

## CHAPTER 11.50

### TREES IN DEVELOPMENT SITUATIONS

**Sections:**

- 11.50.010 Purpose.
- 11.50.020 When a Tree Plan is Required.
- 11.50.030 Development Impact Area Option for Large Sites and Streets.
- 11.50.040 Tree Preservation Standards.
- 11.50.050 On-Site Tree Density Standards.
- 11.50.060 Street Tree Planting Standards.
- 11.50.070 Tree Plan Submittal Requirements.
- 11.50.080 Changes to Approved Tree Plans and Emergency Tree Removal.

**11.50.010 Purpose. [No Change]**

**11.50.020 When a Tree Plan is Required.[No Change]**

**11.50.030 Development Impact Area Option For Large Sites and Streets. [No Change]**

**11.50.040 Tree Preservation Standards.**

**A.** Where these regulations apply.

1. Except when exempted by Subsection B., below, this Section applies to trees within the City of Portland and trees on sites within the County Urban Pocket Areas in the following situations:
  - a. On sites. Development activities with ground disturbance where there are Private Trees 12 or more inches in diameter and/or City Trees 6 or more inches in diameter and the site:
    - (1) is 5,000 square feet or larger in area; and
    - (2) has existing or proposed building coverage less than 85 percent.
  - b. In streets. Development activities with ground disturbance where there are Street Trees 3 or more inches in diameter.
2. Any Heritage Trees and trees required to be preserved through a land use condition of approval or tree preservation plan cannot be removed using the provisions in this Chapter, but may be counted toward the tree preservation requirements of this Section.

**B. Exemptions.** The following are exempt from the tree preservation standards of this Section:

1. On portions of sites located within an IH, IG1, EX, CX, CS, or CM zone.
2. Trees that are dead, dying, dangerous, or a nuisance species, as documented in a Tree Plan per Subsection 11.50.070 B. These are subtracted from the total number of trees to be addressed by the standards.
3. Trees exempted from this standard by a land use decision.
4. Tree preservation requirements approved in a land division or planned development review under Title 33, Planning and Zoning and the requirements of that review are still in effect.

**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. — Retention. An applicant shall preserve and protect at least 1/3 of the trees 12 inches and larger in diameter located completely or partially on the development site. Retaining trees at least 6 and less than 12 inches in diameter that are documented in a report prepared by an arborist or landscape professional to be Garry Oak (*Quercus garryana*), Pacific Madrone (*Arbutus menziesii*), Pacific Yew (*Taxus brevifolia*), Ponderosa Pine (*Pinus ponderosa*), or Western Flowering Dogwood (*Cornus nuttallii*) species are not included in the total count of trees on the site but may be used toward meeting the preservation standard.~~

~~b. — Mitigation. For each tree removed below the 1/3 requirement, payment to the Tree Planting and Preservation Fund is required equivalent to the cost of two trees. See Section 11.15.010.~~

a. General tree preservation.

(1) Retention. An applicant shall preserve and protect at least 1/3 of the non-exempt trees 12 inches and larger in diameter located completely or partially on the development site, unless mitigation occurs per Subsection 11.50.040.C.1.a.(2) below. Retaining trees at least 6 and less than 12 inches in diameter that are documented in a report prepared by an arborist or landscape

professional to be Garry Oak (Quercus garryana), Pacific Madrone (Arbutus menziesii), Pacific Yew (Taxus brevifolia), Ponderosa Pine (Pinus ponderosa), or Western Flowering Dogwood (Cornus nuttallii) species are not included in the total count of trees on the site but may be used toward meeting the preservation standard.

- (2) Mitigation. For each tree not preserved and protected below the 1/3 requirement, payment to the Tree Planting and Preservation Fund is required as shown in Table 50-1. The fee is calculated using the per-inch Restoration Fee for Tree Removal in the adopted fee schedule for Title 11. In cases where more than one tree is proposed for removal in excess of that allowed by Subsection 11.50.040.C.1.a.(1), the mitigation payment required to meet the 1/3 retention standard is based on the largest tree or trees proposed for removal.

