baseline amount of trees is maintained through preservation or planting on development sites.

Title 33, Planning and Zoning updates will now emphasize preserving healthy, high quality trees, native trees, and tree groves, and preserving a minimum amount of trees on land division sites. Title 33 amendments will also prompt consideration of tree preservation in the context of Design Reviews and certain Conditional Uses, where appropriate. Title 33 amendments will also ensure that tree protection and tree replacement are addressed more consistently in existing environmental resource overlay zones and specified plan districts.

In non-development situations, the standardized tree permit system will continue to encourage retention of large healthy trees, while providing for more consistent tree replacement across the city. The new prohibition on planting invasive tree species on City property and rights-of-way will support City and community investments in managing invasive plants and adds consistency with existing prohibitions on planting these trees in required landscaping or natural resource areas.

Canopy estimating approaches are described below for the following project recommendations:

- Standardized tree permit system for trees on private property
- Tree preservation and tree density standards applied to development permits
- Trees and land use reviews
- Trees replacement in environmental zone transition and resource areas

In some instances the estimates are for acres of tree canopy preserved *or* tree canopy planted to replace or mitigate for trees removed or tree standards not met. In these situations, tree preservation and tree planting are inversely correlated. One can see that the future canopy of trees planted will be greater than the area of canopy generated from trees preserved today. This reflects the proposal to give “extra credit” for preserving existing healthy trees, and to require more than a 1:1 tree replacement ratio. This account for the loss of that asset and the time needed for new trees to provide similar benefits to larger trees. Staff has taken an average of preservation and planting to come up with an overall number to use in project discussions.

Like estimates for the financial impacts of the Citywide Tree Project, the tree canopy estimates have been refined as the project proposal has evolved through the Planning Commission and Urban Forestry Commission hearings process.

Approach

The following describes the general methodologies used to estimate incremental increases in tree canopy associated with the different components of the Citywide Tree Project. Changes in tree canopy would occur due to 1) increased preservation of existing trees, and 2) generation of future canopy through increased tree planting to replace existing trees or meet other requirements.

The scenarios developed to estimate the tree canopy generated each year are intended to be both plausible and conservative, to avoid over-estimating the projections. Therefore, the actual incremental tree canopy increases may be greater than the estimates. Relevant assumptions are also consistent with the assumptions used to evaluate potential financial impacts of the proposal (e.g., future development permit activity).

Standardized Permit System for Trees on Private Property (Absent Development)

| Permit System | Acres Preserved | Future Acres Planted |
|--------------------------|-----------------|----------------------|
| Single Family Lots | | 3.4 |
| Currently Regulated Lots | 0.35 | 3.59 |

Single Family Lots Eligible for the Homeowner Permit

The standardized permit system will apply to trees on all lots in the city, including single family lots that are currently exempt from tree permit requirements. As a result, the permit system will address trees on 104,000 more lots in the city, or nearly double

the lots addressed by current system. The additional lots contain ~ 37 percent of the total tree canopy in the city.

Currently the public is relatively unaware of the City's permit requirements for trees on private property. Only about 120 permits per year are filed with the City, while several thousand permits per year are filed for activities related to street trees. If private tree permit applications increased by 2 to 4 times given the additional lots and proposed "call before you cut" outreach campaign, the City would process about 500 permits per year, or 380 more permits than the 120 permits currently processed. (The City of Lake Oswego processes roughly 750 tree permits per year.)

The standardized permit system will establish a streamlined permit for homeowners, requiring replacement of any tree that is least 20 inches in diameter with another tree. If half of the total permit applications were for trees on these homeowner lots, the updated permit system would require replacement of 250 additional trees per year. If these replacement trees were, on average, medium canopy type trees providing about 600 s.f. of canopy at maturity, this would generate 3.4 additional acres of canopy in the future.

$$(250 \text{ trees planted/year} \times 600 \text{ s.f./tree}) / 43,560 \text{ s.f. per acre} \\ = 3.4 \text{ future canopy acres planted per year}$$

Currently Regulated Lots

The standardized permit system will streamline current requirements by requiring 1:1 tree replacement for dead, dying and dangerous trees, and nuisance species trees, and up to 4 healthy trees per year between 12 inches and 20 inches in diameter. The City will continue to require up to inch-for-inch replacement for trees larger than 20 inches in diameter and requests to remove more than 4 healthy trees at least 12 inches in diameter.

UF staff reports that currently ~80 percent of the tree removal permit applications are for trees that are dead, dying or dangerous (DDD). If half of the total permit applications were for trees on the currently regulated lots, and 80% of those applications were for removal of DDD trees, the updated permit system would require replacement of 200 unhealthy trees per year. If these replacement trees were, on average, medium canopy type trees providing about 600 s.f. of canopy at maturity, this would generate 2.75 additional acres of canopy in the future.

$$(200 \text{ trees planted/year} \times 600 \text{ s.f. per tree}) / 43,560 \text{ s.f./acre} \\ = 2.75 \text{ future canopy acres planted/year}$$

For the remaining 50 healthy trees, we assume that most of these trees are large trees that are no longer wanted. If half (25) of the trees are less than 20 inches in diameter and qualify for the 1:1 tree replacement, this would generate an additional 0.34 acres.

$$(25 \text{ trees planted/year} \times 600 \text{ s.f. per tree}) / 43,560 \text{ s.f./acre} \\ = 0.34 \text{ future acres planted/year}$$

If the other half (25) of the remaining healthy trees are at least 20 inches in diameter, the City would require somewhere between one replacement tree and an inch-to-inch

replacement. Based on City experience the inch-for-inch replacement requirement often acts as an effective deterrent to tree removal. If City required half of the 25 trees to be replaced with 3 trees (12x3=36 replacement trees), and half to be replaced inch for inch which in effect deterred their removal, and the canopy of those existing trees was on average 1,200 s.f., the canopy effect would be:

$$(36 \text{ trees planted/year} \times 600 \text{ s.f. per tree}) / 43,560 \text{ s.f./acre} \\ = 0.5 \text{ future acres planted/year}$$

$$(13 \text{ trees preserved/year} \times 1,200 \text{ s.f. per tree}) / 43,560 \text{ s.f./acre} \\ = 0.35 \text{ canopy acres preserved/year}$$

Tree Preservation and Density Standards (Applied Through Building Permits)

| Development | Acres Preserved | Future Acres Planted |
|--------------------|------------------------|-----------------------------|
| Tree Preservation | 62 | |
| Tree Density | | 121 |

New Title 11 Tree Preservation Standards will apply to all development permits where site disturbance will occur and trees 12 or more inches in diameter are present (with some exceptions). Consistent with assumptions used to estimate fiscal impact these standards will address approximately 2,250 permits per year. If on average 1 large healthy tree were preserved on these sites, an additional 2,250 trees would be preserved. If the average canopy of an established mature tree was 1,200 square feet, the proposed standards would preserve an additional 62 acres of canopy per year.

$$(2,250 \text{ sites/year} \times 1,200 \text{ s.f. preserved per tree}) / 43,560 \text{ s.f./acre} = 62 \text{ acres preserved}$$

It was projected for fiscal impact assessment the new Tree Density Standards will apply to 4,400 development permits per year. The standards will vary by development type. Across the development types (excluding open space zones), the tree density standards are projected to establish and maintain canopy coverage for distinct urban land elements (ULE’s).

