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# **Proposed Amendment to Title 11, Trees, to Extend Sunset Date for Certain Tree Preservation Regulations in Development Situations on Private Property**

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**Planning and Sustainability Commission Hearing  
September 24, 2019**



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# Order of Presentation

- **Summary of Proposal**
- **Process**
- **History**
- **2016 Amendments**
  - **Comparison to Previous Code**
  - **PSC Recommendation**
- **2016-2019 Data**
- **Further Considerations**





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# Summary of Proposal

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## **Extend Sunset Date for Certain Tree Preservation Regulations Two Years: From December 31, 2019 to December 31, 2021**

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### **Note on Scope**

- Applies to regulations for Private Trees in Development Situations (not City Trees, or Street Trees, or Trees in Non-development Situations).
- Does not pertain to when tree preservation regulations are triggered, or when a site or tree is exempt from tree preservation regulations.
- Presentation/discussion will refer to trees (assume non-exempt trees on non-exempt sites)



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# 2016 Amendments

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1. Continued to require that at least 1/3 of trees be preserved or pay a fee in-lieu of preservation. Added requirement that all non-exempt trees 36" or larger be preserved or pay a fee in-lieu of preservation.
2. Amended the fee in-lieu of preservation to a graduated scale as follows:
  - a. 12"-20" = \$1,800 (cost of (2) 2-inch trees)
  - b. 20"- 36"= \$3,600 (cost of (4) 2-inch trees)
  - c. 36" or larger = \$16,220 and up ("inch-per-inch" fee at \$450/inch)
3. Applicants post notice on-site and send a notice to the neighborhood association and district coalition 45 days prior to development permit issuance for removal of trees 36" or larger.
4. Certain affordable housing projects exempt, from the fee in-lieu of preservation for removal of trees 36" or larger.
5. Sunset date of December 31, 2019.



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# Process

- **Planning and Sustainability Commission Hearing and Recommendation (September 24, 2019)**
- **Urban Forestry Commission Hearing and Recommendation (October 17, 2019)**
- **City Council Hearing and Decision (@ November or December 2019)**







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# History

- Title 11 effective **January 1, 2015**
- **Mid-2015**, community concern regarding especially large sized trees being removed in association with development projects
- Commissioner Fritz (PP&R Commissioner in Charge) requested **fast-track amendments to Title 11** to address issue
- Early Proposals Presented to Tree Code Oversight Advisory Committee (OAC), Urban Forestry Commission (UFC), Development Review Advisory Committee (DRAC), and City Bureaus. No other community engagement
- Amendments **effective May, 2016**





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# Purpose of Code

## Purpose of Regulations for Trees in Development Situations (PCC 11.50.010)



*“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.”*



# 2016 Amendments

|   | Description   | 2015 Code   | PSC  | Adopted  |
|---|---|---|--|--|
| 1 | <b>Mitigation Fee In-lieu Applies to All Large Trees Removed</b><br><b>OR</b><br><b>Only Trees Removed that are Subject to 1/3 Preservation Standard?</b> | <ul style="list-style-type: none"> <li>1/3 preservation standard; can be met by paying a fee in lieu of preservation</li> </ul>                       | <ul style="list-style-type: none"> <li>Up to 36"= 1/3 preservation standard; can be met by paying a fee in lieu of preservation</li> <li>36" or greater=All must be preserved; can be met by paying a fee in lieu of preservation; can be used to meet 1/3 preservation standard.</li> </ul> | <ul style="list-style-type: none"> <li>Up to 36"= Fee required for removal of trees used to meet the 1/3 preservation standard.</li> <li>36" or greater=All must be preserved; can be met by paying a fee in lieu of preservation; can be used to meet 1/3 preservation standard.</li> </ul> |
| 2 | <b>Mitigation Fee In-Lieu of Preservation Structure</b>   | <ul style="list-style-type: none"> <li>Flat fee per tree removed, regardless of tree size (cost to plant and maintain 2 replacement trees)</li> </ul> | <ul style="list-style-type: none"> <li>Graduated fee in lieu of preservation</li> <li>12-20"= (cost of (2) 2-inch trees)</li> <li>20-36"= (cost of (4) 2-inch trees)</li> <li>36-50"= (cost of (6) 2-inch trees)</li> <li>50" plus-=inch-per-inch</li> </ul>                                 | <ul style="list-style-type: none"> <li>Graduated fee in lieu of preservation</li> <li>12-20"= (cost of (2) 2-inch trees)</li> <li>20-36"= (cost of (4) 2-inch trees)</li> <li>36" plus= inch-per-inch</li> </ul>   |
| 3 | <b>Notice Requirements</b>  | None  | For removal of trees 36" plus:<br>30 day posted notice and Neighborhood Association notice   | For removal of trees 36" plus:<br>45 day posted notice and Neighborhood Association notice   |
| 4 | <b>Applicability to City and Street Trees</b>   | No (Admin Rule)   | Yes  | No (Admin Rule)  |
| 5 | <b>Sunset Date</b>  | N/a   | December 31, 2019  | December 31, 2019  |
| 6 | <b>Affordable Housing Exemption</b>   | None  | None   | Exempt from fee-in lieu for 36" plus   |