Table 50-1  
Required Mitigation

<u>Size of Tree Removed (inches in diameter)</u>	<u>Required Mitigation</u>
<u>At least 12 and less than 20</u>	<u>The cost of (2) two-inch diameter replacement trees</u>
<u>At least 20 and less than 36</u>	<u>The cost of (4) two-inch diameter replacement trees</u>
<u>At least 36 or more</u>	<u>The cost per inch of tree removed</u>

**b. Preservation of trees 36 inches or greater.**

- (1) Retention. An applicant shall preserve and protect all non-exempt trees 36 inches in diameter or greater located completely or partially on the development site, unless mitigation and notice occurs per Subsections 11.50.040.C.1.b.(2) and 11.50.040.C.1.b(3), below. Retention or mitigation of these trees may also be used to meet the standards for general tree preservation in Subsection 11.50.040.C.1.a. above.
- (2) Mitigation. For each tree 36 or more inches in diameter not preserved and protected, payment to the Tree Planting and Preservation Fund is required as shown in Table 50-1. The fee is calculated using the per-inch Restoration Fee for Tree Removal in the adopted fee schedule for Title 11.
- (3) Notice. If a tree 36 inches or greater in diameter is not preserved and protected as allowed by Subsection 11.50.040.C.1.b.(2)

above, the property owner or the property owner's representative must post a notice on the site and send a notice to the recognized Neighborhood Association and District Coalition in which the site is located. The notices are for notification purposes only. The notices do not provide for public comment on the proposal or for appeal of the proposal. The property owner or the property owner's representative must provide a signed certification to the Bureau of Development Services that a notice was posted on the site and a notice was sent to the Neighborhood Association and District Coalition. The development permit may not be issued until the business day following the day the notification period is completed.

(a) The posted notice must:

- (i) Be posted on the site for at least 45 calendar days prior to development permit issuance;
- (ii) Be posted within 10 feet of the street lot line nearest the tree or trees to be removed;
- (iii) Include the date of posting and the date of the end of the notification period;
- (iv) Include a site plan at least 8.5 x 11 inches in size showing the location and description of the trees(s) to be removed including diameter inch size(s); and
- (v) Include contact information for the property owner or the property owner's representative.

(b.) The notices to the Neighborhood Association and District Coalition must:

- (i) Be e-mailed or mailed to the Neighborhood Association and District Coalition using the contact information maintained by the Office of Neighborhood Involvement. If mailed, the notice must be sent via certified or registered mail. The date of the e-mail or the mailing must be at least 45 calendar days prior to development permit issuance;
- (ii) Include a description of the trees(s) to be removed including diameter inch size(s); and
- (iii) Include contact information for the property owner or the property owner's representative.

(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. 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 of Subsection 11.50.040.C.1.b(4).

- c. Exception for Capital Improvement Projects. Trees on private property that are part of a capital improvement project and within the development impact area are regulated as City and Street Trees.

2. City and Street Trees.

- a. Retention. For development on City owned or managed sites, new public streets, or improvements to existing streets, applicants are required to consult with the City Forester at the preliminary project design phase if City or Street Tree removal is likely to occur to complete the project. The purpose of this consultation is to identify potential impacts and opportunities to retain existing trees, as well as any measures required to protect trees on site, on adjacent sites, or in the street.
- b. Mitigation. Any required mitigation specified below shall occur on the site, in the street planter strip, or in the same watershed either by planting or a payment into the Tree Planting and Preservation Fund. The City Forester may reduce or waive the following mitigation requirements.
- (1) Approved Street Tree removal in conjunction with improvements to partially or fully unimproved streets. Each tree at least 12 inches in diameter that is allowed to be removed shall be replaced with at least one tree. Trees planted to meet Street Tree Planting Standards will be credited toward meeting this requirement.
  - (2) Any other Street or City Tree allowed to be removed that is 6 or more inches in diameter shall be replaced with at least one tree in addition to trees required to meet required tree density or Street Tree planting standards.

**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;
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.
  - b. A specific condition of land use review approval exempts the site from these density standards;
  - c. 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.
  - d. On portions of sites located within an IH, IG1, EX, CX, CS, or CM zone.
  - e. Work conducted under Demolition, Site Development, or Zoning Permits.
2. Sites with the following primary uses are exempt from the on-site tree density standards:
  - a. Railroad Yards;
  - b. Waste Related;
  - c. Agriculture;
  - d. Aviation and Surface Passenger Terminals;
  - e. Detention Facilities;
  - f. Mining;
  - g. Radio Frequency Transmission Facilities; or

**h. Rail Lines and Utility Corridors;**

**C. On-Site Tree Density Requirement.** Planting on sites shall meet City specifications and standards in Chapter 11.60 and the following:

1. **Required Tree Area.** The required tree area is based on the size of the site and the type and size of proposed and existing development as shown in Table 50-42. Applicants may choose Option A or Option B for calculating required tree area except only Option A may be used to apply standards to a "Development Impact Area".

