



[Home](#) / [Council Documents](#)

# 191314

Ordinance

## Authorize Portland Parks & Recreation to establish and collect fees in-lieu of mitigation activities to implement restoration projects in natural areas

Passed

The City of Portland ordains:

Section 1. The Council finds:

1. Portland Parks & Recreation (PP&R) provides safe places, facilities, and programs that promote physical, mental, and social activity. PP&R programs establish, safeguard, and restore parks, natural areas, and public places.
2. The City Nature team within PP&R is charged with the care and stewardship of natural areas including Forest Park. Healthy natural areas keep Portland's land and water healthy and support the City's climate resilience goals. Vegetation in sloped natural areas prevents land slumping and landslides that can impact both public and private property. Trees in forested natural areas keep the air healthy. Natural areas can mitigate flooding by storing water in floodplains and reducing the amount of water entering streams during rain events. Forested areas also sequester carbon and mitigate high temperature events.
3. Forest Park is a 5,200-acre natural area that provides critical refuge for hundreds of native wildlife and plant species and provides important air and water quality benefits. Forest Park contains more than 80 miles of trails and provides access to nature, recreation, and educational opportunities for the region. There is also an extensive network of existing infrastructure within the park, including electrical and natural gas transmission facilities, public roads, and other utility facilities.
4. There are a number of existing utility easements that run through Forest Park, held by Portland General Electric (PGE), Bonneville Power Administration (BPA), Kinder Morgan, and NW Natural Gas. The infrastructure associated with these easements requires ongoing maintenance or additional development which can result in natural resource impacts. Infrastructure projects such as Oregon Department of Transportation (ODOT) and Portland Bureau of Transportation

Introduced by

[Commissioner Dan Ryan](#)

Bureau

[Parks & Recreation](#)

Contact

**Kendra Petersen-Morgan**  
Natural Areas Supervisor

✉ [kendra.petersen-morgan@portlandoregon.gov](mailto:kendra.petersen-morgan@portlandoregon.gov)

☎ [503-823-4492](tel:503-823-4492)

**Requested Agenda Type**

Regular

**Date and Time Information**

**Requested Council Date**  
June 7, 2023

Portland Policy Document


- (PBOT) road maintenance within or adjacent to Forest Park can also cause ecological impacts.
5. The land and natural resources within Forest Park are protected by the Environmental overlay zones provided in Title 33 and the Forest Park Natural Resource Management Plan (NRMP), administered by the Bureau of Development Services (BDS). These zoning and NRMP regulations require mitigation plans for ecological impacts in the areas where they are applied. Additionally, PP&R requires a Non-Parks Use Permit for work in PP&R-managed areas to ensure that ecological and recreation impacts are minimized and mitigated.
  6. Currently, required mitigation is performed by the entity causing the impact. Due to conditions in Forest Park and the complexity of conducting comprehensive restoration in Forest Park, large-scale mitigation provided to off-set infrastructure maintenance or other development is often unsuccessful and does not meet the goals of the Forest Park Natural Resources Management Plan, resulting in a net loss to City natural resources.
  7. To address this, PP&R proposes to establish an optional in-lieu fee which would allow PP&R to receive mitigation funds from applicants as the alternative for the applicants conducting mitigation activities within Forest Park. PP&R would utilize this in-lieu fee to implement restoration projects within the same management unit of the park where impacts occurred, in order to mitigate for those impacts. Funds will be part of the Forest Park Trust Fund and will be spent within five (5) years of receipt, unless good cause is determined by the Director to extend the time for use. PP&R will provide annual reporting to BDS on the status of the funds spent and mitigation accomplished. When a mitigation plan is required in Title 33 or the NRMP, PP&R will demonstrate how the mitigation in-lieu fee satisfies the required mitigation.
  8. To implement this in-lieu fee, it is necessary for City Council to adopt a fee schedule which sets out the required fees per tree to be removed within Forest Park. This mitigation in-lieu fee schedule is Exhibit A to this ordinance.

NOW, THEREFORE, the Council directs:

- A. Portland Parks and Recreation is authorized to establish and collect fees in-lieu of mitigation for impacts in Forest Park, which will be utilized to implement mitigation and conduct monitoring and maintenance not for the design of mitigation plans nor general staffing costs.
- B. Adoption of the Fee Schedule listed as Exhibit A to this ordinance shall be effective May 31, 2023. The Fee Schedule may be increased each fiscal year in accordance with City Economist's recommendation and the annual supplemental Fee Schedule will be filed by Portland Parks and Recreation and thereafter incorporated as part of the policy.