One medium canopy tree will generally be required for each 500 square feet of site area not occupied by buildings. If on average, each of the 4400 permits where tree density standards are applied results in planting two medium canopy trees, the net result would be 121 acres of future canopy.

$$(4400 \text{ permits/year} \times 2 \text{ trees planted} \times 600 \text{ s.f. per tree}) / 43,560 \text{ s.f./acre} \\ = 121 \text{ future acres planted/year}$$

Tree Preservation and Land Use Reviews

| Land Use Reviews | Acres Preserved | Future Acres Planted |
|--|-----------------|----------------------|
| Tree Preservation Criteria | 5 | |
| <ul style="list-style-type: none"> Plus improved quality preservation on 200 sites per year | | |

The proposed new land division criteria should significantly improve the quality and quantity of tree preservation on more than 165 sites per year. The focus will be on preserving large healthy trees, tree groves and native trees. Additionally, trees on property lines will now be counted toward meeting preservation requirements.

The proposal includes establishing new tree preservation considerations for certain conditional use/master plan and design reviews. It is estimated that this would provide opportunities to preserve trees during an additional 35 reviews per year.

If 2 additional trees were preserved on half of the land division sites (2 trees x 0.5 x 165 sites =165 trees), and 1 additional tree was preserved on half of the conditional use and design review cases (1 tree x 0.5 x 35 sites =17 trees), an additional 182 trees would be preserved each year. Preserving these trees would also help applicants meet the preservation and density standards at time of building permit. If the average canopy of an established mature tree was 1200 square feet, this would preserve an additional 5 acres of canopy per year.

$$(182 \text{ trees preserved/year} \times 1,200 \text{ s.f. per tree}) / 43,560 \text{ s.f./acre} = 5 \text{ acres tree canopy preserved/year}$$

Tree Replacement in Environmental Zones

| Environmental Zones | Acres Preserved | Future Acres Planted |
|--|-----------------|----------------------|
| Replacement requirements | | 4.4 |
| <ul style="list-style-type: none"> Plus conversion of nuisance trees to native tree species | | |

The proposal will clarify that trees in environmental overlay zone transition areas (~1,400 acres) must be replaced with native or non-nuisance species trees. This would apply to trees 6 inches or more in diameter, in both development and non-development situations. Currently these trees are not required to be replaced so the potential impact on tree canopy could be substantial over time.

Assuming only 1 tree per 10 acres of transition area received a permit each year, with requirements to replace with another tree, and the replacement trees were medium canopy type trees (on average), the additional replacement would generate almost 2 more acres of future canopy annually.

$$(1400 \text{ acres}) \times (1 \text{ tree planted/year/ per } 10 \text{ acres}) = 140 \text{ trees planted/year}$$

$$(140 \text{ trees planted/year} \times 600 \text{ s.f. per tree}) / 43,560 \text{ s.f. /acre} = 1.9 \text{ acres future canopy planted/year}$$

Moreover, the proposal clarifies that in the resource areas of environmental zones, replacement trees are required for non-native trees, as well as dead, dying and dangerous trees, and trees located adjacent to structures. These trees are presently exempt from replacement requirements. Replacement trees planted in the resource areas are required to be native species.

Assuming only 1 tree per 100 acres of resource area received a permit each year, with requirements to replace with another tree, and the replacement trees were medium canopy type trees (on average), the additional replacement would generate almost 2.5 more acres of future canopy annually.

$$\begin{aligned}
 (18,000 \text{ acres}) \times (1 \text{ tree replaced per } 100 \text{ acres}) &= 180 \text{ trees replaced/year} \\
 (180 \text{ trees planted/year} \times 600 \text{ s.f. per tree}) / 43,560 \text{ s.f. /acre} \\
 &= 2.5 \text{ acres future canopy planted/year}
 \end{aligned}$$

Summary of Estimated Canopy Benefits from Tree Project Proposal

| | Acres Preserved | Future Acres Planted |
|---------------------|------------------------|-----------------------------|
| Tree Permits | 0.35 | 7 |
| Development | 62 | 60-121* |
| Land Use Reviews | 5 | |
| Environmental Zones | | 4.4 |
| TOTAL | 67.35 | 72.4 - 132.4 |

* The City’s current landscaping standards also generate additional tree canopy, however the Tree Density Standards provide assurances that baseline tree capacity is maintained even if landscape standards do not apply or are modified or waived. Trees planted to meet Tree Density Standards may also be used to meet Zoning Code landscaping standards so these rules are complementary and reinforcing. If it is assumed that only half of the additional tree canopy is attributable solely to the Tree Project proposal then the total annual net increase in tree canopy for development would be about 60 acres.

Comparing Tree Canopy Generated By the Tree Project Proposal with Canopy Generated By Tree Planting Alone

| | Acres Preserved | Future Acres Planted |
|-----------------------------|------------------------|-----------------------------|
| Tree Project Proposal (net) | 67.35 | 72.4 |
| City Tree Planting Alone | | 12.3 |

During the Planning Commission and Urban Forestry Commission hearings process stakeholders asked how much tree canopy benefit would be generated if the City invested the equivalent of the project implementation costs solely on planting trees.

The ongoing implementation costs of the project proposal are estimated to be \$535,000 to support the staffing necessary put these programs into action.

According to Urban Forestry staff, the per tree cost of planting and establishing a 2 inch tree is estimated to be \$600:

| | | |
|----------------------|---|--------------|
| Tree cost | each/incl. acquisition and delivery | \$175 |
| Volunteer planting | 1 hr coordinator | \$60 |
| <u>Establishment</u> | <u>20 visits X .25 hr for 2 seasons</u> | <u>\$375</u> |
| | Total | \$600 |

By applying the ongoing implementation costs to plant trees instead of administering the proposed regulations, the City could plant approximately 892 trees per year. Assuming the trees were medium canopy type trees (on average), this planting effort would generate approximately 12.3 acres of future canopy annually. However, no trees would be preserved through this approach.

$$(\$535,000 / \$600 \text{ per tree}) = 892 \text{ trees}$$

$$(892 \text{ trees planted/year} \times 600 \text{ s.f. per tree}) / 43,560 \text{ s.f./acre} \\ = 12.3 \text{ acres of future canopy planted/year}$$

Considering that the project proposal would generate a total of almost 200 acres of current and future tree canopy, the proposed regulatory programs would achieve over 16 times the amount of tree canopy than City planting efforts alone.

$$(199.75 \text{ acres gross} / 12.3 \text{ acres}) = 16.24 \text{ times more canopy}$$

Accounting for the fact that existing landscaping requirements of the Zoning Code also generate additional tree canopy that could be reflected in the acres planted through development, the net tree canopy that is solely attributable to this proposal remains well over 130 acres per year and more than 10 times the canopy that would be generated than had the City invested an amount equivalent to the project costs to plant trees only. Moreover, City tree plantings tend to be public property, while the proposal will foster equitable distribution of trees on public and private land throughout the city.

$$(139.75 \text{ acres net} / 12.3 \text{ acres}) = 11.36 \text{ times more canopy}$$

Costs and Budget Proposal

Introduction

Although the Citywide Tree Project proposal is intended to streamline and standardize current City programs the proposal also increases the level of service provided by the City and will require a net additional investment to achieve desired benefits.