**Table 50-42 Determining Required Tree Area**

<b>Development Type</b>	<b>Option A</b>	<b>Option B</b>
<b>One and Two Family Residential</b>	40 percent of site or development impact area	Site area minus building coverage of existing and proposed development
<b>Multi Dwelling Residential</b>	20 percent of site or development impact area	
<b>Commercial/Office/Retail/Mixed Use</b>	15 percent of site or development impact area	
<b>Industrial</b>	10 percent of site or development impact area	
<b>Institutional</b>	25 percent of site or development impact area	
<b>Other</b>	25 percent of site or development impact area	

2. **Required Tree Density.** The required tree area shall be planted with some combination of large, medium or small canopy trees at the following rates:

**Table 50-23  
Number of Required Trees and Minimum Planting Area**

<b>Canopy size category (at maturity)</b>	<b>Number of trees required per size of tree area</b>	<b>Min. required planting area per tree (min. dimension)</b>
Large	1 per 1,000 s.f.	150 s.f. (10' x 10')
Medium	1 per 500 s.f.	75 s.f. (5' x 5')
Small	1 per 300 s.f.	50 s.f. (3' x 3')

Refer to Chapter 11.60, Technical Specifications, to calculate tree canopy size categories. When the canopy size category of the tree species is not or cannot be determined, the tree will be considered a small canopy tree.

3. **Tree Density Credits**
  - a. Trees planted on site to meet any required stormwater or other landscaping requirement may be counted toward the On-site tree density requirements.

- b. Trees that are retained and protected, including trees preserved per Section 11.50.040, may be credited as follows:
  - (1) Trees between 1.5 and less than 6 inches in diameter count as one small canopy size tree.
  - (2) Trees 6 or more inches in diameter count as one medium canopy size tree for each full increment of 6 diameter inches.
- c. Payment in lieu of planting. The applicant may pay a fee to the Tree Planting and Preservation Fund per Section 11.15.010 equivalent to the cost of planting and establishing one 1.5-inch caliper tree. The fee per tree shall be credited at a rate of one medium canopy size tree.
- d. On sites less than or equal to 3,000 square feet, healthy non-nuisance species trees planted or retained in the street planting strip may be credited as described in this Subsection.

**11.50.060 Street Tree Planting Standards. [No Change]**

**11.50.070 Tree Plan Submittal Requirements. [No Change]**

**11.50.080 Changes to Approved Tree Plans and Emergency Tree Removal. [No Change]**





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January 20, 2016

Mayor Charles Hales and Members of Portland City Council  
Portland City Hall  
1221 SW Fourth Ave  
Portland, OR 97204

Subject: Amendments to Title 11, Trees, Tree Preservation in Development Situations

Dear Mayor Hales and City Commissioners:

On January 12, 2016, the Planning and Sustainability Commission (PSC) held a public hearing on proposed amendments to Title 11, Trees, Tree Preservation in Development Situations. Two proposals (Proposal A – Portland Parks and Recreation 11/3/15 and Proposal B – Bureau of Development Services 12/11/15) were heard. The proposals intend to more adequately address concerns regarding tree preservation, particularly the preservation of especially large trees, in development situations. The PSC offers the following comments and recommendations.

**Comments**

1. The PSC found it challenging to be presented with two different proposals from two bureaus. It was also challenging to be asked to make a recommendation absent a full policy discussion and vetting of the proposals with stakeholders and the public. That said, the PSC understands that the proposals are both intended to provide a temporary, “stop-gap” approach to increase the incentive to preserve trees, particularly large trees on development sites.
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



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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.
- Like proposal B, the recommendation includes a graduated fee-in-lieu of preservation. This graduated fee approach, with a proposed cap, will increase fees not only the largest trees, but also the medium - large trees on development sites.
  - We recommend lowering the threshold to 36" diameter. At this threshold, to preservation or payment in lieu of preservation is required for all trees, and public notice is required in cases of removal. Based on a data sample presented at the hearing by BDS:

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>

- We also recommend a longer public notice period to provide more time for communication and potential negotiated solutions between developers and neighbors.
- We also recommend that the amendments apply to City and Street Trees (those on City-owned or managed property and those in the public right-of-way) as well as trees on private property. We believe this is fair and appropriate that the City be subject to at least as stringent requirements as are applied to private developments and other public projects.
- Finally, we recommend a sunset date to the new regulations as an impetus to fund and initiate a more comprehensive Tree Code update project in a timely manner.

The Commission voted 7-2 to recommend approval of a modified Proposal B, modified as described below.

#### Recommendation

The Portland Planning and Sustainability Commission recommends that City Council amend the Tree Code (Title 11) as shown in Proposal B (Bureau of Development Services, 12/11/15) with the following modifications:

1. Lower the proposed new threshold for large trees from 50" to 36" diameter (and greater) at 4.5 feet above ground surface. All trees this size and greater on a development site will be required to be preserved or to pay a fee in lieu of preservation, even if they are not used to meet the general 1/3 preservation standard (preservation of at least 1/3 of non-exempt trees on a site). In addition, all trees this size and greater that are not designated to be preserved are subject to the notification requirement.



