

Recommended Draft Report to City Council

HOUSEKEEPING AMENDMENTS TITLE 11, TREES & TITLE 33, PLANNING AND ZONING

September 2012



City of Portland
Bureau of Development Services & Portland Parks and Recreation
1900 SW Fourth, Suite 5000
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CITY OF PORTLAND

URBAN FORESTRY COMMISSION



PORTLAND PARKS & RECREATION

Healthy Parks, Healthy Portland



• Nick Fish, Commissioner • Mike Abbaté, Director

June 5, 2012

Portland City Council
Portland City Hall
1221 SW Fourth Avenue
Portland, OR 97204

Dear Mayor Adams and City Council Members:

On May 17, 2012, the Urban Forestry Commission voted unanimously to forward the Proposed Housekeeping Amendments to Title 11, Trees to City Council for approval. Specifically, the commission recommended that the Council:

Adopt the recommended housekeeping amendments to Title 11, Trees and Title 33 Planning and Zoning, and direct the Bureaus of Parks and Recreation and Development Services to:

1. Track and monitor street and private tree removal permit activity, including trees removed, planted, violations, etc.;
2. Monitor the effectiveness and enforceability of on-line street tree pruning permits and size threshold;
3. Clarify terminology in code amendment commentary;
4. Monitor situations where a public notice is not required for removing one tree larger than 20" diameter per year on residentially zoned properties; and
5. Produce easy-to-understand outreach materials to ensure Portlanders are aware of and understand the code requirements.

Three written responses were received before the hearing, and two additional people testified at the public hearing. Most of the comments did not specifically relate to the proposed amendments. Instead, they focused on the applicability and clarification of existing regulations and the already-adopted new regulations. Specific requests were to:

1. Clarify "per year" in reference to requirements that address removing large trees on private property;
2. Consider revising the 1/4" street tree pruning permit size threshold; and
3. General questions of when a permit is required.

The Urban Forestry Commission focused their attention on the need for a comprehensive and far-reaching communications plan. As with any new regulations, people are initially unsure of how the new code will specifically apply to them. The Commission emphasized the need for staff to create easy-to-understand handouts in plain language. Staff is committed to providing an inclusive training and public outreach program that will provide many avenues for public access. Staff will work with Public Information Officers from the Bureaus of Development Services, Parks and Recreation, and Environmental Services to design an effective outreach strategy that will reach organizations such as the Homebuilders Association, arborists, Neighborhood Coalitions and Associations, and individual property owners.

In summary, the proposed amendments combined with comprehensive outreach and code monitoring will create a solid framework for Tree Code implementation and ongoing administration.

Thank you for considering our recommendations.

Very truly yours,


Joseph Poracsky, Chair
Portland Urban Forestry Commission



Bureau of Planning and Sustainability
Innovation. Collaboration. Practical Solutions.

Portland Planning and Sustainability Commission

André Baugh, Chair

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June 13, 2012

Portland City Council
Portland City Hall
1211 SW Fourth Avenue
Portland, OR 97204

Dear Mayor Adams and City Council Members:

On May 22, 2012 the Planning and Sustainability Commission voted unanimously to forward the Proposed Housekeeping Amendments to Title 11 Trees & Title 33 Planning and Zoning to City Council for approval. The Planning and Sustainability Commission played a significant role in the Citywide Tree Project approved in April 2011 that created the new Title 11 Trees, and amended significant portions of Title 33 Planning and Zoning. These proposed housekeeping amendments are consistent with the adopted policies and will provide a solid foundation for implementation and ongoing administration of the new regulations.

The Commission received three written responses to the proposed amendments. The comments generally focused on the requirements of the new regulations and were outside the scope of the proposed amendments. In response to these concerns, the Commission encouraged staff to conduct comprehensive outreach that will provide simple answers to the most commonly asked questions, such as "Do I need a permit", and to coordinate with neighborhood associations, arborists, developers and other community stakeholders. The Commission understands that the Bureau of Development Services and Parks and Recreation are committed to developing an inclusive outreach and training program and materials over the next year leading up to implementation of the new regulations.

The proposed housekeeping amendments along with a strong education and outreach component will create a solid framework for effective implementation of Portland's new and updated tree codes. Thank you for your consideration of our recommendations.