Together the City bureaus estimated the cost to implement the Tree Project, including changes in workload, staffing, equipment, and professional services. Staff also identified likely funding sources for each element of the proposal.

Approach

Staff assessed the financial impact for:

- Tree Permits in Non-Development Situations
- Trees in Development Situations and Land Use Reviews
- Customer Service and Community Education Projects

First staff itemized the main tasks for these program areas. Additional tasks and/or time associated with the tasks were noted. The additional time was then multiplied by the estimated number of permits or cases to arrive at a total additional time and associated staffing needs per task. FTE (Full Time Equivalents) were translated into salary using appropriate job classifications. Benefits were included at a rate of 40% of salary. Staff was advised that the level of recommended staffing increases should not trigger additional overhead, however, vehicles and technical services costs were accounted for separately.

Land use review, building permit, and tree permit activity assumptions were generally based on historical data provided by BDS and Urban Forestry, and some assumptions as to how this activity could change based on proposed code updates.

The estimates represent the project incremental changes in time spent on tasks affected by the proposal - not the full time spent on that task. For example, BDS land use review staff currently spend time evaluating tree preservation standards and writing findings. An incremental increase in time is estimated only for staff to apply new and updated tree preservation criteria. . Any current deficiencies in staffing are not captured or addressed by this analysis.

Trees in Non-Development Situations

The proposal includes recommendations to update the City's tree permit system for City, Street and Private trees when no development is occurring. The proposal will streamline the system overall by creating the Type A and Type B permits. The addition of a minimum 3 inch diameter threshold for permitting City and Street Trees will also streamline the system. Other recommendations are not expected to increase permit system staffing costs for City and Street Trees.

For private tree removal permits the proposal to extend City permitting authority to all properties in the city, including currently exempt single family lots, will increase staffing needs.

The staffing estimates for the proposed private tree removal permit program reflect an assumed number of permits each year. A range of potential permitting activity was considered to account for uncertainty. The staff and budget estimates summarized below reflect the high end of the range to ensure that fiscal impacts are not underestimated. An increase in permitting activity is expected as the tree removal permit program will apply to more properties. Public outreach is proposed to occur before and after updated requirements become effective, which will increase awareness of the permit program. The staffing estimates do not reflect program efficiencies and economies of scale that are expected as the number of tree permit applications increase and procedures are become routine.

Currently, this City's tree permit system is paid for with general fund dollars. The \$35 application fee is charged does not cover the City's to administer the permit, inspect trees, deal with appeals, etc. The proposal is to continue charging a nominal fee for the permit to encourage compliance so the program would not be fee-supported.

Trees in Development Situations

The proposal includes a number of recommendations to better address trees in development situations. Additional staff time will be needed to review, inspect and enforce the proposed standards and criteria related to trees. The proposal will also expand the role of Urban Forestry to provide technical assistance.

Land Use Reviews and Private Development Permits

Staff initially used an annual average case load based on the years 2000 to 2008 for land use reviews and 2004 to 2009 for development permit activity. The data from these higher development years were used to ensure that the fiscal impact is not underestimated if and when development activity increases. Staff also used caseloads from 2009 to 2010 to estimate changes staff needs and costs during a period of lower development activity. The bureaus estimated the percentage of cases that would be affected by the proposal and additional time spent on individual tasks.

Additional costs are associated with increased Urban Forestry staff review and consultation and increased BDS staff time to apply updated standards and criteria related to trees, and to inspect for compliance with tree-related preservation, planting and protection requirements.

These activities will be funded through modest increases in land use review and development fees. Potential fee increases were estimated by applying the cost of the program across affected permit/case types. The projected fees include staff salaries, benefits and overhead. Some fees could be pro-rated based on project value or procedure type so that simpler projects pay a lower fee and more complicated projects pay a higher fee. Preliminary estimates of development fees

show ranges between \$50 and \$60 for building permits. For land use reviews, fees could range from \$60 to \$70, to several hundred dollars, depending on how they are applied across cases. BDS and Parks will propose specific fees for City Council adoption.

Capital Improvement Projects and Public Works

The Citywide Tree Project proposal standardizes current infrastructure bureau practice for involving Urban Forestry when public projects are likely to affect trees. Staff estimated the costs for more routine and frequent coordination between Urban Forestry and the infrastructure bureaus on more projects. Costs were also estimated for additional surveying and CADD time to identify trees within and adjacent to the project area on plan sheets. When considered in relation to the overall budget for capital projects, the increase is expected to be minor.

Infrastructure bureau staff also noted that the proposal could result in increased construction costs for City projects in order to avoid impacting trees. These potential costs should be acknowledged, but because they would not be routine and would be very difficult to anticipate or quantify, they have not been estimated in this fiscal impact assessment.

Required mitigation for tree removal could also increase the cost of some CIP projects. However, mitigation requirements are generally equal to or less than current requirements. The proposal will also allow City projects to plant replacement trees on another site in the same watershed, rather than requiring payments for required mitigation. This flexibility should make it possible for most City projects to mitigate without significant cost increases.

Customer Service and Community Education

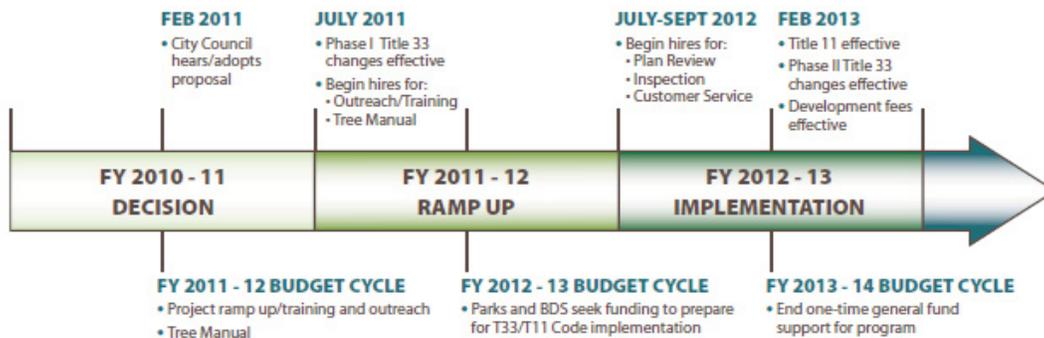
The bureaus worked together to generate projected costs and staffing for customer service improvements as described in previous report sections.

To summarize, the primary implementers of the Tree Project proposal, the Bureau of Development Services (BDS) and the Urban Forestry Division of Portland Parks and Recreation will need additional staff resources to administer and enforce the new tree regulations and provide a single point of contact for the public. There are also additional one-time costs for staffing and services to produce the tree manual, upgrade the TRACS permitting system, pilot a 24 hour Tree Hotline, and pay for new permit review and inspection staff until sufficient development fee revenue has accrued to allow the BDS to shift to fee-based funding. Other infrastructure bureaus (Water, BES and PBOT) will also experience relatively minor cost increases to address trees more systematically in conjunction with City capital improvement and public works projects.