2. Increase the amount of mitigation for trees that are 50 or more inches in diameter from 10 to 15 replacement trees. The recommended schedule for the fee in-lieu of preservation is as follows:

Recommended Amendments		
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

3. Apply the amendments to City Trees and Street Trees, in addition to Private Trees.
4. The notice requirement should be increased from 14 to 30 days. It will include notification to the neighborhood association in addition to an on-site posted notice.
5. Adopt a sunset date of December 31, 2019.

Sincerely,

Andre' Baugh  
Chair, Portland Planning and Sustainability Commission

cc: Urban Forestry Commission





## URBAN FORESTRY COMMISSION

1120 SW FIFTH AVENUE, PORTLAND, OREGON 97204

PHONE 503-823-5396 FAX 503-823-5570



AMANDA FRITZ, COMMISSIONER

MIKE ABBATÉ, DIRECTOR

January 29, 2016

187675

Mayor Hales and Members of Portland City Council  
Portland City Hall  
1221 SW Fourth Avenue  
Portland, OR 97204

Subject: Amendments to Title 11, Trees, Tree Preservation in Development Situations

Dear Mayor Hales and City Commissioners:

On January 21, 2016 the Urban Forestry Commission (UFC) held a public hearing on proposed amendments to Title 11, Trees, and Tree Preservation in Development Situations. Our hearing and the recommendations adopted by the UFC follow and build upon a previous hearing and set of recommendations by the Planning and Sustainability Commission (PSC) as required by Title 11, Trees. Both Commissions considered two proposals put forth by Portland Parks and Recreation ("Proposal A") and Bureau of Development Services (BDS, "Proposal B"). We have also attached with this letter a chart comparing the major differences among the stopgap measures proposed by Parks (Proposal A), BDS (Proposal B), and the PSC. The UFC's unanimously approved recommendations are shown as the last column.

The UFC offers the following comments and recommendations:

### Comments

1. The UFC had the benefit of comments and recommendations from the Tree Project Oversight Advisory Committee, the Development Review Advisory Committee, the PSC, and Bureau of Transportation. The UFC hearing included staff presentations and public testimony as well as written comments. City staff from Parks and Recreation, the BDS and Bureau of Planning and Sustainability provided technical expertise. In addition to scenario analysis from the BDS (part of Proposal B), the UFC also had the benefit of research prepared by Urban Forestry Staff and members of the UFC with professional expertise in quantifying ecosystem services and evaluating tradeoffs in mitigation policies. These supporting materials are attached.
2. Among the public comments received by the UFC, we heard all but unanimous support for strengthening current regulations to encourage the retention of trees on development sites. Complementing these public concerns, every City Committee and Commission has concurred that stopgap measures need to be adopted.
3. Data provided by Parks and BDS staff as well as UFC members show patterns indicating a steady decline in the number of the very largest trees in in Portland and their replacement with small-form trees. These data indicate that roughly no more than 2% of trees currently standing in Portland would benefit from Proposal A (Parks) or B (BDS). The PSC proposal would affect ~4% of all trees currently being permitted for removal as tallied by BDS in August 2015<sup>1</sup>.

<sup>1</sup> "Tree Distribution Sample: Residential New Construction and Demolition Permits Issued August 2015. BDS material for UFC Hearing, January 21, 2015.



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AMANDA FRITZ, COMMISSIONER

MIKE ABBATÉ, DIRECTOR

Both the UFC and PSC have recognized that such a high threshold would allow ongoing cutting of significant trees before they could grow to reach these protective limits. The ongoing cutting of large healthy trees and their replacement with small-form seedlings embodies an unsustainable trajectory that will ultimately degrade rather than restore the City's urban forest and the values it provides.

