



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

Dan Saltzman, Commissioner
Paul L. Scarlett, Director
Phone: (503) 823-7300
Fax: (503) 823-6983
TTY: (503) 823-6868
www.portlandoregon.gov/bds

Memorandum

Date: December 11, 2015

To: Planning and Sustainability Commission
Urban Forestry Commission
Interested Parties

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

Re: **Proposed Draft for Proposed Amendments to Title 11, Trees, Chapter 11.50, Trees in Development Situations.**

Due to recent public concern about large trees being removed in development situations in Portland, BDS proposes to amend Title 11, Trees, to strengthen regulations pertaining to tree preservation, especially preservation of large trees, on private property in development situations. The proposed amendments are summarized as follows:

- 1. Amend the general tree preservation mitigation requirement that applies to 1/3 of the non-exempt trees on the site over 12 inches in diameter. The mitigation requirement is proposed to be more responsive to the size of the tree not designated to be preserved and protected. The amendment includes tiers of tree sizes and corresponding mitigation, expressed in the number of replacement trees required.**
- 2. Provide an additional disincentive for the removal of especially large trees by requiring mitigation for all non-exempt trees 50 inches and larger on the site that are not designated to be preserved and protected.**
- 3. Add a notification requirement prior to development permit issuance when non-exempt trees 50 inches or greater are not designated to be preserved and protected.**
- 4. Clarify that trees on private property that are impacted by a capital improvement project are regulated the same as a City or Street Tree, not as a Private Tree.**

Please see the attached commentary and proposed code language. The proposed amendments will be heard by the Planning and Sustainability Commission on January 12, 2016, and by the Urban Forestry Commission at a date to be scheduled. Both bodies will then make recommendations to City Council for their consideration through a hearing process.

**Proposed Amendments to Title 11, Trees, Chapter 11.50,
Trees in Development Situations**

CONTENTS

COMMENTARY.....2
 PROJECT BACKGROUND.....2
 PROJECT GOALS.....3
 PROPOSAL6

PROPOSED CODE CHANGES.....14

COMMENTARY

PROJECT BACKGROUND

Due to recent public concern about large trees being removed in development situations in Portland neighborhoods, BDS proposes to amend Title 11, Trees, to strengthen development regulations pertaining to tree preservation, especially preservation of large trees, on private property.

Over the last several months, the Tree Code Oversight Advisory Committee had begun formulating concepts for addressing some issues identified with Title 11 and its implementation, including issues related to the preservation of large sized trees. The concepts were intended to inform a larger, comprehensive package of Title 11 code amendments to take place within the next year. In November, due to acute public concern about the removal of large trees in development situations, the Tree Code Oversight Advisory Committee and the Development Review Advisory Committee, as well as the Urban Forestry Commission, were asked to review a draft proposal from Portland Parks and Recreation to create a greater disincentive for removal of especially large trees. This draft proposal was intended to be a narrowly-focused, quick amendment to address the situation of larger sized trees specifically, with the intent to make further amendments regarding this issue as part of a future more comprehensive update to Title 11.

As the bureau charged with putting forth amendments to Title 11 that relate to development situations, the Bureau of Development Services submits this proposal for consideration in accordance with the procedural requirements of Section 11.10.040. This proposal was developed taking the recommendations of the Tree Code Oversight Advisory Committee and DRAC on this issue into account. This proposal was also reviewed by the Bureau of Environmental Services, the Bureau of Transportation, the Water Bureau, and Portland Parks and Recreation.

PROJECT GOALS

This proposal is intended to be limited in scope to address the three primary areas of public concern:

- a) Mitigation for tree removal should be more responsive to the size of the tree being removed, not a flat rate.
- b) There should be a disincentive for removing trees 50 inches and greater, independent of the requirement to preserve 1/3 of the trees on the site.
- c) There should be a notification process about proposals to remove trees 50 inches and greater, to allow concerned parties to work with the applicant and/or property owner to explore alternatives.

