

187675

FRITZ/

SALTZMAN

**Council meeting 4-6-2016
Item 328 Amendment**

City Code 11.50.040.C.1.b(4) Exemption of tree preservation mitigation payments for affordable housing developments.

Projects are exempt from the mitigation requirements in 11.50.040.C.1.b(2) if the development will be an affordable housing development approved for system development charge exemptions under Section 30.01.095. ~~To be exempt from the mitigation requirement in 11.50.040.C.1.b(2), the applicant must demonstrate that the retention requirement of 11.50.040.C.1.b.(1) and the Tree Protection Specifications of 11.60.030 cannot be met with the proposed development.~~ The amount of the mitigation exemption shall be pro-rated to a percentage equal to the percentage of dwelling units on the development site that are approved for the systems development charge exemption in Section 30.01.095. The Director of the Portland Housing Bureau may adopt administrative rules for the administration and enforcement of the exemption of tree preservation mitigation payments of this section.

Saltzman
Amendment
3-30-2016

City Code 11.50.040.C.1.b.(2)4. Exemption of tree preservation mitigation payments for affordable housing developments. Projects are exempt from the mitigation requirement in 11.50.040.C.1.b(2) if the development will be an affordable housing development approved for system development charge exemptions under Section 30.01.095. To be exempt from the mitigation requirement in 11.50.040.C.1.b(2), the applicant must demonstrate that the retention requirement of 11.50.040.C.1.b.(1) and the Tree Protection Specifications of 11.60.030 cannot be met with the proposed development. The amount of the mitigation exemption shall be pro-rated to a percentage equal to the percentage of dwelling units on the development site that are approved for the systems development charge exemption in Section 30.01.095. Director of the Portland Housing Bureau may adopt administrative rules for the administration and enforcement of the exemption of tree preservation mitigation payments.

187675

Distributed to
Council in Clerk's
Tuesday Memo
3-29-16.

3/16/16 Item 255 Saltzman Motion

Moved by Fish, seconded by Novick.

Withdrawn by Fish.

To be taken up on March 30.

Title 11 amendment.

187675

City Code 11.50.040.C.1.b.(2)4. Exemption of Tree Preservation Mitigation Payments for Affordable Housing Developments. An applicant is exempt from 11.50.040.C.1.b(2) if the new development will be an affordable housing development approved for system development charge exemptions under Section 30.01.095. To be exempt from complying with Title 11.50.040.C.1.b(2), the applicant must demonstrate that the requirements of Title 11.50.040.C.1.b(1) in Tree Preservation Standards and Tree Protection Specifications in Title 11.60.030 Tree Protection Specifications cannot be met with the development proposed by the applicant.

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Amendments Council Meeting 3-3-16.

212 TIME CERTAIN: 2:00 PM – Strengthen regulations for tree preservation in development situations (Ordinance introduced by Commissioners Saltzman and Fritz; amend Code Chapter 11.50) 2 hours requested

Motion to have an inch for inch mitigation fee based on 36” in diameter rather than 50” in diameter:

Moved by Saltzman and seconded by Fritz. (Y-5)

Motion to change the notice period from 30 days to 45 days: Moved by Saltzman and seconded by Fish. (Y-5)

**PASSED TO
SECOND READING
AS AMENDED
MARCH 16, 2016
AT 9:30 AM**

Parsons, Susan

From: Moore-Love, Karla
Sent: Monday, March 07, 2016 3:28 PM
To: Parsons, Susan
Subject: FW: Title 11 Amendments Revised Exhibit A (Code) for 3-16-16 City Council
Attachments: Title 11 Ordinance_Exhibit A_11_50_03-16-16.docx

Sue – this is the As Amended Exhibit A for the March 16th agenda packets.

K.

