

January 29, 2016

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>.

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

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.

### **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