

March 8, 2017 Amendment motion:

**Mayor Ted Wheeler**

**Bureau of Planning & Sustainability**

**229**

Improve City tree regulations through the Regulatory Improvement Code Amendment Package 8 – Technical Amendments (Previous Agenda 207; amend Title 11)

**Motion to delete amendments proposed to sections 11.05.110 Liability and 11.60.060 A.2.a. Tree Maintenance Specifications and Responsibilities, and return to Mayor's Office for further evaluation; ordinance directives a, b and c to read "as amended by Council" following the date of January 2017: Moved by Saltzman and seconded by Eudaly. (Y-5)**

**PASSED TO  
SECOND READING  
AS AMENDED  
MARCH 15, 2017  
AT 9:30 AM**

## PROPOSED TREE CODE LANGUAGE

Language to be added is underlined  
 Language to be deleted is shown in ~~strike~~through

**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 Type A tree permit in accordance with the provisions of Chapter 11.30. The application fee may be waived when the City forester has directed the work to be done.
2. Responsibilities
  - a. Property owner. It is the duty of every owner of property to maintain trees located on the property, ~~in any adjacent unimproved or partially improved rights-of-way,~~ or on the adjacent sidewalk and/or street planting areas, 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.-4. [No Change]

3/8/17  
 AMEND-  
 MENT

Adopted 2/22/2017  
Mayor's amendment

188278

### ATTACHMENT 3: Title 11, Trees - Errata

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**HIGHLIGHTING** denotes areas of change.

1. In 11.05.110 on page 121, correct the strike-through/underline. The underline in Subsections A and B was inadvertently lost in the formatting of the Recommended Draft. The existing language in Subsection A, was deleted rather than struck through. Correct the text as follows:

#### 11.05.110 Liability

- A. 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 Type A tree permit in accordance with the provisions of Chapter 11.30. The application fee may be waived when the City forester has directed the work to be done. 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, any adjacent ~~unimproved or partially-improved rights-of-way~~, sidewalks, planting strips and trees fronting or upon such private property in a safe condition so as not to be hazardous to public travel. 3-8-17  
Council  
amendment
- 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.

2. In 11.30.040 on page 125, include the missing descriptive text. While not revised, this text was inadvertently omitted during the formatting of the Recommended Draft. Correct the text as follows:

#### 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.-C. [No Change]

D. Appeal process.

1. Scheduling the appeal hearing. The appeal hearing will be scheduled within 45 days of the City Forester's decision of the date the appeal was filed. However, the applicant may request the hearing at a later time.

**WEDNESDAY, FEBRUARY 22, 2017****TIMES CERTAIN**

- 169** **TIME CERTAIN: 11:00 AM** – Improve land use and other City regulations through the Regulatory Improvement Code Amendment Package 8 – Technical Amendments (Previous Agenda 158; Ordinance introduced by Mayor Wheeler; amend Title 17, Title 24 and Title 33) 30 minutes requested for items 169 and 170

Motions for items 169 and 170 were moved and seconded on February 15, 2017 for vote on February 22<sup>nd</sup>.

Mayor Wheeler was present February 15<sup>th</sup> and absent February 22<sup>nd</sup>.

Commissioner Eudaly was absent February 15<sup>th</sup> and present February 22<sup>nd</sup>.

Commissioners Fish, Fritz and Saltzman were present both meetings.

The motions are numbered in the order they were made and votes were taken.

1. **Motion to adopt amendment to Item 3, Regular Lot lines to remove the requirement that the adjusted property lines to be at a right angle to the street; as stated in Wheeler 2/9/2017 memo:** Moved by Wheeler and seconded by Fritz. (Y-4)
2. **Motion to adopt amendment to Item 33, Definitions – Seep or Spring to remove the amendments to the stream definition; as stated in Wheeler 2/9/2017 memo:** Moved by Wheeler and seconded by Fritz. (Y-4)
4. **Motion to add Inclusionary Housing Minimum Parking Requirements as stated in Wheeler 2/9/2017 memo:** Moved by Wheeler and seconded by Fritz. (Y-4)
5. **Motion to amend 33.930.025 Measuring Development Standards as stated in Saltzman 2/14/2017 memo:** Moved by Saltzman and seconded by Fritz. (Y-4)
6. **Motion to correct Title 33 Table 825-1 as stated in Eudaly 2/15/2017 memo:** Moved by Wheeler and seconded by Fritz. (Y-4)
7. **Motion to accept Fritz amendment to 33.710.030 Commissioner, Committees, and Boards Generally as stated in 2/15/2017 handout:** Moved by Fritz and seconded by Wheeler. Motion withdrawn on February 22, 2017.