C. This ordinance is binding City policy.

## Documents and Exhibits

 [Exhibit A \(https://www.portland.gov/sites/default/files/council-documents/2023/exhibit-a\\_3.pdf\)](https://www.portland.gov/sites/default/files/council-documents/2023/exhibit-a_3.pdf) 98.98 KB

An ordinance when passed by the Council shall be signed by the Auditor. It shall be carefully filed and preserved in the custody of the Auditor (City Charter Chapter 2 Article 1 Section 2-122)

Passed by Council  
June 7, 2023

Auditor of the City of Portland  
Simone Rede

## Impact Statement

### Purpose of Proposed Legislation and Background Information

Forest Park, a 5,200-acre natural area managed by PP&R, provides critical refuge for hundreds of native wildlife and plant species and provides important air and water quality benefits. With more than 80 miles of trails, it also provides invaluable access to nature, recreation, and educational opportunities for the region. Further, an extensive network of existing infrastructure currently exists within the park, including electrical and natural gas transmission facilities, public roads, and other utility facilities. The park is protected by the Environmental Zones set forth in Title 33, the City's Zoning Code, and the Forest Park Natural Resources Management Plan (NRMP) to preserve the highest valued natural resources of the City.

Currently there are eight different utility easements running through Forest Park. These utility easements are held by Portland General Electric (PGE), Bonneville Power Administration (BPA), Kinder Morgan, and NW Natural Gas. The infrastructure associated with these easements requires ongoing maintenance or additional infrastructure which can result in natural resource impacts that require mitigation. Additionally, infrastructure projects such as Oregon Department of Transportation (ODOT) and Portland Bureau of Transportation (PBOT) road maintenance within or adjacent to Forest Park may require mitigation to offset ecological impacts. When work must occur on land protected by the Environmental Zones, the projects are reviewed through the Environmental Review land use process with the Bureau of Development Services (BDS) to ensure that the applicable criteria of the Portland Zoning Code (Title 33) and the Forest Park NRMP are met, including that any unavoidable impacts to natural resource and functional values are offset by appropriate mitigation. Additionally, PP&R requires a Non-Parks Use Permit for work in Forest Park to ensure that ecological and recreation impact is minimized as practicable.

To receive a permit under either process, an applicant is required to mitigate impacts to the park. PP&R and BDS review mitigation proposals and provide technical input, while the applicant is responsible for carrying out the mitigation activities.

This current system is challenging for both the City and applicants for a multitude of reasons. First, it requires PP&R land managers with technical expertise to direct a third party to carry out mitigation activities in compliance with the park's natural resources management plan. This process requires considerable communication between the parties and offers many opportunities for misinterpretation and/or non-compliance with City requests or requirements. To achieve optimal mitigation results, PP&R land managers have found that an extensive series of communications, site visits, inspections, and feedback is required to achieve the desired results. Standard Environmental Zoning Code mitigation requirements typically require applicants to plant trees. As a result, much of the mitigation currently being implemented involves revegetation with tree species. However, due to the nature of Forest Park and its abundance of forest canopy, revegetation with trees only does not always meet the highest ecological need for mitigating site impacts from construction and maintenance. Instead, comprehensive restoration over large areas, including the removal of invasive species and revegetation with shrubs and forbs, is mitigation more readily needed in the park. Third-party applicants often are not equipped to carry out this nuanced restoration work. Additionally, as our climate changes, selective pruning and creation of defensible space in the wildland urban interface is becoming increasingly necessary to reduce wildfire risk. Currently, under a programmatic permit from Urban Forestry, Land Stewardship is the responsible party for all activities in the permit, including wildfire risk reduction techniques, which means that it is beneficial for Land Stewardship to directly carry out that mitigation to ensure permit compliance.

BDS and PP&R are proposing an alternate approach that has the support of stakeholders. This alternate approach would, for qualifying projects, authorize PP&R to receive Title 33 mitigation funds from applicants in lieu of the applicants conducting mitigation themselves. PP&R would then utilize this funding to implement required mitigation, reducing inefficiencies associated with applicant-led mitigation. To carry out this process, PP&R site ecologists would submit a mitigation plan to BDS environmental land use review staff for each proposed impact. BDS would review those mitigation plans and, if approved, would include them in the land use approval for the project.

Fees would be collected by PP&R from the applicant and directed into the Forest Park Trust Fund. The Forest Park Trust Fund has three internal orders for each management unit of the park: the south, central and north units. Funds will be directed into each management unit where the impact occurred and would have to be spent in those units as described in the mitigation plan.