During the Planning Commission and Urban Forestry Commission hearings the Citywide Tree Project proposal was revised to reduce complexity and implementation costs. Ongoing costs were reduced by 43 percent, and total costs by 33 percent. For example the commissions approved the use of spot-check approach for tree-related inspections to reduce costs, at least for the near term.

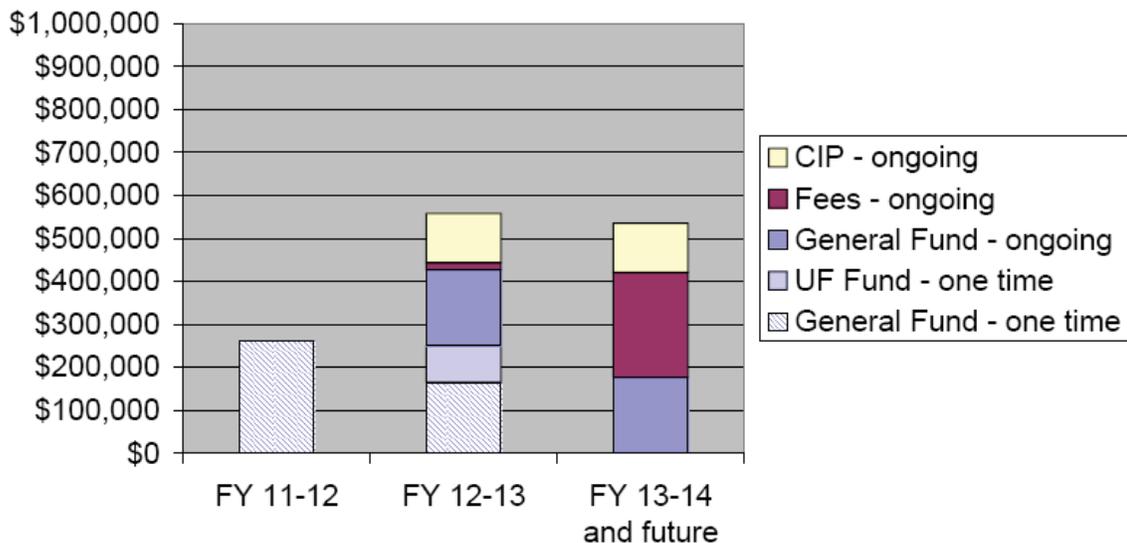
In addition, the commissions approved a phased project implantation strategy and funding strategy. The phased approach will provide time to prepare for the new codes to go into effect, including development of informational materials for staff and the public, conducting public outreach, upgrading the TRACS tree permit tracking system, and producing the community tree manual. This approach also allows the initial start up costs to be gradually spread over a longer period, reducing the burden on annual budget.

The phased project implementation strategy is outlined below, followed by the Budget Proposal Summary Table. Note that much of the one-time funding needed for projects and ramp up activities in the first two fiscal years will end or shift to fee supported funding for ongoing program implementation.



- **Decision (winter 2011) - City Council adopts the project proposal** and implementation strategy; directs the bureaus to budget for Phase I program activities.
- **Phase I (Fiscal Year 2011-12) – “Ramp Up”, Tree Manual , Phase I T33 Improvements**
 - a. City Council approves one-time general funds for project “ramp up” activities, i.e., permit tracking system upgrades, staffing in the Bureaus of Parks and Recreation and Development Services to develop administrative procedures and information on the new development standards and tree permit requirements, and to produce the Community Tree Manual
 - b. Cost-neutral Title 33, Planning and Zoning amendments effective July 2011
- **Phase II (Fiscal Year 2012-13) - Implementation “Transition”**
 - a. City Council approves increases in development and land use review fees and allocates general fund for staff to administer Title 11, Trees and remaining Title 33, Planning and Zoning improvements, to purchase vehicles for new tree inspectors, to hire the single point of contact, and to launch 24-hour tree hotline pilot project.
 - b. In this first year of implementation, fees will need to accrue before fee supported staff can be hired. For this reason, the proposal reflects one time support of these positions through the general fund, the Urban Forestry Fund, or another alternate source. After this first year, sufficient reserves should be available to support the required staffing.
 - c. Title 11, Trees, and remaining amendments to Title 33, Planning and Zoning and other City titles are effective February 1, 2013
 - d. Code and program monitoring begins.
- **Phase III (Fiscal Year 2013-14 and future) - Ongoing Program Implementation**
 - a. One-time general fund allocations are terminated
 - b. Code and program monitoring continues

Budget Summary by Fiscal Year and Funding Source



Budget Proposal Summary Table

FY 2011 - 2012

| Program Start Up | Use of Funds | | | Total | Source of Funds | | | | |
|--|--------------|--------------------|------------|------------------|-----------------|------------------|------|-----|---------|
| | Bureau | Use | FTE | | GF - OG | time | Fees | CIP | UF Fund |
| Program Organization and Start-up | | | | | | | | | |
| PPR Functions | Parks | Botanic Spec II | 0.5 | \$48,000 | | \$48,000 | | | |
| BDS Functions | BDS | Planner II | 0.5 | \$47,000 | | \$47,000 | | | |
| TRACS upgrade - Tree permits | | | | | | | | | |
| PTE | Parks | Contract | | \$32,000 | | \$32,000 | | | |
| Tree Manual | | | | | | | | | |
| Project manager | Parks | Botanic Spec II | 0.5 | \$48,000 | | \$48,000 | | | |
| "Code Made Easy" Content | BDS | Planner II | 0.5 | \$47,000 | | | | | |
| "Watershed Services" Content | BES | Program Specialist | 0.5 | \$0 | | | | | |
| PTE, M&S | Parks | Contract | | \$40,000 | | \$40,000 | | | |
| TOTAL | | | 2.5 | \$262,000 | | \$262,000 | | | |

FY 2012 - 2013

| Year 1 of Full Program | Use of Funds | | | Total | Source of Funds | | | | |
|---|-----------------|---------------------------|------------|------------------|------------------|------------------|-----------------|------------------|-----------------|
| | Bureau | Use | FTE | | GF - OG | GF 1-time | Fees | CIP | UF Fund |
| Land Use Reviews | | | | | | | | | |
| Application Review | BDS | Planner II | 0.5 | \$0 | | | | | |
| Arborist Consultation | Parks | Tree Inspector | 0.2 | \$17,000 | | | \$17,000 | | |
| Building Permits | | | | | | | | | |
| Plan Review | BDS | Planner II | 1.0 | \$95,000 | | \$95,000 | | | |
| Building Permit Inspection | BDS | Tree Inspector | 1.0 | \$85,000 | | | | | \$85,000 |
| Capital and Public Works Projects | | | | | | | | | |
| CIP/PW Plan Preparation | Water, BOT, BES | Survey/CADD | 0.5 | \$90,000 | | | | \$90,000 | |
| CIP/PW Review/Inspection | Parks | Tree Inspector | 0.3 | \$25,000 | | | | \$25,000 | |
| Tree Permit Program | | | | | | | | | |
| Tree Permit Inspector | Parks | Tree Inspector | 1.0 | \$85,000 | \$85,000 | | | | |
| Vehicles and Equipment | | | | | | | | | |
| Single Point of Contact/Permit Assistance | | | | \$60,000 | | \$60,000 | | | |
| Delta Park Location | Parks | Botanic Spec I | 1.0 | \$91,000 | \$91,000 | | | | |
| 24 hour Hotline (pilot) | | | | | | | | | |
| Spill Response Line | BES | Overtime (existing staff) | | \$10,000 | | \$10,000 | | | |
| TOTAL | | | 5.5 | \$558,000 | \$176,000 | \$165,000 | \$17,000 | \$115,000 | \$85,000 |