From: Sandy, Emily
Sent: Monday, March 07, 2016 12:49 PM
To: Moore-Love, Karla <Karla.Moore-Love@portlandoregon.gov>
Cc: Grumm, Matt <Matt.Grumm@portlandoregon.gov>; Crail, Tim <Tim.Crail@portlandoregon.gov>; Esau, Rebecca <Rebecca.Esau@portlandoregon.gov>; Cairo, Jenn <Jenn.Cairo@portlandoregon.gov>
Subject: Title 11 Amendments Revised Exhibit A (Code) for 3-16-16 City Council

Karla:

I've attached revised code for Title 11 Amendments 2nd reading on 3/16/16. The revisions incorporate the amendments from 3/3/16 hearing:

1. Changing the mitigation fee to inch-per-inch for 36" in diameter or larger trees.
2. Changing the notice period to 45 days.

Let me know if you need anything else or have questions.

Emily

Emily Sandy, Code and Policy Analyst

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Portland, OR 97202
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Tree Distribution Sample:
Residential New Construction and Demolition Permits Issued
August 2015

Diameter Inches	# of Trees*	% of Total Trees*
12-19"	86	47%
20-29"	62	34%
30-35"	23	13%
36-42"	7	4%
>42"	6	3%
Total Trees	184	100%

*Shows the number and percent of trees on subject sites. This information does not capture whether the tree was preserved or removed; only that it existed. It is meant to show a rate of occurrence of differing tree sizes in the given sample.

Submitted
by
Emily
Sandy BOS
3/3/2016

Comparison:

Current Code, Planning and Sustainability Commission (PSC) Recommendation, Urban Forestry Commission Recommendation (UFC), Fritz-Saltzman Proposal

Amendments to Title 11, Trees- Tree Preservation in Development Situations (PCC 11.50)

Item	Description	Current Code	PSC	UFC	Fritz/Saltzman
1	Mitigation Fee In-lieu Applies to All Trees Removed OR Only Trees Removed that are Subject to 1/3 Preservation Standard?	1/3 standard	<ul style="list-style-type: none"> Up to 36"= Fee required for removal of trees used to meet the 1/3 preservation standard. 36" or greater=Fee required for removal of all trees. 	<ul style="list-style-type: none"> Up to 30"= Fee required for removal of trees used to meet the 1/3 preservation standard. 30" or greater=Fee required for removal of all trees. 	<ul style="list-style-type: none"> Up to 36"= Fee required for removal of trees used to meet the 1/3 preservation standard. 36" or greater=Fee required for removal of all trees.
2	Mitigation Fee In-Lieu of Preservation Structure	<ul style="list-style-type: none"> \$1,200/tree removed (cost to plant and maintain 2 replacement trees) 	<ul style="list-style-type: none"> Up to 20"=current code (\$1,200/tree removed) 20" and greater= graduated fee based on cost of 4-15 two-inch replacement trees @ \$300/inch (\$2,400-\$9,000) See next page for table 	<ul style="list-style-type: none"> Up to 20"=current code (\$1,200/tree removed) 20" and greater= fee per inch removed @ \$300.00/inch (\$6,000 +) 	<ul style="list-style-type: none"> Up to 20"=current code (\$1,200/tree removed) 20" up to 50" = graduated fee based on cost of 4-8 two-inch replacement trees @ \$300/inch (\$2,400-\$4,800) 50" and greater= fee per inch removed @ \$300.00/inch (\$15,000 +) See next page for table
3	Notice Requirements	None	For removal of trees 36"or greater: 30 day posted notice and Neighborhood Association notice	For removal of trees 30"or greater: 30 day posted notice and Neighborhood Association notice	For removal of trees 36"or greater: 30 day posted notice and Neighborhood Association and District Coalition notice
4	Applicability to City and Street Trees?	No (Admin Rule)	Yes	Yes	No (Admin Rule)
5	Sunset Date?	N/a	December 31, 2019	3 years from passing	December 31, 2019
6	Site Size Applicability	Applies to sites 5,000 square feet or greater.	Applies to sites 5,000 square feet or greater (N/c)	Applies to sites 3,000 square feet or greater.	Applies to sites 5,000 square feet or greater (N/c).