Sincerely,

André Baugh, Chair
Planning and Sustainability Commission



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Housekeeping Amendments Title 11, Trees & Title 33, Planning and Zoning

Recommended Draft Report to City Council

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Project Summary

On April 13 2011, Portland City Council adopted Ordinances #184522, and #184524 that together created a new Title 11, Trees, and amended Title 33, Portland Zoning Code. Implementation of the new regulations was staggered with some of the code going into effect in July 2011 and the bulk of the changes effective July 1, 2013. This phasing strategy was designed to provide time for the bureaus to become familiar with the new requirements, set up new permit procedures and communicate the new regulations to City staff and Portland residents.

Over the course of establishing protocols to administer the new tree regulations, staff from the Bureau of Development Services and Portland Parks and Recreation Urban Forestry Division (the two primary bureaus responsible for implementing the new regulations) identified some glitches in the codes that require amendments. These amendments will improve the day-to-day usability of the regulations and ensure a coordinated and seamless implementation. The amendments do not change the intent of the adopted policies; rather they are designed to further the objectives of the tree project by simplifying and clarifying the regulations for staff and customers.

Title 11 amendments fall into one or more of the following categories:

A more detailed summary of the recommended tree code amendments for each topic area as well as the Title 33 amendment can be found on page 3.

- **Clarify Policy** to describe permit requirements for all tree removal scenarios.
Currently, some permit requirements are not explicit.
The amendments make permit requirements explicit for all regulated tree sizes and species.

Includes Amendments #2 Correct Permit Procedures Summary Table 30-1, #4 Clarify and expand Table 40-1.
- **Eliminate Unintended Consequences** regarding amendment procedures, requiring a permit for all street tree removal permits and issuance of civil penalties.
Currently, the tree code requires duplicative public hearings to be held by the Urban Forestry Commission and Planning and Sustainability Commission for amendments that previously went through a public process.
The amendments will allow staff to efficiently update Title 11 by eliminating duplicative hearing requirements.

Currently, the adopted street tree removal size threshold requires permits to remove only some small-sized trees, creating confusion as to when a permit is required.
The amendments will require a permit for all street tree removals creating a clear and consistent requirement.

Currently, the tree code unintentionally disallows assessment of civil penalties to third party contractors who violate the code.
The amendment will allow issuance of a penalty to any third party contractor.

Includes Amendments #1 Amend Process for Updating Title 11, #3 Eliminate Street Tree Removal Minimum Size Threshold, #7 Modify Enforcement Tools to Provide More Options.

- **Fix Technical Errors** to eliminate ambiguous language, correct references and fix typos.

Currently, Title 11 contains terminology that is applied inconsistently with Title 33 definitions. Some sections contain incorrect references and require minor technical corrections.

The amendments will create consistency between Titles 11 and 33 and correct typos and section references.

Includes Amendments #5 Modify Tree Permit Summary Table 40-2 and 40-3, #6 Correct References and Typos, Replace Inconsistent Terminology.

Planning and Sustainability Commission and Urban Forestry Commission Recommendation

The Urban Forestry Commission held a public hearing on May 17, 2012. Two people testified at the hearing in regards to the adopted street tree branch pruning size threshold. Although this particular policy was not addressed in the proposed amendment package, the Urban Forestry Commission asked staff to monitor the effectiveness of the pruning size threshold after Title 11 implementation. The Commission also asked staff to monitor the frequency of permit requests for removing multiple large trees on private property under one permit.

The Planning and Sustainability Commission met on May 22, 2012 and received no public testimony. Following the staff presentation, the Commission encouraged staff to conduct a robust and inclusive outreach plan to ensure the public is knowledgeable of the new regulations.

Both the Urban Forestry Commission and the Planning and Sustainability Commissions voted unanimously to forward the Proposed Housekeeping Amendments to Title 11 Trees & and Title 33, Planning and Zoning to City Council for approval.

I. Introduction

Background

Why are we proposing these amendments?

Since adoption of new tree regulations in April 2011, staff from the Bureau of Development Services and Portland Parks and Recreation has been working to set up systems to administer the new code. During this process, staff from these two bureaus raised questions and concerns regarding various components of the new regulations. In some cases, these questions highlighted areas where the intent of a regulation was not clear, while others identified unintended consequences not directly discussed during code development. Other questions brought to light inconsistencies between the Zoning Code and Title 11. The proposed amendments will clean up the new tree regulations ensuring a solid foundation for implementation and ongoing administration.