The proposed amendments intend to achieve the project goals while adhering to the following considerations:

- Adhere to the policy decisions from the original development of Title 11, including moving away from inch-per-inch mitigation and instead focusing on the ecological value of trees as expressed by numbers of trees, and being consistent with the adopted purpose of 11.50, Trees In Development Situations,
- Fit within the broader context and policies in place for tree mitigation in development situations in Title 33, Planning and Zoning, including specific plan district regulations, and Environmental Overlay Zones, the designation for the City's most significant and protected natural resources,
- Do not conflict with the recently approved Administrative Rule: Replanting Requirements for Tree Removal on Private Property, City-Owned and Managed Sites and Public Rights-of-Way, which covers tree removal on City-Owned and Managed Sites, public rights-of-way, and on private property in non-development situations,
- Be appropriate financially from an equity standpoint, given these rules apply to homeowners doing an addition on their home as well as developers proposing a new development on a site (i.e., customers in a wide range of economic situations would be paying this mitigation fee), and
- Be clear, easy to administer, and keep implementation time and costs down.

Policy Context

The original Title 11 tree regulations sought to increase Portland's overall tree canopy incrementally through a variety of preservation and planting regulations and options, while also recognizing the city's goals for housing, jobs, and other development. In other words, it is a policy of balance: incrementally increasing the tree canopy across Portland over time, while also accommodating development. The adopted purpose statement for the Chapter being amended, 11.50, Trees in Development Situations, is as follows:

11.50.010. Purpose: The regulations of this Chapter support and complement other City development requirements, with a focus on achieving baseline tree preservation and total tree capacity on a site, considering the anticipated use and level of development. This Chapter regulates the removal, protection and planting of trees through the development process to encourage development, where practicable, to incorporate existing trees, particularly high quality or larger trees and groves, into the site design, to retain sufficient space to plant new trees, and to ensure suitable tree replacement when trees are removed. It is the intent of these provisions to lessen the impact of tree removal and to ensure mitigation when tree preservation standards are not met.

The proposal is not intended to prohibit or prevent development envisioned by the comprehensive plan, recognizing that the urban forest is dynamic and evolving. New trees will be planted and will grow to replace trees removed.

The proposal intends to maintain consistency with the basic code constructs already in place. The proposal uses a measure (number of trees) that is consistent with the tree preservation and tree density standards for private trees in development situations (11.50.040.C.1). The tree preservation standard requires that 1/3 of healthy, non-nuisance trees be preserved. It does not base preservation requirements on the total diameter inches of trees on-site, but the number of trees on site. The tree density standards (tree planting standards) are also expressed in number of trees required to be planted (depending on species of tree) as opposed to total number of diameter inches planted.

Finally, the proposal is in scale with the regulations for Portland's most significant natural resources, which are identified and are regulated through the Environmental overlay zone, by not introducing mitigation requirements that are in excess of those required in Environmental zones.

Relationship to Permanent Administrative Rule: Replanting Requirements for Tree Removal on Private Property, City-Owned and Managed Sites, and Public Rights-of-Way.

Mitigation for removal of large trees on City-owned and managed property and public rights-of-way, and for private property in non-development situations is currently addressed in the City's recently approved Administrative Rule: Replanting Requirements for Tree Removal on Private Property, City-Owned and Managed Sites and Public Rights-of-Way. This Administrative Rule was adopted by the Bureau of Development Services and Portland Parks and Recreation on October 19, 2015.

Removal of City and Street Trees in Development Situations

The Administrative Rule is meant, in part, to more objectively clarify the mitigation requirements for City and Street Trees in development situations. The code (11.50.040.C.2) states that mitigation for approved tree removal shall consist of at least one tree. The Administrative Rule clarifies that for Street Trees, the maximum mitigation requirement shall consist of two trees, and for City Trees (trees on City-Owned or Managed sites), the maximum mitigation requirement consists of up to 2 to 6 trees, depending on the size of the tree to be removed (in diameter inches).

This proposal has a consistent measurement with the Administrative Rule in that the mitigation requirements are based on number of replacement trees. In addition, this proposal does not conflict with the administrative rule by introducing mitigation requirements in the code that are different or more than those specified by the Administrative Rule. The proposal intentionally does not amend the code relating to City and Street Trees in part to prevent conflict with the Administrative Rule.

Removal of Private Trees in Non-Development Situations

The Administrative Rule also clarifies mitigation requirements for Private Trees in non-development situations (as opposed to Private Trees in development situations which are the subject of this proposal). The code (Chapter 11.40 Table 40-2 or Table 40-3) triggers up to inch-per-inch mitigation for approved tree removal. The Administrative Rule further determines mitigation requirements to be a minimum of one tree for each tree removed. It also contains a maximum mitigation requirement, stating that additional trees may only be required if the site is below the minimum Tree Density standards in 11.50.050. Similar to the tree preservation requirements for development situations, the applicant may pay a fee in-lieu of re-planting requirements. However, for applicants who are owners or residents of single-family dwellings, the fee in-lieu is capped at \$1,200 per tree removed.