Under the proposed approach, fees would be calculated based on existing fees for tree planting and removal under Title 11, the City's tree code. The Environmental Review Land Use Process generally requires mitigation for impacts to trees 6 inches diameter at breast height (dbh) and larger. Title 11 tree removal in-lieu fees apply to trees at least 12 and less than 20 inches dbh, as well as for trees 20 inches and larger dbh. Title 11 also establishes a planting in-lieu fee which is a fee per tree. Table 1 below proposes to apply the per-tree fee for trees at least 6 and less than 12 inches dbh. For removal of trees at least 12 and less than 20 inches dbh, as well as for trees 20 inches and larger dbh, the corresponding tree removal in-lieu fee from the Title 11, Trees fee schedule would apply. The total number and diameter of trees 6 inches or greater dbh to be removed would be used to calculate a total fee for mitigation. These funds would be utilized to inform the total mitigation budget and inform the mitigation plan. The mitigation plan will include such actions as revegetation of both trees and shrubs, and invasive species removal. It may include wildfire risk reduction where appropriate. The mitigation plan will include a descriptive narrative, timeline, and proposed acreage to which the mitigation will be applied. As required by the Forest Park Natural Resource Management Plan, all mitigation actions will be applied to the management unit (South, Central or North) where the impact occurred.

The alternative approach will reduce inefficiencies for both the City and applicants to accomplish more ecologically beneficial mitigation. It will simplify process and improve outcomes from that associated with applicant-led mitigation. It will ultimately result in more comprehensive and sustainable ecological restoration, as technically knowledgeable PP&R staff who are managing broader-scale ecological management of Forest Park would be planning, implementing and maintaining the mitigation rather than a third-party applicant.

Table 1: Fee structure based on tree diameter

Tree diameter	Fee
≥6 and <12 inches	\$675 per tree
≥12 and <20 inches	\$1,800 per tree
≥20 inches	\$450 per inch

## Financial and Budgetary Impacts

The funds will be used to pay for mitigation for environmental impacts in and adjacent to Forest Park. Funds will be part of the Forest Park Trust Fund and earmarked for the specific management unit where the impact occurred. There is no budgetary impact for the current fiscal year. Budget development each year will include spending down approximately \$200K/year to pay for all expenses associated with mitigation activities. Funds received will be spent within five (5) years of receipt and PP&R will provide annual reporting to BDS on the status of funds spent and mitigation accomplished.

## Community Impacts and Community Involvement

These funds will allow PP&R to do restoration and fuels management work that will help reduce wildfire risk and help meet the City's climate goals, enhance ecological health, and protect wildlife habitat. Engagement with the community has included outreach to the Forest Park Conservancy, Forest Park Neighborhood Association, and Portland Audubon. Additionally, infrastructure easement holders in Forest Park as well as current applicants have been apprised of this proposal through BDS. At this time, PP&R has received positive response both from the community and from potential applicants.

## 100% Renewable Goal

N/A

## Budget Office Financial Impact Analysis

This action allows Portland Parks & Recreation (PPR) to transition to a fee-based structure for mitigation activities in natural areas. This new structure would allow PP&R to receive title 33 mitigation funds in lieu of applicants conducting mitigation themselves. The fee structure is based upon diameter of trees within impacted areas. PP&R estimates fees collected to be approximately \$200,000 a year which will be directed to pay for in-house mitigation activities.

## Agenda Items

441 Regular Agenda in [May 31-June 1, 2023 Council Agenda](https://www.portland.gov/council/agenda/2023/5/31)  
(<https://www.portland.gov/council/agenda/2023/5/31>)

Rescheduled

Rescheduled to June 1, 2023 at 2:00 p.m.

454 Regular Agenda in [May 31-June 1, 2023 Council Agenda](https://www.portland.gov/council/agenda/2023/5/31)  
(<https://www.portland.gov/council/agenda/2023/5/31>)

Passed to second reading

Passed to second reading June 7, 2023 at 2:00 p.m.

476 Regular Agenda in [June 7-8, 2023 Council Agenda](https://www.portland.gov/council/agenda/2023/6/7)  
(<https://www.portland.gov/council/agenda/2023/6/7>)

Passed

Commissioner Dan Ryan Yea

Commissioner Rene Gonzalez Yea

Commissioner Mingus Mapps Absent

Commissioner Carmen Rubio Yea

Mayor Ted Wheeler Yea