FY 2013 - 2014 and future years ongoing

| On-going of Full Program | Use of Funds | | | Total | Source of Funds | | | | |
|--|-----------------|----------------|------------|------------------|------------------|------------|------------------|------------------|------------|
| | Bureau | Use | FTE | | GF - OG | GF 1-time | Fees | CIP | UF Fund |
| Land Use Reviews | | | | | | | | | |
| Application Review | BDS | Planner II | 0.5 | \$47,000 | | | \$47,000 | | |
| Arborist Consultation | Parks | Tree Inspector | 0.2 | \$17,000 | | | \$17,000 | | |
| Building Permits | | | | | | | | | |
| Plan Review | BDS | Planner II | 1.0 | \$95,000 | | | \$95,000 | | |
| Building Permit Inspection | BDS | Tree Inspector | 1.0 | \$85,000 | | | \$85,000 | | |
| Capital and Public Works Projects | | | | | | | | | |
| CIP/PW Plan Preparation | Water, BOT, BES | Survey/CADD | 0.5 | \$90,000 | | | | \$90,000 | |
| CIP/PW Review/Inspection | Parks | Tree Inspector | 0.3 | \$25,000 | | | | \$25,000 | |
| Tree Permit Program | | | | | | | | | |
| Tree Permit Inspector | Parks | Tree Inspector | 1.0 | \$85,000 | \$85,000 | | | | |
| Single Point of Contact/Permit Assistance | | | | | | | | | |
| Delta Park Location | Parks | Botanic Spec I | 1.0 | \$91,000 | \$91,000 | | | | |
| TOTAL | | | 5.5 | \$535,000 | \$176,000 | \$0 | \$244,000 | \$115,000 | \$0 |

EXHIBIT E

City of Portland, Oregon

FINANCIAL IMPACT STATEMENT For Council Action Items

(Deliver original to Financial Planning Division. Retain copy.)

| | | | |
|--------------------------------------|---|----------------------------------|---|
| 1. Name of Initiator Roberta Jortner | | 2. Telephone No. 503.823.7855 | 3. Bureau/Office/Dept. Planning & Sustainability |
| 4a. To be filed (date) | 4b. Calendar (Check One) Regular Consent 4/5ths X <input type="checkbox"/> <input type="checkbox"/> | | 5. Date Submitted to FPD Budget Analyst: |

1) Legislation Title: Citywide Tree Policy Review and Regulatory Improvement Project

City Council will be asked to accept the Recommended Draft Report to City Council, and adopt 3 ordinances.

2) Purpose of the Proposed Legislation: Create clear, consistent, cohesive regulatory framework to address trees in Portland and to protect and enhance the urban forest by:

- SUBJECT OF THIS ORDINANCE: Updating City regulations relating to the Urban Forestry Program and trees in development and non-development situations, and consolidating these regulations into a new City code title – Title 11, Trees. Title 11 contains provisions to authorize the City’s Urban Forestry Commission and Urban Forestry Program, standardizes the City’s tree permit system and enforcement procedures, establishes new tree preservation and tree density standards that apply through development permits, and establishes technical specifications and definitions. Title 11 clarifies that trees on the City’s Nuisance Plants List may not be planted on City property or rights of way.**
- TO BE ADOPTED THROUGH SEPARATE ORDINANCE:** Amendments are proposed to the existing Intergovernmental Agreement to Transfer Land Use Planning Responsibilities between the City of Portland and Multnomah County, to address the administration of tree-regulations that apply in situations requiring a development permit.
- TO BE ADOPTED THROUGH SEPARATE ORDINANCE:** Updating City land use regulations in Title 33 to improve tree preservation and tree planting in land divisions and other specified land use reviews, to encourage tree preservation through new flexible development standards, and improving consistency of tree regulations in specified overlay zones and plan districts. Amendments to the Ladd’s Addition Conservation District Guidelines are proposed to clarify that the prohibition on planting nuisance species trees applies and that the street plan guidelines will inform the selection of species to replace nuisance species street trees in the future.
- SUBJECT OF THIS ORDINANCE:** Taking actions to improve customer service and access to tree-related information including upgrading the City’s tree permit tracking system and establishing a single point of contact to assist the public, a 24-hour tree hotline pilot project, and a community tree manual.

3) Revenue:

Will this legislation generate or reduce current or future revenue coming to the City? If so, by how much? If new revenue is generated please identify the source. While intended to improve program efficiency and cost-effectiveness, this legislation does not, in itself generate or reduce current or future revenues for the City.

4) Expense:

What are the costs to the City as a result of this legislation? What is the source of funding for the expense? (Please include costs in the current fiscal year as well as costs in future years) (If the action is related to a grant or contract please include the local contribution or match required)

The estimated costs to prepare for and implement the proposed code improvements and to customer service program improvements and projects are shown in the attached 3 tables. Costs (staffing, equipment, materials and services) and recommended funding sources are shown for:

- a. FY 2011-2012 – Funding for tree permit tracking system upgrades, “ramp up” for new code, and community tree manual; phase 1 Title 33 amendments – Source: one-time general fund
- b. FY 2012-13 – Funding to implement Title 11, phase 2 Title 33 amendments, vehicle purchase, single point of contact, 24-hour hotline pilot; amendments to Ladd’s Addition Conservation District Guidelines – mix of one-time and ongoing general fund, development and land use review fees, Urban Forest fund
- c. FY 2013-14 – Funding for ongoing program activities (code administration and enforcement) – ongoing general fund, development and land use review fees

Staffing Requirements:

5) Will any positions be created, eliminated or re-classified in the current year as a result of this legislation? (If new positions are created please include whether they will be part-time, full-time, limited term or permanent positions. If the position is limited term please indicate the end of the term.) - None.

6) Will positions be created or eliminated in future years as a result of this legislation? - Positions proposed to be created in future years, and budget proposal, are shown on the attached 3 tables. The positions and cost associated with this ordinance are listed under all headings except “Land Use Reviews”.

Complete the following section if you are accepting and appropriating a grant via ordinance. This section should only be completed if you are adjusting total appropriations, which currently only applies to grant ordinances.