This proposal would require fees in-lieu of up to \$6,000 for a single tree removed, depending on tree size, in any development situation, including for owners of single-family dwellings that are doing an addition to the house, or building a garage or accessory dwelling unit. Therefore, it should be noted that this proposal will result in differing mitigation requirements for trees removed for owners of single-family dwellings, depending on if they are proposing development on their site or not. Where tree removal is permitted as part of a development situation, fees of up to \$6,000 per tree would be required. In contrast, tree removal permitted in absence of any other proposal for development, fees of up to \$1,200 per tree removed would be required. It is recommended that the Administrative Rule be revisited to address this discrepancy once the outcome of this amendment regarding development situations is complete.

Tree Preservation Applicability and Exemptions.

Tree preservation standards are triggered whenever there is ground disturbance and there are any trees over 12 inches in diameter that are not dead, dying, dangerous, or a nuisance species. However, tree preservation does not apply in some situations, including location within some of the higher intensity Commercial, Industrial and Employment Zones (but not all of those zones), on sites less than 5,000 square feet in area, or on sites with 85% building coverage or more. Within those parameters tree preservation requirements are triggered for all project types and sizes; not only new development projects and not only new residential development projects. This could include a new commercial development, a new apartment complex, re-development of a site with a single family house, a new accessory dwelling unit (ADU), a detached garage on a lot with an existing single family house, or a small kitchen or family room addition to an existing single family house. Given that tree preservation standards apply in a wide variety of circumstances, it is important to develop regulations that are as financially equitable as possible, and that do not unintentionally act as a disincentive for the type of development envisioned by the comprehensive plan, including moderate upgrades by homeowners.

PROPOSAL

The proposed amendments fall into four categories:

- 1. Amend the general tree preservation mitigation that applies to 1/3 of the non-exempt trees on the site over 12 inches in diameter. The mitigation requirement is proposed to be more responsive to the size of the tree not designated to be preserved and protected. The amendment includes tiers of tree sizes and corresponding mitigation, expressed in the number of two-inch diameter replacement trees required. The mitigation fee is then based on the cost of planting that number of two-inch diameter replacement trees, as stated on the fee schedule. The rate is currently \$300.00 per caliper inch.**

Background

The existing code requires that 1/3 of non-exempt trees 12 inches or more in diameter on a site be designated to be preserved and protected. The remaining trees (2/3 of trees 12 inches or more in diameter) are not required to be preserved and protected. For trees not designated to be preserved and protected below the 1/3 preservation requirement, a fee in lieu of preservation is required. Common reasons an applicant may pay the fee in-lieu of preservation include, but are not limited to the following:

- The applicant chooses not to preserve the tree(s) due to preference,
- The tree(s) is situated on the site in the location of a proposed building footprint or other site improvements, or
- The tree(s) is of a size and location where, though it may not conflict with proposed building or paving areas, the tree protection specifications of Section 11.60.030 cannot be met. Generally, the prescriptive path tree protection specifications require that the tree have a designated root protection zone of 1-

foot radius for every 1-inch of tree diameter, with some allowances for encroachments. Alternately, a performance path option may be used when a different root protection zone and tree preservation methods are recommended by an arborist. However, if neither the prescriptive path nor performance path tree preservation methods can be met, the tree(s) cannot be designated to be preserved and protected, and cannot be used to meet the tree preservation requirements. In these cases, though it may not be the intent to remove the subject tree(s), payment in-lieu of preservation must be made, even if the tree is retained.

(Related Note: As described above, the regulations apply to trees being designated to be preserved and protected. For purposes of this report, language referring to trees being removed or proposed for removal are used interchangeably with trees not being designated to be preserved and protected for ease of description. However, it is important to keep in mind that the regulations for tree preservation apply the same if the tree is not being preserved and protected vs. if it is proposed for removal, regardless if the intent in the field is to not remove the tree.)