**February 22, 2017**

8. **Motion to delete Planning and Sustainability Commission amendment 15, Commission Term Limits, 33.710.030:** Moved by Fritz and seconded by Fish. (Y-4)

**PASSED TO  
SECOND READING  
AS AMENDED  
MARCH 1, 2017  
AT 9:30 AM**

- 170** Improve City tree regulations through the Regulatory Improvement Code Amendment Package 8-Technical Amendments (Previous Agenda 159; Ordinance introduced by Mayor Wheeler; amend Title 11)

3. **Motion to correct several minor typos and/or errors identified by City Auditor; as stated in Wheeler 2/9/2017 memo:** Moved by Wheeler and seconded by Fritz. (Y-4)

**PASSED TO  
SECOND READING  
AS AMENDED  
MARCH 1, 2017  
AT 9:30 AM**



188278



Office of Mayor Ted Wheeler  
City of Portland

Amendments  
#159, #229  
Trees  
Adopted 2/22/2017

**DATE:** February 9, 2017  
**TO:** Portland City Commissioners  
**FROM:** Mayor Ted Wheeler  
**CC:** Kathryn Hartinger, BPS RICAP 8 Project Manager  
**SUBJECT:** RICAP 8 - Proposed Amendments

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## INTRODUCTION

On February 15, 2017 the City Council will hold a hearing at 3:00 p.m. on the *RICAP 8 Recommended Draft*. The report includes 44 topics addressed by various code amendments. The amendments range from technical and minor corrections to ensure consistency within the code, to minor changes to current policy.

After the Urban Forestry and Planning and Sustainability Commissions separately voted to recommend the RICAP 8 package in December 2016, Bureau of Planning and Sustainability (BPS) staff brought several items to my attention for which I would like to propose amendments. Three of these are amendments to items contained in the *RICAP 8 Recommended Draft*, and a fourth item addresses a technical fix not in the report, but in need of urgent resolution.

The four items are summarized below, and proposed zoning code amendments for each are attached for consideration at the City Council hearing.

## AMENDMENTS

### 1. Item #3, Regular Lot Lines (page 95)

The language in the Recommended Draft attempts to ensure that property line adjustments result in regularly-shaped lots. The language requires that the adjusted property line be at a right angle to the street lot line.

This works well in inner Portland because the lots are already regularly shaped and the grid is formed by straight streets. It does not work well in east and west Portland, which are characterized by curved streets and more irregular lot patterns.

*Amendment: Remove the requirement that the adjusted property lines to be at a right angle to the street; adjust commentary accordingly. See replacement pages in Attachment 1.*

**2. Item #33, Definitions - Seep or Spring, Stream (page 113)**

The City's policy is to require surface streams to be protected in a tract, but streams in a pipe don't need to be.

The language in the Recommended Draft alters the definition of "Seep or Spring" in order to ensure that streams which eventually drain into a pipe are still considered "streams" in the land division process - and that these resources are protected in a tract. This is consistent with City policy.

However, the language that amends the "Stream" definition could be interpreted as meaning that a stream in a pipe would still need to be protected in a tract. This was not the intent of the amendment and is against City policy.

*Amendment: Remove the amendments to the stream definition; adjust commentary accordingly. See replacement pages in Attachment 2.*

 **3. Title 11, Trees - Errata**

After publication of the *RICAP 8 Recommended Draft*, the City Auditor identified several minor typos and/or errors ("errata") in the Title 11 amendments that should be corrected.