Project Scope

The scope of the recommended housekeeping amendments is narrow. The implementing bureaus identified the changes as necessary for efficient and effective implementation. Public comments and questions received in response to the amendments were related to general Title 11 requirements and not specifically to the proposed amendments. Given the narrow scope of this project as minor housekeeping amendments, staff was not able to address requests to re-examine adopted policies. For example public testimony received at the Urban Forestry Commission hearing requested staff to review the street tree branch pruning size threshold. Since the adopted threshold does not affect implementation staff did not include this request in the scope of work. However, the street tree branch pruning size threshold will be monitored after implementation for effectiveness and enforceability.

Some of the public responses asked for greater explanation of general code requirements, while other comments included simple suggestion to improve clarity. These comments helped staff to hone aspects of the code language and ensure that policy intent was clear. Staff incorporated suggestions where possible. Some of these changes are included in the section entitled “Additional Staff Amendments” (EXHIBIT C). Questions related to general code requirements will be addressed through the public outreach and education campaign that will explain regulations and adopted policies in plain language.

Topic Area Descriptions

Clarify Policy

Title 11 includes four separate tables in the non-development section of the code that are designed to provide at-a-glance information for tree permit requirements. The tables serve as a tool for readers to quickly and easily determine permit requirements. As staff began setting up protocols based on these tables they discovered that some tree removal scenarios were inadvertently not included. This amendment makes intended policy more explicit.

Correct Permit Procedure Summary Table 30-1

Chapter 11.30 includes application requirements and procedures for obtaining tree permits for City, Street and Private Trees. Table 30-1 was included as a means of quickly identifying the public notice requirements and appeal opportunities for Type A and B permits. The existing table does not capture several situations where Type B tree removal permits are required. For example, removing a nuisance species healthy street tree requires a Type B process but was not reflected in the current table. The table also does not clearly address situations where multiple city or street trees smaller than 12 inches in diameter were proposed for removal. This amendment expands the existing table to include the requirements for all tree removal scenarios.

Clarify and Expand Table 40-1

Table 40-1 is intended to provide a quick reference to inform readers whether the regulations of Title 11, Trees or Title 33, Planning and Zoning applies to tree removal requests in certain plan districts and overlay zones. This amendment expands the table to provide a more complete reference tool for situations where the Zoning Code applies. This will create a more user-friendly table and reduce the potential for inadvertent violations.

Modify Tree Permit Summary Tables 40-2 and 40-3

Table 40-2 summarizes the distinctions between Type A and Type B permits for City and Street Trees, including tree replacement requirements and when public notice opportunities for public appeal are required. Changes to this table are intended to clarify tree replacement and public notice requirements for different tree size thresholds. The changes identify two tree size categories that were omitted from the previous version of this table: trees smaller than three inches diameter; and trees that are at least three inches and smaller than 12 inches diameter.

Similar to Table 40-2 (Summary Table for City and Street Trees), Table 40-3 summarizes the distinctions between Type A and Type B permits for Private Trees, including tree replacement requirements, and when public notice and opportunities for public appeal are required. Amendments to this table are made to keep formatting, terminology, and footnotes consistent with the changes made to Table 40-2.

Together, these amendments will create clear regulations that are easier for staff to implement and customers to understand.

Correct Unintended Consequences

There are situations where the regulatory effect of the adopted code results in unintended outcomes. These unintended consequences result in; 1) reduced violation enforcement tools, 2) regulations that create administrative obstacles and 3) will require a permit for some, but not all small-sized tree removal requests.

Modify Enforcement Tools to Provide More Options

Under the criminal and civil penalty contained in Title 20 (Street tree and other Tree Regulations), the City Forester may impose a civil penalty on any person or company that violates the code. This penalty can be assessed for up to \$1,000 and may be issued to first time offenders. This penalty serves as an effective deterrent for people who may choose to otherwise conduct tree work without a permit.

The new tree code replaces the criminal and civil penalty option with a requirement for staff to first seek corrective action. This enforcement model is effective for property owners and places an emphasis on restoring lost canopy. However, it removes the

ability to penalize a third party contractor, such as a tree service provider, who may have conducted work for a homeowner without a permit. For example, if a tree service company removed a street tree without first obtaining a permit from Urban Forestry, Title 11 would require the homeowner to replace the tree. Once replaced, the enforcement case would be closed. There is no ability of staff to enforce a violation on the company who conducted the work and failed to get a permit. Furthermore, a tree care company could continue to conduct work on other properties without obtaining a permit and without penalty. The City should be able to discourage this activity by imposing a fine. Staff is recommending that the ability to issue penalties to third party contractors be added back into the regulations.