7) Change in Appropriations (If the accompanying ordinance amends the budget, please reflect the dollar amount to be appropriated by this legislation. If the appropriation includes an interagency agreement with another bureau, please include the partner bureau budget adjustments in the table as well. Include the appropriate cost elements that are to be loaded by the Grants Office and/or Financial Planning. Use additional space if needed.)

| Fund | Fund Center | Commitment Item | Functional Area | Funded Program | Grant | Sponsored Program | Amount |
|------|-------------|-----------------|-----------------|----------------|-------|-------------------|--------|
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |

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Citywide Tree Policy Review and Regulatory Improvement Budget Proposal

FY 2011 - 2012

| Program Start Up | Use of Funds | | | Total | Source of Funds | | | | |
|--|--------------|--------------------|------------|------------------|-----------------|------------------|------|-----|---------|
| | Bureau | Use | FTE | | GF - OG | time | Fees | CIP | UF Fund |
| Program Organization and Start-up | | | | | | | | | |
| PPR Functions | Parks | Botanic Spec II | 0.5 | \$48,000 | | \$48,000 | | | |
| BDS Functions | BDS | Planner II | 0.5 | \$47,000 | | \$47,000 | | | |
| TRACS upgrade – Tree permits | | | | | | | | | |
| PTE | Parks | Contract | | \$32,000 | | \$32,000 | | | |
| Tree Manual | | | | | | | | | |
| Project manager | Parks | Botanic Spec II | 0.5 | \$48,000 | | \$48,000 | | | |
| "Code Made Easy" Content | BDS | Planner II | 0.5 | \$47,000 | | \$47,000 | | | |
| "Watershed Services" Content | BES | Program Specialist | 0.5 | \$0 | | | | | |
| PTE, M&S | Parks | Contract | | \$40,000 | | \$40,000 | | | |
| TOTAL | | | 2.5 | \$262,000 | | \$262,000 | | | |

FY 2012 - 2013

| Year 1 of Full Program | Use of Funds | | | Total | Source of Funds | | | | |
|---|-----------------|---------------------------|------------|------------------|------------------|------------------|-----------------|------------------|-----------------|
| | Bureau | Use | FTE | | GF - OG | GF 1-time | Fees | CIP | UF Fund |
| Land Use Reviews | | | | | | | | | |
| Application Review | BDS | Planner II | 0.5 | \$0 | | | | | |
| Arborist Consultation | Parks | Tree Inspector | 0.2 | \$17,000 | | | \$17,000 | | |
| Building Permits | | | | | | | | | |
| Plan Review | BDS | Planner II | 1.0 | \$95,000 | | \$95,000 | | | |
| Building Permit Inspection | BDS | Tree Inspector | 1.0 | \$85,000 | | | | | \$85,000 |
| Capital and Public Works Projects | | | | | | | | | |
| CIP/PW Plan Preparation | Water, BOT, BES | Survey/CADD | 0.5 | \$90,000 | | | | \$90,000 | |
| CIP/PW Review/Inspection | Parks | Tree Inspector | 0.3 | \$25,000 | | | | \$25,000 | |
| Tree Permit Program | | | | | | | | | |
| Tree Permit Inspector | Parks | Tree Inspector | 1.0 | \$85,000 | \$85,000 | | | | |
| Vehicles and Equipment | | | | | | | | | |
| Single Point of Contact/Permit Assistance | | | | \$60,000 | | \$60,000 | | | |
| Delta Park Location | | | | | | | | | |
| Delta Park Location | Parks | Botanic Spec I | 1.0 | \$91,000 | \$91,000 | | | | |
| 24 hour Hotline (pilot) | | | | | | | | | |
| Spill Response Line | BES | Overtime (existing staff) | | \$10,000 | | \$10,000 | | | |
| TOTAL | | | 5.5 | \$558,000 | \$176,000 | \$165,000 | \$17,000 | \$115,000 | \$85,000 |

FY 2013 - 2014 and future years ongoing

| On-going of Full Program | Use of Funds | | | Total | Source of Funds | | | | |
|--|-----------------|----------------|------------|------------------|------------------|------------|------------------|------------------|------------|
| | Bureau | Use | FTE | | GF - OG | GF 1-time | Fees | CIP | UF Fund |
| Land Use Reviews | | | | | | | | | |
| Application Review | BDS | Planner II | 0.5 | \$47,000 | | | \$47,000 | | |
| Arborist Consultation | Parks | Tree Inspector | 0.2 | \$17,000 | | | \$17,000 | | |
| Building Permits | | | | | | | | | |
| Plan Review | BDS | Planner II | 1.0 | \$95,000 | | | \$95,000 | | |
| Building Permit Inspection | BDS | Tree Inspector | 1.0 | \$85,000 | | | \$85,000 | | |
| Capital and Public Works Projects | | | | | | | | | |
| CIP/PW Plan Preparation | Water, BOT, BES | Survey/CADD | 0.5 | \$90,000 | | | | \$90,000 | |
| CIP/PW Review/Inspection | Parks | Tree Inspector | 0.3 | \$25,000 | | | | \$25,000 | |
| Tree Permit Program | | | | | | | | | |
| Tree Permit Inspector | Parks | Tree Inspector | 1.0 | \$85,000 | \$85,000 | | | | |
| Single Point of Contact/Permit Assistance | | | | | | | | | |
| Delta Park Location | Parks | Botanic Spec I | 1.0 | \$91,000 | \$91,000 | | | | |
| TOTAL | | | 5.5 | \$535,000 | \$176,000 | \$0 | \$244,000 | \$115,000 | \$0 |

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ORDINANCE No.

Second amendment to the Intergovernmental Agreement to Transfer Land Use Planning Responsibilities between the City of Portland and Multnomah County, to address the administration of tree-regulations that apply in situations requiring a development permit.

The City of Portland Ordains:

Section 1. The Council finds:

General findings

1. The City of Portland (the “City”) and Multnomah County (the “County”) entered into an Intergovernmental Agreement (the “Agreement”) to transfer land use planning responsibilities effective January 4, 2002 (Ordinance no. 176115).
2. The Agreement transfers responsibilities for implementing and administering comprehensive plan and zoning regulations from the County to the City for properties within unincorporated Multnomah County that are within the City’s Urban Services Boundary, the METRO Urban Services Area and Urban Growth Boundary.
3. The first amendment to this IGA was adopted per Ordinance 179313 to include the Pleasant Valley Plan District study area, effective June 13, 2005.
4. The City and County agree that it is appropriate and consistent with the intent of this IGA to reference tree-related regulations, along with other listed regulations such as stormwater review and erosion control, in sections describing the development regulations to be administered under this IGA.
5. The cost of applying the Title 11 tree in the areas affected by this IGA represent a minimal incremental increase in the costs of administering these regulations in the city and the development regulations in these areas. The costs will, after initial start up, be covered through development fees as discussed in Exhibit B, Financial Impact Statement.

NOW, THEREFORE, the Council directs:

1. Amend the Intergovernmental Agreement to Transfer Land Use Planning Responsibilities between the City of Portland and Multnomah County as shown in Exhibit A.

Passed by the Council: *[dated by Clerk's office]*

Commissioner Mayor Sam Adams
Prepared by: Roberta Jortner
Date Prepared:

LaVonne Griffin-Valade
Auditor of the City of Portland
By

Deputy

Exhibit A

**SECOND AMENDMENT TO
INTERGOVERNMENTAL AGREEMENT TO TRANSFER
LAND USE PLANNING RESPONSIBILITIES
BETWEEN
CITY OF PORTLAND AND MULTNOMAH COUNTY**

WHEREAS:

- A. The City of Portland (the “City”) and Multnomah County (the “County”) entered into an Intergovernmental Agreement (the “Agreement”) to transfer land use planning responsibilities effective January 4, 2002 (Ordinance no. 176115);
- B. The Agreement transfers responsibilities for implementing and administering comprehensive plan and zoning regulations from the County to the City for properties within unincorporated Multnomah County that are within the City’s Urban Services Boundary, the METRO Urban Services Area and Urban Growth Boundary;
- C. The first amendment to this IGA was adopted per Ordinance 179313 to include the Pleasant Valley Plan District study area, effective June 13, 2005; and
- D. The City and County agree that it is appropriate and consistent with the intent of this IGA to reference tree-related regulations, along with other listed regulations such as stormwater review and erosion control, in sections describing the development regulations to be administered under this IGA.