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# Highlights from PSC Recommendation

## Recommendation Letter January 20, 2016

**(2)** The commission considered the proposals carefully, spending more than two hours learning about them from staff, and deliberating our options. We also received written testimony, including from the Development Review Advisory Committee, and the Tree Code Oversight Advisory Committee and heard from a number of individuals, including representatives from the Urban Forestry Commission, and the Portland Bureau of Transportation. Aside from the appointed committees and commissions, the comments from the general public supported stronger trees regulations. We also heard support for a subsequent, more comprehensive Title 11 update to improve preservation of trees on development sites, among other issues related to Title 11.

**(3)** The PSC grappled with a number of issues, including whether to recommend a graduated fee-in-lieu of tree preservation based on the number of replacement trees or inch-for-inch replacement beginning at a designated tree size, and whether there should be a cap on the fees. Concerns were expressed about the seeming reliance on mitigation for tree removal, and frustration that the current regulations do not ensure trees on development sites are actually preserved. However there were also concerns about the impact of additional costs on development, including affordable housing and on homeowners that might simply want to build on a new room or a deck.

**(4)** Ultimately, the Commission recommends a modified Proposal B. We feel that Proposal B, with our modifications, continues to balance city goals for the urban forest and development, while providing additional incentives to preserve trees on development sites.



# 2016-2019 Data

## 36" or Larger Trees Removed and Preserved

|                                      | Pre-Amendment<br>(2015) | Post-Amendment<br>(Average/Year) | %Change |
|--------------------------------------|-------------------------|----------------------------------|---------|
| # Non-exempt 36" +<br>Trees Removed: | 42                      | 15                               | -64%    |
| #36" + Trees Preserved               | 91                      | 156                              | 71%     |

## Issued Permits and Fees In-Lieu Collected

|  | Pre-Amendment<br>(2015) | Post-Amendment<br>(Average/Year) | %Change |
|--|-------------------------|----------------------------------|---------|
| # Issued Permits                       | 6,843                   | 6,588                            | -4%     |
| Fee In Lieu of<br>Preservation Revenue | \$200,400               | \$462,376                        | 131%    |



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# Potential Further Considerations

- Scope of Impact

**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%                |
| <b>Total Trees</b> | <b>184</b>  | <b>100%</b>       |

- Who does it impact? (Equity)
- It is effective at preserving large sized trees specifically when the tree is affected by proposed development?
- Does the notification process work?
- Are thresholds correct? Does it appropriately value mid-sizes?
- Does the affordable housing exemption fit with how other City regulations consider affordable housing development?
- What is the effect on housing development overall?
- How are priorities balanced?



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# Actions

## Request for Action Today:

- **Recommend staff proposal to extend sunset date of existing amendments to December 31, 2021**
- **Recommend alternate proposal (alternate regulations and/or alternate sunset date)**
- **Recommend maintaining the current sunset date of December 31, 2019**





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**Questions?**