*See Attachment 3.*

**4. Inclusionary Housing Parking (not in RICAP 8 Recommended Draft)**

As part of the adoption of the Inclusionary Housing Zoning Code Project in December 2016, City Council approved an amendment to the recommended zoning code. The amendment was intended to waive parking requirements for projects that provide on- or off-site affordable housing, but not waive the parking requirements for projects that pay a fee in-lieu of providing affordable units. An error occurred when the amendment was drafted for City Council, and the final amendment that was adopted on December 21, 2016 does not correctly implement City Council's intention. The amendments presented here are intended to correct the problem and accurately implement the legislative intent of City Council.

*See amended code language in Attachment 4.*

## ATTACHMENT 3: Title 11, Trees - Errata

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**HIGHLIGHTING** denotes areas of change.

1. **In 11.05.110 on page 121, correct the strike-through/underline.** The underline in Subsections A and B was inadvertently lost in the formatting of the Recommended Draft. The existing language in Subsection A, was deleted rather than struck through. Correct the text as follows:

### 11.05.110      **Liability**

- A. 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 Type A tree permit in accordance with the provisions of Chapter 11.30. The application fee may be waived when the City forester has directed the work to be done. 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, any adjacent unimproved or partially-improved rights-of-way, 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.

2. **In 11.30.040 on page 125, include the missing descriptive text.** While not revised, this text was inadvertently omitted during the formatting of the Recommended Draft. Correct the text as follows:

### 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.-C. [No Change]

D. Appeal process.

1. Scheduling the appeal hearing. The appeal hearing will be scheduled within 45 days ~~of the City Forester's decision~~ of the date the appeal was filed. However, the applicant may request the hearing at a later time.

- 2. [No Change]
- 3. [No Change]
- E. [No Change]

3. **In 11.30.050 on page 125, include the missing descriptive text and correct underline in Paragraph 1.** While not revised, text was omitted from the *Recommended Draft*. Additionally, the underline in Paragraph 1 was inadvertently omitted during the formatting of the Recommended Draft. Correct the text as follows:

**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.-C. [No Change]
- D. Appeal process.
  - 1. Scheduling of the appeal hearing. The appeal hearing will be scheduled within 45 days ~~of the City Forester's decision~~ from the date the appeal was filed. However, for good cause shown by any party, the Appeals Board may extend the hearing deadline.
  - 2. [No Change]
  - 3. [No Change]
- E. [No Change]

4. **In 11.50.040.C on page 139, correct underlines related to renumbering.** Underlining was inadvertently omitted when Subparagraph items were renumbered. Correct the text as follows:

- C. Tree Preservation Requirement. Any trees preserved shall be protected in accordance with the specifications in Section 11.60.030. The regulations for Private Trees in Subsection 11.50.040 C.1. sunset after December 31, 2019. After December 31, 2019 the regulations in effect will be those in effect on January 1, 2015.
  - 1. Private Trees.
    - a. General tree preservation.

(1) Tree preservation is not required for development activities within 10 feet of existing primary structures, garages, or



detached accessory structures permitted as living space if the submitted tree plan confirms the following:

(a) Tree removal is not a part of the project; and

(b) Ground disturbance will not occur in the root protection zone of any existing tree on site, as defined in Subsection 11.60.030.C.1.a.

(2)(1) Retention. [No Change]

(3)(2) Mitigation. [No Change]

- b. Preservation of trees 36 inches or greater. [No Change]
- c. Exception for Capital Improvement Projects. [No Change]

5. In 11.50.050 on page 141, correct code references and correct underline in renumbering. The number references are correct, but should have been prefaced with “subsection” or “chapter.” Additional underlining was inadvertently omitted during the formatting of the Recommended Draft. Correct the text as follows:

**11.50.050 On-Site Tree Density Standards.**

- A. Where these Regulations Apply. This Section applies to sites within the City of Portland and the County Urban Pocket Areas. Unless exempted in Subsection 11.50.050 B., the following are subject to the On-Site Tree Density Standards:
  - 1. New Development;
  - 2. Exterior alterations to existing development with a project valuation that is more than the threshold stated in Subsection 33.258.070.D.2.a.;
  - ~~3. Additions in excess of 200 square feet to single dwelling development.~~
- B. Exemptions.
  - 1. The following development activities are exempt from the on-site tree density standards:
    - ~~a. Additions or exterior alterations to existing development with a project valuation less than the non-conforming upgrade threshold noted in Title 33, Planning and Zoning.~~
    - ab. A specific condition of land use review approval exempts the site from these density standards.
    - bc. The site is within the Portland International Airport Plan District or Cascade Station/Portland International Center Plan District and is subject to the Airport Landscape Standards; see Title 33, Planning and Zoning.
    - cd. On portions of sites located within an IH, IG1, EX, CX, CS, or CM zone.

de. Work conducted under Demolition, Site Development, Septic, Plumbing or Zoning Permits.

2. [No Change]

C. New development shall meet City specifications and standards in Chapter 11.60 and the on-site tree density requirements in Subsection D, below. Exterior alterations shall meet City specifications and standards in Chapter 11.60 and the on-site tree density requirements in Subsection D, below, but are only required to spend 10 percent of project value on the requirements in Subsection D and the nonconforming upgrades required by Chapter 33.258, Nonconforming Situations.

DC. ~~On-Site Tree Density Requirements. Planting on sites shall meet City specifications and standards in Chapter 11.60 and the following:~~

1.-3. [No Change]

6. **In 11.50.070 on page 143, correct underline/strikethrough related to renumbering.** The underlines were inadvertently omitted during the formatting of the Recommended Draft. Correct the text as follows:

**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. Any construction staging areas on site;

32. Proposed alterations including structures, impervious area, grading, and utilities;

43. 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.

(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 11.50.030, need only identify the trees on

the site inside and 25 feet beyond the edge of the development impact area. For all trees shown to be retained on the tree plan (including those beyond the development impact area), tree protection methods detailed in Subsection 11.60.030.C. shall be implemented. Protection may be achieved using the Prescriptive Path or Performance Path.

b. [No Change]

54. Proposed tree activity. [No Change]

B. Narrative requirements. [No Change]

7. In 11.60.020 on page 145, insert missing descriptive text. While not revised, text was omitted from the *Recommended Draft*. Correct the text as follows:

#### 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.- D. [No Change]

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 labeled for the inspector and properly supported to ensure survival. Support devices such as guy wires or stakes shall not interfere with vehicular or pedestrian movement:

2.-3. [No Change]

8. Correct underline in 11.60.030 on page 147 and 148; include image. Some underlining was inadvertently omitted and some existing language was underlined. Additionally, the image that accompanies this section, which was not revised, was inadvertently omitted from the *Recommended Draft*. Correct the text as follows:

#### 11.60.030 Tree Protection Specifications

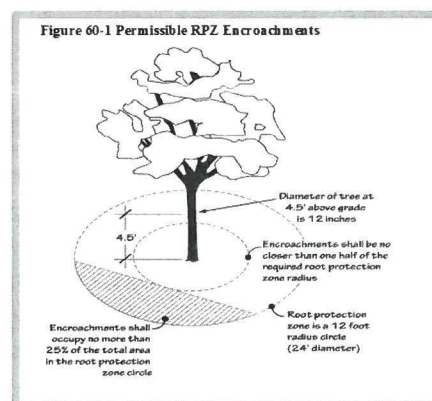
A. Intent. [No Change]

B. Applicability. [No Change]

C. **Protection methods.** The Tree Plan shall show that trees retained are adequately protected during construction using one of the methods described below:

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 Subsection 11.80.020 C., Measurements):
  - (2) Street Trees – the City Forester may prescribe greater or lesser protection than required for on-site trees.
  - (3) Existing encroachments into the root protection zone, including structures, paved surfaces and utilities, may remain. New encroachments into the root protection zone are allowed provided:
    - (a) the area of all new encroachments is less than 25 percent of the ~~total~~ remaining root protection zone area when existing encroachments are subtracted; and
    - (b) no new encroachment is closer than 1/2 the required radius distance (see Figure 60-1);



- b. Protection fencing
- (1) 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 on the development site. Existing structures and/or existing secured fencing at least 3.5 feet tall can serve as the required protective fencing.
  - (2) When a root protection zone extends beyond the development site, protection fencing is not required to extend beyond the development site. Existing structures and/or existing secured fencing at least 3.5 feet tall can serve as the required protective fencing.
- c. [No Change]