NOW, THEREFORE, THE CITY AND COUNTY DO MUTUALLY AGREE TO AMEND THE AGREEMENT AS FOLLOWS:

- I. At Section I.D. “INTENT OF AGREEMENT” the existing provision is deleted and the following is substituted:
 - D. All actions specified by this Agreement shall be taken to assure that the County’s comprehensive plan, zoning ordinances, regulations for land divisions, signs, erosion control and stormwater disposal, ~~grading, and floodplain review, and trees~~ remain consistent with the City’s. The County has adopted the City comprehensive plan, zoning ordinance and other regulations as the County’s for comprehensive plan, zoning ordinance, and regulations for land divisions, signs, erosion control and stormwater disposal, ~~grading, and floodplain review, and~~ requirements for trees in development situations. The City intends to administer the same codes and regulations for County properties in the Affected Area as it does for ~~City~~ properties in the City.

II. At Section III. B. COUNTY RESPONSIBILITIES; Subsection 3. b. and 3.e. of, “Amendments to City and County Regulations” are amended as follows:

1. At Subsection 3.b, the existing first sentence of the Subsection is deleted and the following is substituted: b The County will ensure that the County Planning Commission and the County Board of Commissioners are notified of all proposed comprehensive plan map or text amendments or development-related amendments to the City’s Code, including amendments to the zoning code or maps, and regulations for land divisions, signs, erosion control, floodplain review, grading, ~~and~~ stormwater disposal, and tree preservation, planting and protection.

2. At Subsection 3.e, the existing provision is deleted and the following is substituted:
 - e. In the event the County Board of Commissioners chooses not to adopt amendments to the comprehensive plan, zoning code or maps, and regulations for land divisions, signs, erosion control, floodplain review, grading, ~~and~~ stormwater disposal, trees, or other development-related titles of the City Code as adopted by City Council, the City may terminate this Agreement as provided in Section V.B. In this event, the County will resume responsibility for planning and zoning administration within the Affected Area.

III. At Section III.C. CITY RESPONSIBILITIES, Subsection 2, “Land Use Reviews and Services”; the existing Subsections 2.a., 2.h., and 2.j. are deleted and the following provisions are substituted;

2. Land Use Reviews and Services
 - a. Perform land use, zoning and planning services (pre-application conferences, information, case review, building permit review, long range planning) for the Affected Area using the City’s comprehensive plan, zoning, land division, sign, erosion control, floodplain, grading, stormwater disposal, tree preservation and planting, and other applicable City regulations as adopted by the County.
 - h. Enforce land use regulations, code violations and permit violations and perform code enforcement services, including inspections, under City codes adopted by the County for land use and related activities, including zoning, conditions of approval, signs, erosion control, stormwater disposal, floodplain and grading review, and tree-related requirements.

- j. Review building and development permits for compliance with City zoning, sign, erosion control, floodplain review, grading, ~~and~~ stormwater disposal, ~~and~~ tree-related regulations and other applicable requirements adopted by the County.

IV. Section V., TERMS OF AGREEMENT AND TERMINATION, Subsection B TERMINATION BY THE CITY, the existing provision is deleted and the following is substituted:

B. Termination by the City

This agreement may be terminated by the City if the County fails to adopt changes to the city's comprehensive plan, comprehensive plan maps, zoning maps, applicable community plans, Titles, 10, 11, 32, 33, and 34, or regulations for stormwater disposal, floodplain review or grading in a timely manner as provided in Section III.B.3.

V. The remainder of the Agreement as amended to date is unchanged and continues in full force and effect.

VI. This amendment is effective after signature by both the City and the County, and upon the effective date of Title 11, Trees, whichever occurs later.

MULTNOMAH COUNTY

CITY OF PORTLAND

By: _____
Jeff Cogan, Chair

By: _____
Sam Adams, Mayor

Date: _____

Date: _____

REVIEWED:

Approved as to form

Henry H. Lazenby Jr.
County Attorney

Linda Meng
City Attorney

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EXHIBIT B

City of Portland, Oregon

FINANCIAL IMPACT STATEMENT For Council Action Items

(Deliver original to Financial Planning Division. Retain copy.)

| | | | |
|--------------------------------------|---|----------------------------------|---|
| 1. Name of Initiator Roberta Jortner | | 2. Telephone No. 503.823.7855 | 3. Bureau/Office/Dept. Planning & Sustainability |
| 4a. To be filed (date) | 4b. Calendar (Check One) Regular Consent 4/5ths X <input type="checkbox"/> <input type="checkbox"/> | | 5. Date Submitted to FPD Budget Analyst: |

1) Legislation Title: Citywide Tree Policy Review and Regulatory Improvement Project

City Council will be asked to accept the Recommended Draft Report to City Council, and adopt 3 ordinances.

2) Purpose of the Proposed Legislation: Create clear, consistent, cohesive regulatory framework to address trees in Portland and to protect and enhance the urban forest by:

- 1. TO BE ADOPTED THROUGH SEPARATE ORDINANCE:** Updating City regulations relating to the Urban Forestry Program and trees in development and non-development situations, and consolidating these regulations into a new City code title – Title 11, Trees. Title 11 contains provisions to authorize the City’s Urban Forestry Commission and Urban Forestry Program, standardizes the City’s tree permit system and enforcement procedures, establishes new tree preservation and tree density standards that apply through development permits, and establishes technical specifications and definitions. Title 11 clarifies that trees on the City’s Nuisance Plants List may not be planted on City property or rights of way.
- 2. SUBJECT OF THIS ORDINANCE:** Amendments are proposed to the existing Intergovernmental Agreement to Transfer Land Use Planning Responsibilities between the City of Portland and Multnomah County, to address the administration of tree-regulations that apply in situations requiring a development permit.
- 3. TO BE ADOPTED THROUGH SEPARATE ORDINANCE:** Updating City land use regulations in Title 33 to improve tree preservation and tree planting in land divisions and other specified land use reviews, to encourage tree preservation through new flexible development standards, and improving consistency of tree regulations in specified overlay zones and plan districts. Amendments to the Ladd’s Addition Conservation District Guidelines are proposed to clarify that the prohibition on planting nuisance species trees applies and that the street plan guidelines will inform the selection of species to replace nuisance species street trees in the future.
- 4. TO BE ADOPTED THROUGH SEPARATE ORDINANCE:** Taking actions to improve customer service and access to tree-related information including upgrading the City’s tree permit tracking system and establishing a single point of contact to assist the public, a 24-hour tree hotline pilot project, and a community tree manual.

3) Revenue:

Will this legislation generate or reduce current or future revenue coming to the City? If so, by how much? If new revenue is generated please identify the source. While intended to improve program efficiency and cost-effectiveness, this legislation does not, in itself generate or reduce current or future revenues for the City.