The fee-in lieu of preservation is based on the cost of planting and maintaining two 2-inch replacement trees, resulting in a flat \$1,200 payment into the Tree Planting and Preservation Fund for each tree not designated to be preserved and protected or proposed for removal. This is based on replacement value of two 2-inch trees at \$300 per inch currently adopted as a per-inch Restoration Fee for Tree Removal in the Portland Parks and Recreation Fee Schedule for Title 11.

Proposed Changes

Sub-paragraph 11.50.040.C.1.a contains the proposed requirement for general tree preservation. The proposed amendments continue to require that any tree that is not designated to be preserved and protected below the 1/3 preservation requirement be replaced by paying a fee into the Tree Preservation and Planting Fund. However, the fee, which is currently based on the cost of two replacement trees regardless of tree size (at a flat rate of \$1,200) is now proposed to be at the cost of planting and maintaining the number of 2-inch replacement trees specified in the new tiered mitigation schedule. The tiered schedule requires more replacement trees as the size of tree removed increases. Thus, the tiered schedule places more value on, and greater disincentive for removal of medium to large sized trees, based on the size (in diameter inches) of the tree to be removed. In cases where more than one tree is proposed for removal, the mitigation fee must be for the largest sized tree(s). For example, if a site has 3 trees, 15-inches, 27-inches, and 37-inches in diameter, any 2 of the 3 trees would be allowed to be removed without mitigation. If the third tree is removed, it is subject to payment into the Tree Preservation and Planting Fund. The payment is based on the largest tree (the 37-inch tree).

Comparison of Fees In-Lieu of Preservation

Size of Tree Removed (inches in diameter)	Current Code		Proposed Amendments	
	Number of 2-inch Replacement Trees	Corresponding Fee In-Lieu of Preservation	Number of 2-inch Replacement Trees	Corresponding Fee In-Lieu of Preservation
At least 12 and less than 20	2	\$1,200	2	\$1,200
At least 20 and less than 35	2	\$1,200	4	\$2,400
At least 35 and less than 50	2	\$1,200	6	\$3,600
At least 50 or more	2	\$1,200	10	\$6,000

Under the proposed amendments and the currently adopted fee schedule, removal of trees up to but not including 20 inches in diameter would require the same payment of \$1,200 that currently exists for all tree sizes. Trees from 20 inches and larger but not including 35 inches in diameter would require a \$2,400 payment; from 35 inches and larger but not including 50 inches in diameter would require a \$3,600 payment; and trees 50 inches or more in diameter would require payment of \$6,000.

The tiered approach both a) moves away from a one-size-fits all mitigation standard and more proportionately compensates for removal of larger trees; and b) could act as a greater disincentive for removal of larger trees over smaller trees if site conditions provide that flexibility.

However, caution should be used to not raise the fee so high that it acts as a disincentive for maintaining or making upgrades to a property, again keeping in mind the wide variety of circumstances that trees may be proposed for removal. The fee is also intended to be in scale with the regulations for Portland’s most significant natural resources, which are identified and are regulated through the Environmental overlay zone, by not introducing mitigation requirements that are in excess of those required in Environmental zones.

Recent Permit Data

Some data has been gathered to help illustrate the number and scope of trees that this proposed amendment would affect.

Data through the first 3 quarters of 2015 show that 14 trees 50-inches or more in diameter were proposed for removal during that time, associated with all types of building permits. This does not take into account whether they may have been otherwise exempt from tree preservation standards due to tree health or other reasons. It also does not distinguish whether these trees were removed as part of the

allowed removal of 2/3 of trees on site, or whether a fee was paid in-lieu of their preservation. It is merely illustrative of the number of trees that may potentially be affected by the greatest tier of 50-inches or more.

Data gathered from August of 2015 illustrates the broader occurrence and distribution of all tree sizes, but for a shorter period of time, as summarized in the table below. This information shows the number of sizes and trees on all sites. It does not show if they were preserved or removed. It is meant to give an indication of the number and general distribution of tree sizes that exist in the field. Note this information is for residential new construction and demolition permits only. Also note that this information was gathered with a top tier of 42-inches, as opposed to the 50-inches proposed.