Eliminate Street Tree Minimum Size Removal Threshold

Under today's regulations a permit is required to remove any street tree. Title 11 changes this requirement by creating a minimum size threshold. This change eliminates the need to obtain a permit for removing trees less than 3 – inches in diameter. However, Title 11 still requires a removal permit for these small trees if it was planted as a requirement of a previous permit, land use review, or landscaping plan. This creates an administrative burden for staff that would need to research a particular tree removal request to determine if the tree was required to be planted as a condition of a previous permit. This also makes it challenging to explain to a customer when a permit is required, causing confusion and uncertainty for the public and increasing the risk of inadvertent violations. For example, is a permit needed to remove this two-inch street tree? The answer would be “no, unless that tree was planted under a street tree planting permit, as a requirement of a previous tree removal permit, as part of a development requirement, or as required mitigation.” Urban Forestry would be responsible for researching each application to make this determination.

In addition to creating an administrative challenge, this new size threshold would allow some small trees to be removed and not replaced in kind. This is problematic since the majority of newly planted trees are less than a 3- inch diameter. Allowing these small trees to be removed and not replaced could reduce Portland's future urban canopy. This amendment eliminates the 3-inch size threshold for street trees and maintains the current tree removal policy. Requiring a removal permit for all street trees creates a simple and implementable policy and ensures that trees removed will be replaced.

The 3-inch size threshold will continue to apply to trees on City properties and the 12-inch diameter threshold size (6-inches in some overlay zones and plan districts) will continue to apply to trees on private property.

Simplify Amendment Procedures

Staff is recommending adding an additional amendment procedure that will allow staff to keep Title 11 current with other applicable City titles. Conforming amendment procedures are required when changes to other city titles affect the regulations in Title 11. For example, if changes to zoning code plan district regulations result in no longer requiring land use reviews for tree removal, Title 11 would need to be updated to reflect the change. Since these substantive changes to Title 33 require public hearings, it would be duplicative and unnecessary to require additional public hearings to keep Title 11 current with these types of policy shifts. This amendment will also allow staff to update Title 11 in a timely manner.

This amendment eliminates duplicative hearings, allowing Title 11 to remain current with other City and State titles in a more timely and efficient manner, without reducing citizens' access to the code amendment process.

Technical Corrections

Technical corrections address typos, fix references, and create consistent terminology between Title 11 and Title 33. The proposed amendments will better align Titles 11 and 33 facilitating a consistent and cohesive system.

Replace Inconsistent Terminology

The Tree Code and Zoning Code together create an integrated regulatory system for citywide tree requirements. As such, the Zoning Code and Tree Code contain similar terminology. Staff has identified inconsistencies between the use of terms in Title 11 and the definition in Title 33. For example in some sections the term "site" is used instead of "lot". "Site" refers to property under common ownership and may include several lots or parcels of land. "Lot" is a more narrow definition referring to a distinct plot of land, sometimes constituting only a portion of a "site."

In addition the term "frontage" has been replaced with "abutting right of way". Site "frontage" refers to the portion of a site that abuts a street, rather than the portion in the right of way that abuts a property. This clarification reflects the intent of particular sections which is to address street trees in the right of way.

Other amendments that fall into this category include fixing minor typos such as spelling corrections and section references.

Rescind Conflicting Amendments to Title 33, Planning and Zoning

Title 33 amendments pertaining to environmental regulations in certain plan districts conflict with the existing Airport Futures project (effective May 13, 2011). Although not related, the two concurrently developed projects addressed some of the same environmental regulations in the same plan districts, creating inconsistencies.

The Airport Futures project comprehensively overhauled the environmental regulations in the Cascade Station/Portland International Center (CS/PIC), and created a third airport related district called the Portland International Airport. The Airport Futures project reorganized and changed substantial portions of the plan district language.

The changes proposed by the Citywide Tree Project were intended to make the language between the general environmental zones and Cascade Station/Portland International Center Plan District environmental regulations more consistent. The Airport Futures project resolved those inconsistencies by referring the CS/PIC Plan District environmental regulations back to the general environmental regulations.

