

IMPACT STATEMENT

Legislation title: Amend Trees In Development Situations Code to extend sunset date for certain tree preservation regulations in development situations on private property (Ordinance; amend Code Chapter 11.50)

Contact name: Emily Sandy, BDS Code & Policy Development
Contact phone: 503-823-7828
Presenter name: Emily Sandy

Purpose of proposed legislation and background information:

- Portland City Code Title 11, Trees, was effective January 1, 2015. Shortly thereafter, public concern developed regarding the removal of large sized trees associated with development projects as allowed by Title 11.
- In response, fast track amendments to Title 11 were adopted to strengthen tree preservation requirements for private trees in development situations. The amendments were made with some, but not all desired public engagement or analysis. Therefore, the amendments were adopted with a sunset date of December 31, 2019, to allow for more time to complete comprehensive evaluation and amendment of Title 11, including regulations for tree preservation in development situations can be undertaken.
- The subject amendments were effective May 13, 2016.
- There is some data to indicate the amendments have resulted in increased preservation of large diameter trees. However, to-date, no comprehensive evaluation and amendment of Title 11 has been undertaken.
- Rather than allow the amendments to sunset, this proposal will extend the sunset date, recognizing the need to do further outreach and analysis before adopting permanent amendments.

Financial and budgetary impacts:

There are no financial or budgetary impacts because there are no changes to the existing regulations.

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.
- At the time of the 2016 amendments, Portland Parks and BDS staff conducted outreach to the Tree Code Oversight Advisory Committee and the Development Review Advisory Committee (DRAC), as well as to affected City Bureaus 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 a recommendation for amendments that were heard by City Council. All notifications required by Title 11 were completed.

- For this proposal, BDS staff conducted outreach to the DRAC, and staff proposals were heard by the PSC and UFC who each developed a recommendation on the extension of the sunset date. All notifications required by Title 11 were completed. The proposal was also distributed through various electronic channels to interested party lists maintained by BDS and Portland Parks-Urban Forestry.

100% Renewable Goal:

This action does not increase or decrease the City's total energy use or renewable energy use.

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



**City of
Portland, Oregon**
Bureau of Development Services
FROM CONCEPT TO CONSTRUCTION

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MEMO

Date: November 13, 2019

To: Mayor Ted Wheeler
Commissioner Chloe Eudaly
Commissioner Nick Fish
Commissioner Amanda Fritz
Commissioner Jo Ann Hardesty

From: Rebecca Esau, Director
Bureau of Development Services

Re: **Amend Chapter 11.50 (Trees In Development Situations) to Extend Sunset Date for Certain Tree Preservation Regulations in Development Situations on Private Property, City Council Hearing November 13, 2019, 4:20 TC**

I. Background

Portland City Code Title 11, Trees, was effective January 1, 2015. Title 11, the Tree Code is one tool used to meet the goals set forth in the Urban Forest Management Plan, including increased tree canopy, enhanced urban forest through development and redevelopment and consistent and clear regulation.

Shortly thereafter, public concern developed regarding the removal of large sized trees associated with private development projects as allowed by Title 11.

In response and at the request of Commissioner Fritz (then Commissioner-In-Charge of Portland Parks and Recreation), BDS and PP&R worked to develop fast track amendments to Title 11 to strengthen tree preservation requirements, especially for larger sized trees, in development situations on private property.

The amendments were made with some, but not all desired public engagement or analysis. Therefore, the amendments were adopted with a sunset date of December 31, 2019, to allow for more time to complete comprehensive evaluation and amendment of Title 11, including regulations for tree preservation in development situations, can be undertaken. The subject amendments were effective May 13, 2016.

There is some data to indicate the amendments have resulted in increased preservation of large diameter trees. However, to-date, no comprehensive evaluation of either these amendments or Title 11 as a whole has been undertaken. Rather than allow the amendments to sunset or making the amendments permanent, this proposal will extend the sunset date, recognizing the need to do further outreach and analysis before adopting permanent amendments. More information can be found in the BDS staff proposal dated August 23, 2019.