4) Expense:

What are the costs to the City as a result of this legislation? What is the source of funding for the expense? (Please include costs in the current fiscal year as well as costs in future years) (If the action is related to a grant or contract please include the local contribution or match required)

The estimated costs to prepare for and implement the proposed code improvements and to customer service program improvements and projects are shown in the attached 3 tables. Costs (staffing, equipment, materials and services) and recommended funding sources are shown for:

- a. FY 2011-2012 – Funding for tree permit tracking system upgrades, “ramp up” for new code, and community tree manual; phase 1 Title 33 amendments – Source: one-time general fund
- b. FY 2012-13 – Funding to implement Title 11, phase 2 Title 33 amendments, vehicle purchase, single point of contact, 24-hour hotline pilot; amendments to Ladd’s Addition Conservation District Guidelines – mix of one-time and ongoing general fund, development and land use review fees, Urban Forest fund
- c. FY 2013-14 – Funding for ongoing program activities (code administration and enforcement) – ongoing general fund, development and land use review fees

The cost to implement the proposed code improvements in the Multnomah County urbanizing pockets is relatively minimal and will be covered through development fees.

Staffing Requirements:

5) Will any positions be created, eliminated or re-classified in the current year as a result of this legislation? (If new positions are created please include whether they will be part-time, full-time, limited term or permanent positions. If the position is limited term please indicate the end of the term.) - None.

6) Will positions be created or eliminated in future years as a result of this legislation? Future positions that will be needed to implement the code improvements are addressed in separate ordinances. This ordinance does not in itself create any future positions.

Complete the following section if you are accepting and appropriating a grant via ordinance. This section should only be completed if you are adjusting total appropriations, which currently only applies to grant ordinances.

7) Change in Appropriations (If the accompanying ordinance amends the budget, please reflect the dollar amount to be appropriated by this legislation. If the appropriation includes an interagency agreement with another bureau, please include the partner bureau budget adjustments in the table as well. Include the appropriate cost elements that are to be loaded by the Grants Office and/or Financial Planning. Use additional space if needed.)

| Fund | Fund Center | Commitment Item | Functional Area | Funded Program | Grant | Sponsored Program | Amount |
|------|-------------|-----------------|-----------------|----------------|-------|-------------------|--------|
| | | | | | | | |
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APPROPRIATION UNIT HEAD (Typed name and signature)

Citywide Tree Policy Review and Regulatory Improvement Budget Proposal

FY 2011 - 2012

| Program Start Up | Use of Funds | | | Total | Source of Funds | | | | |
|--|--------------|--------------------|------------|------------------|-----------------|------------------|------|-----|---------|
| | Bureau | Use | FTE | | GF - OG | time | Fees | CIP | UF Fund |
| Program Organization and Start-up | | | | | | | | | |
| PPR Functions | Parks | Botanic Spec II | 0.5 | \$48,000 | | \$48,000 | | | |
| BDS Functions | BDS | Planner II | 0.5 | \$47,000 | | \$47,000 | | | |
| TRACS upgrade – Tree permits | | | | | | | | | |
| PTE | Parks | Contract | | \$32,000 | | \$32,000 | | | |
| Tree Manual | | | | | | | | | |
| Project manager | Parks | Botanic Spec II | 0.5 | \$48,000 | | \$48,000 | | | |
| "Code Made Easy" Content | BDS | Planner II | 0.5 | \$47,000 | | \$47,000 | | | |
| "Watershed Services" Content | BES | Program Specialist | 0.5 | \$0 | | | | | |
| PTE, M&S | Parks | Contract | | \$40,000 | | \$40,000 | | | |
| TOTAL | | | 2.5 | \$262,000 | | \$262,000 | | | |

FY 2012 - 2013

| Year 1 of Full Program | Use of Funds | | | Total | Source of Funds | | | | |
|---|-----------------|---------------------------|------------|------------------|------------------|------------------|-----------------|------------------|-----------------|
| | Bureau | Use | FTE | | GF - OG | GF 1-time | Fees | CIP | UF Fund |
| Land Use Reviews | | | | | | | | | |
| Application Review | BDS | Planner II | 0.5 | \$0 | | | | | |
| Arborist Consultation | Parks | Tree Inspector | 0.2 | \$17,000 | | | \$17,000 | | |
| Building Permits | | | | | | | | | |
| Plan Review | BDS | Planner II | 1.0 | \$95,000 | | \$95,000 | | | |
| Building Permit Inspection | BDS | Tree Inspector | 1.0 | \$85,000 | | | | | \$85,000 |
| Capital and Public Works Projects | | | | | | | | | |
| CIP/PW Plan Preparation | Water, BOT, BES | Survey/CADD | 0.5 | \$90,000 | | | | \$90,000 | |
| CIP/PW Review/Inspection | Parks | Tree Inspector | 0.3 | \$25,000 | | | | \$25,000 | |
| Tree Permit Program | | | | | | | | | |
| Tree Permit Inspector | Parks | Tree Inspector | 1.0 | \$85,000 | \$85,000 | | | | |
| Vehicles and Equipment | | | | | | | | | |
| Single Point of Contact/Permit Assistance | | | | \$60,000 | | \$60,000 | | | |
| Delta Park Location | | | | | | | | | |
| Delta Park Location | Parks | Botanic Spec I | 1.0 | \$91,000 | \$91,000 | | | | |
| 24 hour Hotline (pilot) | | | | | | | | | |
| Spill Response Line | BES | Overtime (existing staff) | | \$10,000 | | \$10,000 | | | |
| TOTAL | | | 5.5 | \$558,000 | \$176,000 | \$165,000 | \$17,000 | \$115,000 | \$85,000 |

FY 2013 - 2014 and future years ongoing

| On-going of Full Program | Use of Funds | | | Total | Source of Funds | | | | |
|--|-----------------|----------------|------------|------------------|------------------|------------|------------------|------------------|------------|
| | Bureau | Use | FTE | | GF - OG | GF 1-time | Fees | CIP | UF Fund |
| Land Use Reviews | | | | | | | | | |
| Application Review | BDS | Planner II | 0.5 | \$47,000 | | | \$47,000 | | |
| Arborist Consultation | Parks | Tree Inspector | 0.2 | \$17,000 | | | \$17,000 | | |
| Building Permits | | | | | | | | | |
| Plan Review | BDS | Planner II | 1.0 | \$95,000 | | | \$95,000 | | |
| Building Permit Inspection | BDS | Tree Inspector | 1.0 | \$85,000 | | | \$85,000 | | |
| Capital and Public Works Projects | | | | | | | | | |
| CIP/PW Plan Preparation | Water, BOT, BES | Survey/CADD | 0.5 | \$90,000 | | | | \$90,000 | |
| CIP/PW Review/Inspection | Parks | Tree Inspector | 0.3 | \$25,000 | | | | \$25,000 | |
| Tree Permit Program | | | | | | | | | |
| Tree Permit Inspector | Parks | Tree Inspector | 1.0 | \$85,000 | \$85,000 | | | | |
| Single Point of Contact/Permit Assistance | | | | | | | | | |
| Delta Park Location | Parks | Botanic Spec I | 1.0 | \$91,000 | \$91,000 | | | | |
| TOTAL | | | 5.5 | \$535,000 | \$176,000 | \$0 | \$244,000 | \$115,000 | \$0 |

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