4. The Urban Forestry Commission found it challenging to determine the appropriate quantitative limits to the necessary stopgap measure while incorporating the scope and apparent intent of Title 11. Despite language in Chapter 11.50 Trees in Development Situations pertaining explicitly to "Tree Preservation", the code does not actually require preservation of trees in any development situation. Instead, disincentives are provided in a subset of development situations, and only partial mitigation for the loss of trees is effected. The practice of partial mitigation now in effect contrasts with the original stated intent of this portion of Title 11 articulated in the commentary for the "Tree Preservation Requirement" in Chapter 11.50: "to offset the loss of the established tree and the time lag for new trees to provide benefits."
5. The Commission grappled with the issue of a significant and implicit distinction in Title 11 between the value or importance of tree preservation and mitigation in development versus non-development situations. In non-development situations, we noted that no tree removed on private property larger than 6 inches in diameter, dead or alive, is exempted from potential mitigation. We noted that all lots in several commercial and industrial zones are exempt from Title 11 tree regulations and allow clear-cutting a lot prior to transfer to another entity for development. In addition, a full 2/3 of trees on private property are currently allowed to be removed in development situations without any mitigation whatsoever. For those 1/3 of trees remaining beneath the "Tree Preservation Standard" the schedule for mitigating for "the loss of the established tree and time lag for new trees to provide benefits" is dramatically different between development and non-development, while the actual value of trees lost is certainly not. As this is a stopgap measure, the Commission does not recommend correcting all of these problems at this time. Nevertheless, the Commission did consider the exemption of any lot less than 5,000 sq. ft. from these mitigation requirements as a significant loophole that is likely to allow significant unregulated and unmitigated removal of significant trees during development. As the zoning code allows development on lots as small as 3,000 sq. ft. the UFC recommends that these provisions apply to lots 3,000 sq. ft. and larger.
6. We agree with Parks and the PSC that the best means to ensure a more careful approach is to require notice to the public and neighborhood associations.
7. As this is a stop gap measure and further evaluation will better inform our approach, a sunset date will ensure that these measures do not become a substitute for further evaluation in light of the soon to be adopted Comprehensive Plan policies.

The Commission voted unanimously to recommend approval of a modified Proposal B, modified as described below.



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AMANDA FRITZ, COMMISSIONER

MIKE ABBATÉ, DIRECTOR

**Recommendation**

The Urban Forestry Commission recommends that City Council amend the Tree Code (Title 11) as show in Proposal B (Bureau of Development Services , 12/11/15) with the following modifications:

1. Lower the proposed new threshold for very large trees from 50" to 30" diameter (typically measured as diameter at breast height, 4.5 feet above ground surface). All trees this size and greater that are removed from a development site shall be subject to mitigation via a fee in lieu of preservation, even if they are not used to meet the general 1/3 preservation standard (preservation of at least 1/3 of non-exempt trees on a site). Trees with a diameter beneath this threshold shall be subject to mitigation according to the 1/3 preservation standard.
2. All trees greater than or equal to the large tree threshold (30" diameter) that are not designated to be preserved should be subject to the public notification requirement.
3. Trees that are 20" diameter or larger should be subject to a mitigation schedule based on inch-for-inch replacement. The mitigation schedule for trees removed less than 20" that are subject to mitigation requirements shall be determined based on current code, as modified by the Administrative Rule.
4. Apply the amendments to City Trees and Street Trees, in addition to Private Trees.
5. The notice requirement should be increased from 14 to 30 days. It should include notification to the relevant neighborhood association in addition to an on-site posted notice.
6. Adopt a sunset date of three years after effective date of the amendment ordinance.
7. Request that Mayor Hales and City Council direct the Bureaus of Development Services and Planning & Sustainability to allocate sufficient resources and work collaboratively with Parks on revising the Tree Code in a comprehensive manner and as soon as possible.
8. Apply the amendment to lots as small as 3,000 sq. ft.

Sincerely

Meryl Redisch  
 Chair, Urban Forestry Commission

Att: David Diaz: Current Code (Title 11 + Admin Rule) Tree Replacement/Mitigation Schedule  
 David Diaz: Mitigating for the removal of a 20" Douglas-fir  
 David Diaz: Comparison Table: Current Code, Proposal A, Proposal B, PSC, UFC



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

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**Memorandum**

**Date:** February 18, 2016

**To:** Interested Parties

**From:** Emily Sandy, Code and Policy Analyst, Bureau of Development Services  
(503) 823-7828, [Emily.sandy@portlandoregon.gov](mailto:Emily.sandy@portlandoregon.gov)

**Re:** **Commissioners Fritz/Saltzman Proposal: Amendments to Title 11, Trees, Chapter 11.50, Trees In Development Situations**

**Background**

Due to recent public concern about large trees being removed in development situations in Portland neighborhoods, amendments are proposed to Portland City Code Title 11, Trees, to strengthen development regulations pertaining to tree preservation, especially preservation of large trees, on private property in development situations.

Generally, the amendments aim to:

1. Revise the mitigation requirement (payment into the Tree Planting and Preservation Fund) for trees removed to be based on the size of the tree. Currently, the same mitigation is required for all trees removed regardless of size.
2. Add a notification requirement when trees above a certain size are removed.

To that end, staff from the Bureau of Parks and Recreation and staff from the Bureau of Development Services developed 2 proposals. Those proposals were considered by both the Planning and Sustainability Commission (PSC) and the Urban Forestry Commission (UFC). Both the PSC and the UFC made separate recommendations to City Council. The initial staff proposals, the recommendations by the PSC and the UFC, and a table comparing those proposal and recommendations are available at the Portland Trees website ([www.portlandoregon.gov/trees](http://www.portlandoregon.gov/trees)) and the Bureau of Development Services website ([www.portlandoregon.gov/bds](http://www.portlandoregon.gov/bds)).