Diameter of Trees
Residential New Construction and Demolition Permits Issued August 2015

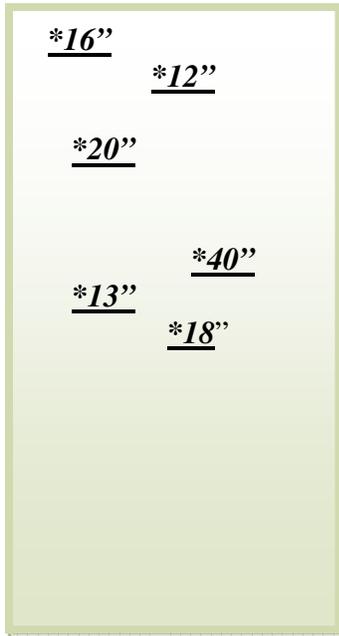
Diameter Inches	# of Trees	% of Total Trees
12-19	86	47%
20-35	85	46%
36-42	7	4%
>42	6	3%
Total Trees	184	100%

This data shows that there appears to be a roughly equal distribution of the number of trees less than 20-inches in diameter, and between 20 and 35 inches in diameter. The number of larger sized trees (6 over 42 inches in August of 2015, and 14 over 50 inches through the first three quarters of 2015), drops off significantly, as does the number of trees 36-42 inches (7 in August of 2015).

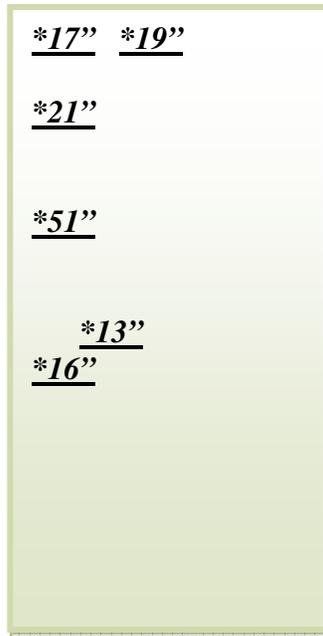
Based on this data, the largest scope of change would be for trees in the 20-35 inch range, of which there were 85 in August of 2015. These trees would have double the current fee in-lieu of preservation (\$2,400 vs. \$1,200). The largest trees 50 inches or more in diameter are less numerous, but would see the most significant change with a fee in-lieu of \$6,000, and a notification requirement (see amendment #3, below). This is consistent with the policy intent to create the highest tier of mitigation and required notice (see also proposed amendments #2, and #3 below), for only the largest sized trees, while still recognizing a more proportionate mitigation requirement for medium sized trees.

Development Scenarios Under the Proposed Amendment

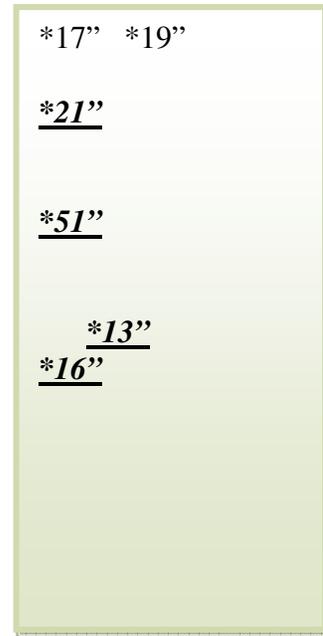
The following scenarios illustrate how the amendment would be applied in each specific situation. Each scenario is shown in site plan form, noting general location and size of trees. No proposed development is shown in these examples. In the scenarios, **underlined italic bold font** indicates trees to be removed, while regular font indicates trees to be preserved. In each scenario, all trees shown are not exempt from the tree preservation requirement. A summary and more detailed explanation follow each scenario.



Scenario #1
Current: \$2,400
Proposed: \$6,000



Scenario #2a
\$2,400
\$8,400



Scenario #2b
\$0
\$6,000

In **Scenario #1**, there are six trees on the site 12 inches in diameter or larger. Of those trees, 1/3 (i.e., two trees) must either be preserved, or mitigation must be paid for their removal. This requirement does not change as part of the proposed amendment. In this scenario, the applicant is proposing to remove all six trees over 12 inches in diameter or larger.

- Under current code, to remove the two regulated trees, the mitigation fee is \$2,400 (\$1,200 per tree).
- Under the proposed amendment, to remove the two regulated trees, the mitigation fee is the fee associated with the two largest trees to be removed, i.e., the 40-inch and 20-inch tree. Per the proposed mitigation schedule, payment equal to the cost of planting a total of ten 2-inch replacement trees would be required. The total fee is \$6,000 (\$2,400 for the 20-inch tree and \$3,600 for the 40-inch tree).