Note: Actual fees based on current adopted fee schedule and are subject to future amendment

Comparison:

**Current Code, Planning and Sustainability Commission (PSC) Recommendation, Urban Forestry Commission Recommendation (UFC), Fritz-Saltzman Proposal
Amendments to Title 11, Trees- Tree Preservation in Development Situations (PCC 11.50)**

PSC Recommended Mitigation Fee In-lieu of Preservation Table

Size of Tree Removed (inches in diameter)	Number of 2-inch Replacement Trees That Fee is Based On	Corresponding Current Fee In-Lieu of Preservation
At least 12 and less than 20	2	\$1,200
At least 20 and less than 36	4	\$2,400
At least 36 and less than 50	6	\$3,600
50 or more	15	\$9,000

Fritz-Saltzman Mitigation Fee In-lieu of Preservation Table

Size of Tree Removed (inches in diameter)	Number of 2-inch Replacement Trees That Fee is Based On	Corresponding Current Fee In-Lieu of Preservation
At least 12 and less than 20	2	\$1,200
At least 20 and less than 36	4	\$2,400
At least 36 and less than 50	8	\$4,800
50 or more	N/a: Inch-per-Inch	\$15,000+



City of Portland, Oregon
Bureau of Development Services
Office of the Director
 FROM CONCEPT TO CONSTRUCTION

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 Paul L. Scarlett, Director
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February 22, 2106

To: Mayor Hales
 Commissioner Fish
 Commissioner Fritz
 Commissioner Novick
 Commissioner Saltzman

From: Paul L. Scarlett, Director
 Bureau of Development Services

Warren Jimenez, Acting Director
 Bureau of Parks & Recreation

PLS

W

Regarding: Proposed Amendments to Tree Preservation in Development Situations (PCC 11.50)

I. RECOMMENDATION

Amend Chapter 11.50 (Trees in Development Situations) to strengthen regulations for tree preservation in development situations (Ordinance; amend Code Chapter 11.50)

II. BACKGROUND

PCC 11.50, Trees in Development Situations allows that 1/3 of non-exempt trees on a development site be preserved. Removal of any tree(s) subject to the 1/3 preservation requirement necessitates a mitigation fee in-lieu equal to the cost of planting and maintaining 2 replacement trees for a period of 2 years as specified by the adopted fee schedule for Title 11. The current corresponding fee is \$1,200 per tree removed, regardless of size. There is no incentive for preserving larger sized trees over smaller sized trees. No notification is required for any tree removal in development situations.

Due to public concern over the removal of trees, in particular of especially large sized trees in development situations, Title 11 is proposed to be amended to strengthen the regulations for tree preservation in development situations.

The proposal described below is co-sponsored by Commissioner Amanda Fritz and Commissioner Dan Saltzman (Fritz-Saltzman Proposal) and is recommended for adoption.

III. PROPOSAL

- A. **Institute a tiered mitigation fee in-lieu schedule for removal of trees up to 50 inches in diameter, based on tree size. The mitigation fee-in-lieu is based on the cost of planting and maintaining 2 to 8 replacement trees. Based on the current adopted fee schedule for**

- Title 11, the corresponding fee in-lieu is \$1,200 to \$4,800 depending on the size of tree removed.**
- B. Institute an inch-per-inch mitigation fee for removal of trees 50 inches in diameter or larger. Based on the current adopted fee schedule for Title 11, the corresponding fee in-lieu is \$15,000 for a 50" tree and increasing at \$300 per additional diameter inch.**
 - C. Require that all trees 36" in diameter or larger be preserved or pay a mitigation fee in-lieu of preservation, not just those trees required to be preserved by the 1/3 preservation standard.**
 - D. Require public notice posted on-site and sent to the recognized neighborhood association and district coalition a minimum of 30 days prior to issuance of development permit when any tree 36" in diameter or larger is proposal for removal.**
 - E. Apply the amendments to Private Trees, but not to City Trees or Street Trees.**
 - F. Include a sunset date of December 31, 2019.**