**Fritz/Saltzman Proposal**

In addition, Commissioners Amanda Fritz and Dan Saltzman have sponsored a proposal (Fritz/Saltzman Proposal), which is summarized below. Code Amendments to Title 11 reflecting this proposal are located at the end of this memo. For ease of reference, the summary follows the same format as the comparison table referenced above and available on the Portland Trees and Bureau of Development Services websites.

- 1) Mitigation Fee In-lieu Applies to All Trees or Only Trees Subject to the 1/3 Preservation Standard?
  - Removal of Trees Up to 36" in diameter = Fee required only for removal of trees used to meet the 1/3 preservation standard.
  - Removal of Trees 36" in diameter or greater = Fee required for removal of all trees.
- 2) Mitigation Fee In-lieu of Preservation Standard.\*\*
  - At least 12" and less than 20 " = the cost of two 2" mitigation trees (\$1,200/tree)
  - At least 20" and less than 36" = the cost of four 2" mitigation trees (\$2,400/tree)
  - At least 36" and less than 50" = the cost of eight 2" mitigation trees (\$4,800/tree)
  - 50" or more = the cost of mitigation-per-inch of tree removed (\$300/inch or \$15,000/tree and up)
- 3) Cap on Fee?
  - No cap for trees 50" or more in diameter
- 4) Notice Requirements.
  - For removal of trees 36" or greater: 30 day posted notice and notice to neighborhood association and district coalition
- 5) Applicability to City and Street Trees
  - No
- 6) Sunset Date?
  - Yes, December 31<sup>st</sup>, 2019
- 7) Change site size applicability from 5,000 sf to 3,000 sf?
  - No

\*\*The actual mitigation fee in-lieu is based on the adopted Urban Forestry fee schedule. The current fee schedule specifies fees of \$300/inch. The fees shown are fees based on the current adopted fee schedule. This fee schedule is subject to amendment in the future.

#### **Hearing Information and Testimony**

City Council will hold a hearing on this matter on Thursday, March 3, 2016 at 2:00 p.m. Time Certain. The hearing will be located in Council Chambers at City Hall, 1221 SW 4th Avenue.

You may testify at the City Council hearing or submit written testimony. Submit written testimony to the Council Clerk via Email at [CCTestimony@portlandoregon.gov](mailto:CCTestimony@portlandoregon.gov) or send to 1221 SW Fourth Avenue, Room 130, Portland, Oregon 97204. Written testimony must be received by the time of the hearing and must include your name and address.



**Proposed Code Language for the Fritz/Saltzman Proposal**

Note: The following code language may be revised prior to the hearing to address technical clarifications. New language is shown in underline. Deleted language is shown in ~~strikethrough~~.

**CHAPTER 11.50**

**TREES IN DEVELOPMENT SITUATIONS**

**Sections:**

- 11.50.010 Purpose.
- 11.50.020 When a Tree Plan is Required.
- 11.50.030 Development Impact Area Option for Large Sites and Streets.
- 11.50.040 Tree Preservation Standards.
- 11.50.050 On-Site Tree Density Standards.
- 11.50.060 Street Tree Planting Standards.
- 11.50.070 Tree Plan Submittal Requirements.
- 11.50.080 Changes to Approved Tree Plans and Emergency Tree Removal.

**11.50.010 Purpose. [No Change]**

**11.50.020 When a Tree Plan is Required.[No Change]**

**11.50.030 Development Impact Area Option For Large Sites and Streets. [No Change]**

**11.50.040 Tree Preservation Standards.**

**A.** Where these regulations apply.

1. Except when exempted by Subsection B., below, this Section applies to trees within the City of Portland and trees on sites within the County Urban Pocket Areas in the following situations:
  - a. On sites. Development activities with ground disturbance where there are Private Trees 12 or more inches in diameter and/or City Trees 6 or more inches in diameter and the site:
    - (1) is 5,000 square feet or larger in area; and
    - (2) has existing or proposed building coverage less than 85 percent.
  - b. In streets. Development activities with ground disturbance where there are Street Trees 3 or more inches in diameter.
2. Any Heritage Trees and trees required to be preserved through a land use condition of approval or tree preservation plan cannot be removed using

the provisions in this Chapter, but may be counted toward the tree preservation requirements of this Section.

**B.** Exemptions. The following are exempt from the tree preservation standards of this Section:

1. On portions of sites located within an IH, IG1, EX, CX, CS, or CM zone.
2. Trees that are dead, dying, dangerous, or a nuisance species, as documented in a Tree Plan per Subsection 11.50.070 B. These are subtracted from the total number of trees to be addressed by the standards.
3. Trees exempted from this standard by a land use decision.
4. Tree preservation requirements approved in a land division or planned development review under Title 33, Planning and Zoning and the requirements of that review are still in effect.