A Summary of the 2016 amendments subject to the sunset date follows:

1. Continued to require that at least 1/3 of non-exempt trees be preserved or pay a fee in-lieu of preservation, regardless of tree size. **Added requirement that all non-exempt trees 36 inches or larger in diameter be preserved or pay a fee in-lieu of preservation.**
2. **Amended the fee in-lieu of preservation** as follows:
 - a. For removal of non-exempt **trees with a diameter of 12 inches or larger, but less than 36 inches, a graduated scale is used to determine the fee** amount. Based on the current fee schedule, the fees are \$1,800-\$3,600 per tree removed.
 - b. For removal of non-exempt **trees with a diameter of 36 inches or larger, an “inch-per-inch” mitigation” payment is required.** Based on the current fee schedule, fees start at \$16,220 for removal of a 36-inch diameter tree and increase at \$450 per additional diameter inch of tree removed.
3. Required applicants to **post a notice on-site and send a notice** to the neighborhood association and district coalition 45 days prior to development permit issuance for removal of non-exempt trees 36 inches in diameter or larger.
4. **Exempted certain affordable housing projects,** as defined by the Portland Housing Bureau, from the fee in-lieu of preservation for removal of non-exempt trees 36” in diameter or larger.
5. Included a **sunset date of December 31, 2019.**

II. Planning and Sustainability Commission (PSC) and Urban Forestry Commission Recommendations on the Extension of the 2016 Amendments

Title 11 requires that City Council consider recommendations from both the PSC and the UFC for amendments related to tree regulations in development situations. Both bodies have held hearings and recommendations summarized here.

PSC: Recommended to extend sunset date to December 31, 2021, as requested.

UFC: Recommended to extend sunset date to December 31, 2021, OR should City Council declare a climate emergency, the amendments should remain in place for the duration of the climate emergency, whichever is later

Staff Note: *Given the likelihood that a climate emergency will be declared, and that the emergency may not end or expire, coupled with the awkwardness of referring to a yet to be determined action in the code with no particular end date, staff offers that the recommendation from UFC is essentially adopting the 2016 amendments with no sunset*

date. If Council chooses to adopt the UFC proposal, staff recommends that the sunset date should just be removed, rather than referring to the climate emergency.

III. Other Recommendations by the PSC and UFC

Unexpectedly, the PSC also recommended to remove an exemption from tree preservation regulations that exempts portions of sites in CX, EX, IG1, and IH zones from tree preservation in development situations on both private property and city-owned or managed property. The removal of the exemption would also sunset on December 31, 2021.

Following that, at the request of Commissioner Fish, the UFC specifically deliberated on the zone exemption recommendation of PSC, and also voted to recommend the exemption be removed with a sunset date of December 31, 2021. In addition, the UFC voted to recommend reducing the size threshold in the 2016 amendments from 36" to 20", if a climate emergency should be declared and for the duration of the climate emergency.

These parts of the PSC and UFC recommendations will be heard at a later date, December 5, 2019 because:

- The extension of the 2016 amendments requires near immediate action to be in effect prior to the current sunset date of December 31, 2019. Because of the added scope and far-reaching impacts of the additional recommendations, coupling the originally proposed extension with the additional recommendations has the potential to prolong testimony, discussion, deliberation and vote on the proposal. The added amendments have no such time constraint.
- There is limited time on the Council Agenda to adequately present and hear both the original extension proposal and the added amendments in time so that amendments regarding the extension are effective by December 31, 2021.
- There has been no analysis or outreach on these additional amendments. The additional time will allow BDS to conduct some additional outreach and gather some data related to additional amendments recommended by the PSC and UFC.

More information and a staff memo on these additional recommendations will follow at least 3 weeks prior to the December 5th hearing on these recommendations.

IV. Stakeholders

- Parties concerned about Climate Change and ecological benefits of tree preservation.
- Parties involved in development and the potential effects of the regulations on housing costs or ability to develop sites as envisioned by the Comprehensive Plan or other ongoing projects such as Better Housing by Design and Residential Infill Project.

V. Red Flags/Potential Issues

- Generally, there is support for the extension from all stakeholders, including the Development Review Advisory Committee (DRAC).
- There may be testimony regarding the need to fully fund a project to adequately analyze these amendments and other potential amendments to Title 11 in a larger project.
- Parties may want to testify on the other components of the PSC and UFC recommendations (See Section III). Due to time constraints and the fact that these components will be heard on December 5th, staff feels it is important to keep testimony and deliberation limited to the extension of the 2016 amendments only.