It should be noted that members of the public, staff, the Planning and Sustainability Commission and the Urban Forestry Commission have expressed desire for these amendments to be re-evaluated in concert with a broader project evaluating and amending Title 11 as a whole at a future date. To that end, the sunset date of December 31, 2019 is included in this proposal.

IMPACT STATEMENT

Legislation title: Amend Chapter 11.50 (Trees in Development Situations) to strengthen regulations for tree preservation in development situations

Contact name: Emily Sandy, Bureau of Development Services

Contact phone: (503) 823-7828

Presenter name: Emily Sandy, Bureau of Development Services; Jenn Cairo, Portland Parks and Recreation

Purpose of proposed legislation and background information:

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. Portland's urban forestry program is partly implemented through Title 11, Trees. The City Forester and BDS administer Title 11. PCC Chapter 11.50, Trees in Development Situations, regulates, in part, tree removal and tree preservation associated with development projects including when tree removal is allowed, when tree preservation is required, and what mitigation is required for certain tree removal.

PCC 11.50, Trees in Development Situations allows that 1/3 of non-exempt trees on a development site be preserved. Removal of any tree(s) subject to the 1/3 preservation requirement necessitates a mitigation fee in-lieu equal to the cost of planting and maintaining 2 replacement trees for a period of 2 years as specified by the adopted fee schedule for Title 11. No notification is required for any tree removal in development situations. After implementation of Title 11, public concern developed regarding the removal of large sized trees associated with development projects as allowed by Title 11. Collected data indicated that 18 trees 45 inches in diameter or larger were removed through the first 3 quarters of 2015 in association with development permits on private property, as allowed by Title 11. Refinement of data indicated as many as 9 of the 18 trees may have been exempt from tree preservation requirements due to health or other exemptions specified in Title 11.

In response to public concern, the recommended amendments were developed to strengthen regulations for tree protection of especially large trees in development situations as an interim measure until such time a more comprehensive evaluation and amendment of Title 11 including regulations for tree preservation in development situations can be undertaken.

The proposal described below is co-sponsored by Commissioner Amanda Fritz and Commissioner Dan Saltzman (Fritz-Saltzman Proposal) and is recommended for adoption.

The Fritz-Saltzman proposal institutes a tiered mitigation fee in-lieu schedule for trees up to 50 inches in diameter. The mitigation fee in-lieu schedule is based on the cost of 2 to 8 replacements trees depending on the diameter inch size of the tree to be removed. Based on the current adopted fee schedule for Title 11, the mitigation fee in-lieu is \$1,200 to \$4,800. The fee in-lieu for trees 50 inches or larger in diameter is an inch-per-inch fee. Based on the current adopted fee schedule for Title 11 of \$300 per inch removed, the fee in-lieu is \$15,000 for a 50" and greater at \$300 per additional inch. The proposal requires that all trees 36 inches or greater, regardless of the 1/3 preservation standard, is subject to preservation or mitigation fee in-lieu of preservation. The proposal requires public notice posted on site and sent to the neighborhood association and district coalition for the removal of all trees 36 inches or greater for a period of 30 days prior to issuance of the development permit. The proposal applies to Private Trees, and does not apply to City Trees or Street Trees. The proposal has a sunset date of December 31, 2019.

It is anticipated that this proposal will:

- a) further discourage removal of trees, especially very large sized trees, in development situations where practical
- b) increase revenue to the Tree Planting and Preservation Fund, administered by Portland Parks and Recreation, in the form of increased mitigation payments in-lieu of preservation, and
- c) provide for courtesy communication to neighbors and recognized neighborhood associations and district coalitions to provide for opportunity for the public to communicate with the property owner to potentially discuss alternatives to tree removal and to provide general information about anticipated tree removal.