**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 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. Retention. An applicant shall preserve and protect at least 1/3 of the trees 12 inches and larger in diameter located completely or partially on the development site. Retaining trees at least 6 and less than 12 inches in diameter that are documented in a report prepared by an arborist or landscape professional to be Garry Oak (*Quercus garryana*), Pacific Madrone (*Arbutus menziesii*), Pacific Yew (*Taxus brevifolia*), Ponderosa Pine (*Pinus ponderosa*), or Western Flowering Dogwood (*Cornus nuttallii*) species are not included in the total count of trees on the site but may be used toward meeting the preservation standard.~~

~~b. Mitigation. For each tree removed below the 1/3 requirement, payment to the Tree Planting and Preservation Fund is required equivalent to the cost of two trees. See Section 11.15.010.~~

**a.** General tree preservation.

(1) Retention. An applicant shall preserve and protect at least 1/3 of the non-exempt trees 12 inches and larger in diameter located completely or partially on the development site, unless mitigation occurs per 11.50.040.C.1.a(2) below. Retaining trees

at least 6 and less than 12 inches in diameter that are documented in a report prepared by an arborist or landscape professional to be Garry Oak (*Quercus garryana*), Pacific Madrone (*Arbutus menziesii*), Pacific Yew (*Taxus brevifolia*), Ponderosa Pine (*Pinus ponderosa*), or Western Flowering Dogwood (*Cornus nuttallii*) species are not included in the total count of trees on the site but may be used toward meeting the preservation standard.

- (2) Mitigation. For each tree not preserved and protected below the 1/3 requirement, payment to the Tree Planting and Preservation Fund is required as shown in Table 50-1. The fee is calculated using the per-inch Restoration Fee for Tree Removal in the adopted fee schedule for Title 11. In cases where more than one tree is proposed for removal in excess of that allowed by 11.50.040.C.1.a(1), the mitigation payment required to meet the 1/3 retention standard is based on the largest tree or trees proposed for removal.

Table 50-1  
Required Mitigation

<u>Size of Tree Removed (inches in diameter)</u>	<u>Required Mitigation</u>
<u>At least 12 and less than 20</u>	<u>The cost of (2) two-inch diameter replacement trees</u>
<u>At least 20 and less than 36</u>	<u>The cost of (4) two-inch diameter replacement trees</u>
<u>At least 36 and less than 50</u>	<u>The cost of (8) two-inch diameter replacement trees</u>
<u>At least 50 or more</u>	<u>The cost per inch of tree removed</u>

**b. Preservation of trees 36 inches or greater.**

- (1) Retention. An applicant shall preserve and protect all non-exempt trees 36 inches in diameter or greater located completely or partially on the development site, unless mitigation and notice occurs per 11.50.040.C.1.b(2) and 11.50.040.C.1.b(3), below. Retention or mitigation of these trees may also be used to meet the standards for general tree preservation in 11.50.040.C.1.a above.
- (2) Mitigation. For each tree 36 or more inches in diameter not preserved and protected, payment to the Tree Planting and Preservation Fund is required as shown in Table 50-1. The fee

is calculated using the per-inch Restoration Fee for Tree Removal in the adopted fee schedule for Title 11.

- (3) Notice. If a tree 36 inches or greater in diameter is not preserved and protected as allowed by 11.50.040.C.1.b(2) above, the property owner or the property owner's representative must post a notice on the site and send a notice to the recognized Neighborhood Association and District Coalition in which the site is located. The notices are for notification purposes only. The notices do not provide for public comment on the proposal or for appeal of the proposal. The property owner or the property owner's representative must provide a signed certification to the Bureau of Development Services that a notice was posted on the site and a notice was sent to the Neighborhood Association and District Coalition. The development permit may not be issued until the business day following the day the notification period is completed.

The posted notice must:

- Be posted on the site for at least 30 calendar days prior to development permit issuance;
- Be posted within 10 feet of the street lot line nearest the tree or trees to be removed;
- Include the date of posting and the date of the end of the notification period;
- Include a site plan at least 8.5 x 11 inches in size showing the location and description of the trees(s) to be removed including diameter inch size(s); and
- Include contact information for the property owner or the property owner's representative.

The notices to the Neighborhood Association and District Coalition must:

- Be e-mailed or mailed to the Neighborhood Association and District Coalition using the contact information maintained by the Office of Neighborhood Involvement. If mailed, the notice must be sent via certified or registered mail. The date of the e-mail or the mailing must be at least 30 calendar days prior to development permit issuance;
- Include a description of the trees(s) to be removed including diameter inch size(s); and
- Include contact information for the property owner or the property owner's representative.