Rescinding the amendments to Title 33 proposed with the Citywide Tree project will eliminate the conflicting amendments, while retaining consistent requirements for trees in the environmental zones of those plan districts.

II. Tree Project Implementation Activities

City Council phased the implementation of the new Tree Code and related Title 33 amendments to provide time for staff to prepare for implementation. In addition to this amendment package, staff has been working on numerous implementation components. This section provides an overview of some of these activities.

Communication & Outreach

At each of the two public hearings the Urban Forestry and Planning & Sustainability Commissions voiced the importance of a comprehensive outreach and training program to explain the new regulations to staff and the general public. Both the Bureau of Development Services and Portland Parks and Recreation are committed to implementing an inclusive outreach plan that communicates regulations in simple language. Staff is collaborating with public information officers from the Bureau of Environmental Services, Bureau Development Services, Portland Parks and Recreation, and the Bureau of Planning and Sustainability to create an effective outreach and training plan. This plan includes partnering with stakeholders to review outreach materials and beta-test the new website, presenting information at community such as those hosted by Friends of Trees, conducting targeted training classes for those most impacted by the code such as arborists and developers, posting articles in local publications, and creating an outreach page on the new Tree Website that will be available this winter. The website will contain a calendar of events, a way for people to request a training, download brochures, and stay current with tree code implementation activities.

Tree Website

The Citywide Tree Project includes the creation of a tree website designed to provide a single source of tree information for a wide variety of customers. The website is intended as a community resource to help support other public tree investments such as grey to green. It will provide information about Portland's urban forest, tree care, and volunteer opportunities. In addition to information on how to manage and care for trees, the website will provide easy access to tree permit requirements in development and non-development situations, the ability to check the status of an existing permit, who to contact in an emergency and how to report a violation. Some of the features of the new website include:

- An online street tree pruning permit portal that will allow customers to apply for and receive a pruning permit for basic pruning requests, from their home or office;
- A violation portal for people to report suspected tree violations;
- Access to downloadable applications and permit instructions,
- An online customer service survey;
- Answers to commonly asked questions about tree care including planting, pruning and removal;
- Volunteer opportunities for tree programs in the city;
- Information on heritage tree walks; and
- Information on the benefits of trees and links to urban forest resources.

Staffing

Another key element of code implementation includes determining specific staffing needs and identifying initial and ongoing funding sources.

BPS, BDS and PP&R worked collaboratively to develop the initial budget requirements for the first year of implementation as well as ongoing cost estimates for the second, third and fourth years of administration. PP&R and BDS are updating these estimates based on continued examination of development activity, the code requirements and development of implementing procedures. Reorganization of existing staff and workloads will occur, however the code expands regulatory responsibilities and creates customer service improvements that can not be achieved with existing staffing levels. In order to meet the high expectations of the new regulations and customer service goals, additional staff is necessary for full implementation. PP&R and BDS are in the process of creating a revised budget proposal for council consideration.

Processes and Procedures

Both Urban Forestry and Development Services will take on new roles and responsibilities under the new regulations and in some situations will share responsibilities. Title 11, Trees generally separates responsibilities into two sections; regulations applicable at the time of development (BDS), and regulations applicable when no development is proposed (Urban Forestry). Although there are two separate sections of the code there are many areas where responsibilities overlap. For example the zoning code will continue to regulate some trees in non-development situations in city designated plan districts and environmental zones. Since multiple regulations may effect any single property the bureaus are working together to revise existing and create new procedures that will make permit review and issuance simple for staff to implement and efficient for customers requesting a permit. Some procedures currently under development include the following:

- Creating procedures for new A and B tree permits ;
- Updating procedures for permit review;
- Creating and revising enforcement procedures for various types of violations; and
- Programming TRACS (the citywide permitting database) to capture the necessary data for permit processing, tracking and reporting.

Project Monitoring

The bureaus are in the process of creating a tree project monitoring plan that will track staff and customer experiences with the new regulations. The code will be monitored to determine appropriate staffing levels, effectiveness of the new customer service improvements, and overall improvements to the City's urban forest as described in the Citywide Tree Project. If funding and staffing allows, the new regulations will be monitored to evaluate the following;

- A change in tree preservation during new single family construction; and
- A change in tree canopy in neighborhoods with fewer trees compared to other Portland neighborhoods;
- The effectiveness of new enforcement regulations;
- Tree fund expenditures;
- Customer satisfaction with new regulations and associated customer service improvements.