Financial and budgetary impacts:

This legislation will produce ancillary costs associated with implementation including technology changes and production of public information materials. This legislation will likely increase revenue to the Tree Planting and Preservation Fund administered by Portland Parks and Recreation. The legislation increases the amount of mitigation payments for tree removal. Though the legislation is intended to further discourage tree removal and therefore the number of mitigation payments to the Tree and Landscaping Fund, remaining mitigation payments to the Fund will be increased from \$1,200 per tree to anywhere from \$1,200 to \$15,000 per tree (and up for especially large sized trees) depending on tree size. Increased revenue to this Fund will result in additional planting or property acquisition resulting in improved tree canopy. An accurate estimate of total increased revenue is not available. It is not anticipated that this legislation will result in significantly increased workload to require adjustments in staffing or additional staff.

Community impacts and community involvement:

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. Further protection of the urban forestry is a far-reaching community asset positively affecting all Portlanders of diverse ages, cultures, ethnicities, races, and income levels in all of Portland's neighborhoods.

Portland Parks and BDS staff conducted outreach to the Tree Code Oversight Advisory Committee and the Development Review Advisory Committee (DRAC) at various stages in formulation of staff proposals for amendments. Staff proposals were heard by the Planning and Sustainability Commission (PSC) and Urban Forestry Commission (UFC) who each developed recommendations for amendments. Notices of the staff proposals and pending PSC and UFC hearings were posted on the Portland Trees website and the BDS website at least 30 days in advance of the PSC and UFC hearings. Notices were also mailed to those specified in Title 11 at least 30 days in advance of the PSC and UFC hearings. The PSC and UFC recommendations as well as the Fritz/Saltzman proposal were posted on the Portland Trees website and the BDS website. Notice of the City Council hearing was mailed to those specified in Title 11 at least 14 days in advance of the hearing.

The proposal incorporates recommendations from the public participants into the proposed ordinance to the greatest extent possible. The proposal acknowledges the differing value of trees based on diameter inch size as opposed to the current one-size-fits all approach. The current code does not provide incentive for preservation over larger sized trees over smaller sized trees. The proposal incorporates both a tiered mitigation fee in-lieu schedule that places higher monetary value on trees 20 inches or greater and a inch-per-inch mitigation fee that places an even higher monetary value for especially large sized trees-those 50 inches or greater in size. The proposal provides for public notice to better inform interested parties of pending tree removal.

Some public concerns include: not applying the amendments to City Trees or Street Trees in development situations thereby not holding City owned or managed property to the same standard, but acknowledging the added costs to the City for capital improvement and other City projects; potentially increasing costs to developers of new construction or major addition projects that could be passed on to end users if regulated trees cannot be preserved; potentially adding costs to property owners doing modest or major additions or other ground disturbing activities on their properties if regulated trees cannot be preserved; ensuring the highest fees in lieu are coincidental with the largest and rarest sized trees as to limit financial impact in the greatest number of circumstances. Based limited data available from a small sample of development permit applications, trees 50 inches or greater account for less than 3% of trees on sites in development situations. Trees 36 inches or greater account for approximately 7% of trees on sites in development situations. Therefore, it is anticipated the greatest financial and procedural impact will be in a small percentage of situations.

These amendments are intended to be interim until such time a more comprehensive evaluation and amendment of Title 11 are undertaken, including of the regulations for tree preservation in development situations, at which time effects of this proposal may be monitored and further refined. As such, this proposal includes a sunset date of December 31, 2019.

Budgetary Impact Worksheet

Does this action change appropriations?

- YES:** Please complete the information below.
- NO:** Skip this section

Fund	Fund Center	Commitment Item	Functional Area	Funded Program	Grant	Sponsored Program	Amount