- c. Exception for Capital Improvement Projects. Trees on private property that are part of a capital improvement project and within the development impact area are regulated as City and Street Trees.
2. City and Street Trees.
- a. Retention. For development on City owned or managed sites, new public streets, or improvements to existing streets, applicants are required to consult with the City Forester at the preliminary project design phase if City or Street Tree removal is likely to occur to complete the project. The purpose of this consultation is to identify potential impacts and opportunities to retain existing trees, as well as any measures required to protect trees on site, on adjacent sites, or in the street.
  - b. Mitigation. Any required mitigation specified below shall occur on the site, in the street planter strip, or in the same watershed either by planting or a payment into the Tree Planting and Preservation Fund. The City Forester may reduce or waive the following mitigation requirements.
    - (1) Approved Street Tree removal in conjunction with improvements to partially or fully unimproved streets. Each tree at least 12 inches in diameter that is allowed to be removed shall be replaced with at least one tree. Trees planted to meet Street Tree Planting Standards will be credited toward meeting this requirement.
    - (2) Any other Street or City Tree allowed to be removed that is 6 or more inches in diameter shall be replaced with at least one tree in addition to trees required to meet required tree density or Street Tree planting standards.

**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;
  - 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.
    - b. A specific condition of land use review approval exempts the site from these density standards;
    - c. 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.
    - d. On portions of sites located within an IH, IG1, EX, CX, CS, or CM zone.
    - e. Work conducted under Demolition, Site Development, or Zoning Permits.
  2. Sites with the following primary uses are exempt from the on-site tree density standards:
    - a. Railroad Yards;
    - b. Waste Related;
    - c. Agriculture;
    - d. Aviation and Surface Passenger Terminals;
    - e. Detention Facilities;
    - f. Mining;
    - g. Radio Frequency Transmission Facilities; or
    - h. Rail Lines and Utility Corridors;
- C. On-Site Tree Density Requirement. Planting on sites shall meet City specifications and standards in Chapter 11.60 and the following:
1. Required Tree Area. The required tree area is based on the size of the site and the type and size of proposed and existing development as shown in

Table 50-1. Applicants may choose Option A or Option B for calculating required tree area except only Option A may be used to apply standards to a "Development Impact Area".

**Table 50-12 Determining Required Tree Area**

<b>Development Type</b>	<b>Option A</b>	<b>Option B</b>
<b>One and Two Family Residential</b>	40 percent of site or development impact area	Site area minus building coverage of existing and proposed development
<b>Multi Dwelling Residential</b>	20 percent of site or development impact area	
<b>Commercial/Office/Retail/Mixed Use</b>	15 percent of site or development impact area	
<b>Industrial</b>	10 percent of site or development impact area	
<b>Institutional</b>	25 percent of site or development impact area	
<b>Other</b>	25 percent of site or development impact area	

2. Required Tree Density. The required tree area shall be planted with some combination of large, medium or small canopy trees at the following rates:

**Table 50-23  
Number of Required Trees and Minimum Planting Area**

<b>Canopy size category (at maturity)</b>	<b>Number of trees required per size of tree area</b>	<b>Min. required planting area per tree (min. dimension)</b>
Large	1 per 1,000 s.f.	150 s.f. (10' x 10')
Medium	1 per 500 s.f.	75 s.f. (5' x 5')
Small	1 per 300 s.f.	50 s.f. (3' x 3')

Refer to Chapter 11.60, Technical Specifications, to calculate tree canopy size categories. When the canopy size category of the tree species is not or cannot be determined, the tree will be considered a small canopy tree.

3. Tree Density Credits
- a. Trees planted on site to meet any required stormwater or other landscaping requirement may be counted toward the On-site tree density requirements.
  - b. Trees that are retained and protected, including trees preserved per Section 11.50.040, may be credited as follows:
    - (1) Trees between 1.5 and less than 6 inches in diameter count as one small canopy size tree.

(2) Trees 6 or more inches in diameter count as one medium canopy size tree for each full increment of 6 diameter inches.

- c. Payment in lieu of planting. The applicant may pay a fee to the Tree Planting and Preservation Fund per Section 11.15.010 equivalent to the cost of planting and establishing one 1.5-inch caliper tree. The fee per tree shall be credited at a rate of one medium canopy size tree.
- d. On sites less than or equal to 3,000 square feet, healthy non-nuisance species trees planted or retained in the street planting strip may be credited as described in this Subsection.

**11.50.060 Street Tree Planting Standards. [No Change]**

**11.50.070 Tree Plan Submittal Requirements. [No Change]**

**11.50.080 Changes to Approved Tree Plans and Emergency Tree Removal. [No Change]**