- d. Installation of landscaping required by Title 33 is allowed within the root protection zone and is not an encroachment. Any in-ground irrigation systems are considered encroachments.
  - ed. [No Change]
  - fe. [No Change]
  - 2. Performance Path [No Change]
  - 3. Additional information. [No Change]
  - D. Changes to tree protection. [No Change]
  - E. Tree protection inspections. [No Change]
9. In 11.70.080 on page 153, add “Subsection” preface to code references; fix underline related to renumbering. The number references are correct, but should have been prefaced with “Subsection.” Underlining related to renumbering was inadvertently omitted when formatting the Recommended Draft. Correct the text as follows:

**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, or where a dead, dying, dangerous, or nuisance tree has been identified to be preserved to meet Subsection 11.50.040.C.1. 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 including the enforcement actions described in Section 11.70.090. 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.
  - 1. Minor Infractions. [No Change]
  - 2. Treatment. [No Change]
  - 3. Revised Tree Plan and Payment in Lieu. In cases where a dead, dying, dangerous or nuisance species tree is identified to be preserved to meet Subsection 11.50.040.C.1, the City Forester may require a revision to the submitted tree plan to ensure that only healthy, viable trees are preserved to meet the requirement. If the applicant disagrees with the City’s determination on the health or species of a tree to be preserved, an arborist report can be submitted by the applicant to demonstrate compliance. If no trees remain on site to meet the preservation requirement, the applicant may pay the applicable mitigation fee, as defined in Subsection 11.50.040.C.

**43.-54. [Renumber Paragraphs]**

- 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; or
    - ~~b. The tree is a Heritage tree; or~~
    - ~~b.~~ 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. **[No Change]**
- E. Additional remedies for Heritage 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 Heritage Tree, the City Forester may seek additional remedies as described below.
1. Restoration Fees.
    - a. Private Heritage Trees. The City may require any person to pay into the City's Tree Planting and Preservation Fund for the damage or removal of a Heritage Tree, according to the City's adopted Title 11 Tree Fee Schedule.
    - b. City and Street Heritage Trees. The City may require any person to pay into the City's Urban Forestry Fund for the damage or removal of a Heritage Tree, according to the City's adopted Title 11 Tree Fee Schedule.

10. **In 11.70.090 on pages 161, 163 and 165, correct strikethrough/underline; insert unrevised omitted text.** Strikethrough/underline errors occurred when formatting the Recommended Draft. Formatting edits in Paragraph B.1. reflect suggestions by the City Auditor. Correct the text as follows:

**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. 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~~fee, penalty notice or citation, as applicable, 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.
  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, to enforce the provisions of this Section when the responsible person fails to respond to the City Forester or BDS Director's ~~complaint~~ notice or citation as described in Subsection 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.

- a. ~~for d~~ 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.
- b. Tree permits. When a violation of this Title has occurred, the City Forester may delay intake or review of applications for tree permits from the property owner or other applicant, as identified on the violated permit application, until the violation has been satisfactorily resolved.

4.-7. [No Change]

8. Enforcement ~~penalty~~ fees and penalties.

- a. The City may charge a ~~penalty fees and penalties~~ 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 fees and penalties in the monthly enforcement penalty shall be charged as set forth in the ~~Enforcement Fee and Penalty Schedule~~ Title 11, Trees Fee Schedule, as approved by the City Council.
- c. Properties in violation for 3 months from the initial notice of violation will be assessed fees and penalties in the form of an enforcement penalty that is twice the amount as listed in the ~~Enforcement Fee and Penalty Schedule~~ Title 11, Trees Fee 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 fees and penalties ~~an enforcement penalty~~ as described in this Section, the BDS Director or City Forester, as applicable, will file a statement with the City Auditor that identifies the property, the amount of the monthly penalty and the date from which 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 fees and 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, fees, penalties, and costs are paid in full; and the BDS Director or City Forester, as applicable, 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.
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. In 11.80.020 on page 169 and 171, correct numbering. Numbering errors occurred in the process of formatting the Recommended Draft. Correct text as follows:

**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.-3. [No Change]
  4. "Attached Structure" means a structure attached to a building.
  4. [Re-number Paragraph] to 5.
  6. "Building" means a structure that has a roof, is enclosed on at least 50 percent of the area of its sides and required a development permit prior to construction.
  - 5.-9. [Re-number Paragraphs] to 7.-11.
  12. "Construction Staging Area" means a designated area for the storage of equipment and vehicles, stockpiles, waste bins, and other construction-related materials during a construction project. Any construction trailers are to be

included in the construction staging area. In some cases, more than one staging area may be established on site.

**10.-12. [Renumber Paragraphs] to 13.-15.**

**16.** "Development, Alteration" has the same meaning as in Title 33, Planning and Zoning.

**13.-15. [Renumber Paragraphs] to 17.-19.**

**1620.** "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.-b. [No Change]

c. "Removal" is felling, cutting or removing ~~50 percent or more of the~~ any portion of the crown, trunk, or root system of a tree, that resulting results in the loss of ~~aesthetic or~~ physiological viability or structural integrity, or any procedure that will result in the death of the tree, including girdling, poisoning, topping or drowning the tree.

d.-e. [No Change]

**17.-31 [Renumber Paragraphs] to 21.-35.**

**3236.** Tree Related Terms:

a.-k. [No Change]

l. "Tree" means a perennial, woody stemmed plant that typically supports a distinct crown of foliage and typically reaches a mature height of at least 16 feet and excludes plants listed as shrubs or herbaceous plants in the *Tree and Landscaping Manual* published by the Bureau of Development Services or the *Portland Plant List*.

m. [No Change]

**33.-34. [Renumber Paragraphs] to 37.-38.**

**IMPACT STATEMENT**

**Legislation title:** Improve City tree regulations through the Regulatory Improvement Code Amendment Package 8-Technical Amendments (Ordinance; amend Title 11)

**Contact name:** Jeffrey Caudill, City Planner II

**Contact phone:** 503-823-4572

**Presenter name:** Kathryn Hartinger, Jeff Caudill, Phil Nameny, Kristin Cooper

**Purpose of proposed legislation and background information:**

The Regulatory Improvement Program was established by Resolution of the City Council in 2002. The purpose of the work program is to “update and improve City building and land use regulations that hinder desirable development.” Since the program began, the Bureau of Planning and Sustainability (BPS) in conjunction with the Bureau of Development Services (BDS) has worked on over a dozen related regulatory projects to improve the city’s zoning and other codes. One component of the program – Regulatory Improvement Code Amendment Package (RICAP) – was designed to provide an ongoing and rapid vehicle for technical and minor policy amendments to the City’s regulations. From 2005 to 2015, City Council adopted seven packages of amendments (RICAP 1 through 7), which resulted in many amendments to city regulations. Most of the changes were to Zoning Code regulations.

RICAP 8 includes amendments addressing 18 items in Title 11, Trees.

**Financial and budgetary impacts:**

The RICAP amendments to Title 11 are intended to streamline regulations by clarifying confusing or ambiguous text, adding or modifying language to ensure consistency across City codes, and updating sections to better implement the intent of the regulation. These actions result in cost savings to applicants, reduce confusion for the public, and lessen fiscal impacts for the city related to permit review and administration. An amendment to increase the fees associated with unlawful removal of or damage to Heritage Trees is included, but the enforcement process will remain the same. There are no additional costs anticipated with administering any of the regulations as amended.

**Community impacts and community involvement:**

The 18 amendment topics affect and benefit all parts of the city. Both the development community and residents benefit from more clear regulations. Project staff met with 4 neighborhood district coalitions, the development review advisory committee, the citywide land use group, and others.

The Urban Forestry Commission and Planning and Sustainability Commission each held a public hearing and heard testimony from tree advocates, some of whom supported proposals, others wished regulations went farther to protect trees. Both commissions determined that staff’s proposal properly balanced the goals for development, design and tree preservation. Each commission requested minor changes to the amendments. The requested changes have been incorporated into the Recommended Draft.

**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