In **Scenario #2**, there are six trees on the site 12 inches or larger in diameter. One of those trees is 50 inches in diameter or larger (51"). Of those trees, 1/3 (i.e., two trees) must either be preserved, or mitigation must be paid for their removal.

- Under current code, to remove the two regulated trees (Scenario #2a), the mitigation fee is \$2,400 (\$1,200 per tree). If the two regulated trees are preserved (Scenario #2b), no mitigation fee is required.
- Under the proposed amendment, to remove the two regulated trees (Scenario #2a), the mitigation fee associated with the largest two trees to be removed i.e., the 51-inch and 21-inch trees, is required. Per the proposed mitigation schedule, payment equal to the cost of planting fourteen 2-inch replacement trees is required. The total fee is \$8,400 (\$2,400 for the 21-inch tree, and \$6,000 for the 51-inch tree). If the two regulated trees are preserved, choosing the 17- and 19-inch trees at the rear of the lot (Scenario #2b), the 1/3 preservation requirement is met. However, a mitigation fee for removal of the 51-inch tree (See amendment No. 2, below) is also still required. Per the proposed mitigation schedule, payment equal to the cost of planting ten two-inch replacement trees would be required. The total fee would be \$6,000. In addition, the proposed notification requirement would be triggered (see proposed amendment No. 3, below).

2. Provide an additional disincentive for the removal of especially large trees by requiring mitigation for all non-exempt trees 50 inches and larger on the site that are not designated to be preserved and protected.

Background

Currently, there is no differentiation or prioritization for large sized trees. All non-exempt trees are treated the same in terms of both preservation priority and mitigation fees. All non-exempt trees are uniformly subject to the 1/3 preservation requirement, regardless of size. An applicant may choose to remove the largest sized trees over the smallest sized trees with no differentiation in fees paid-in-lieu.

Proposed Changes

The proposed amendment prioritizes preservation of large sized trees by requiring that all non-exempt trees 50" or larger be subject to preservation requirements, regardless if they are being used to meet the general 1/3 preservation requirement for the site. Proposed sub-paragraph 11.50.040.C.1.b spells out that requirement. If the tree(s) is not designated to be preserved or protected, mitigation payment into the Tree Planting and Preservation Fund is required for the equivalent of 10 replacement trees. Retention or mitigation of these 50-inch diameter or greater trees may also count toward the general 1/3 preservation requirement for the site. The fee based on the current adopted fee schedule would be \$6,000. As previously stated, payment equal to a higher number of replacement trees a) more proportionately compensates for removal of larger trees, and b) could act as a greater disincentive for removal of larger trees over smaller trees if site conditions provide that flexibility.

However, as previously stated, caution should be used to not raise the fee so high that it acts as a disincentive for maintaining or making upgrades to a property, again keeping in mind the wide variety of circumstances that trees may be proposed for removal. The fee is also intended to be in scale with the regulations for Portland's most significant natural resources, which are identified and are regulated through the Environmental overlay zone, by not introducing mitigation requirements that are in excess of those required in Environmental zones.

3. Add a notification requirement prior to development permit issuance when non-exempt trees 50 inches or greater are not designated to be preserved and protected.

Background

Currently, there is no notification requirement for any tree removal in any development situation. Information regarding the scope of the development permit and associated tree removal is available to the public upon request, and some information regarding development permits is available on the BDS website. However, no on-site notice of tree removal associated with a development permit is required.

Proposed Changes

Sub-paragraph 11.50.040.C.1.b contains the requirement for posting of a notice when any non-exempt tree 50 inches in diameter or greater is not designated to be preserved and protected. The notice must be posted by the property owner or their designee on the site for a minimum of 14 calendar days. The development permit will not be issued until the posting notification period is completed. The notice is intended to both alert neighbors to the plans for tree removal, and provide for an opportunity for interested parties to contact the property owner or their designee about alternate plans for the tree(s) in question. It will not initiate a formal public comment period to the City about the pending development permit, or to provide an opportunity to appeal the issuance of the pending development permit.

The 14-day notification time period and posting requirement at the site mirrors the notification process for Type B Tree Removal Permits in non-development situations in Chapter 11.40.

4. **Clarify that trees on private property that are impacted by a capital improvement project are regulated the same as a City or Street Tree, not as Private Trees.**

Background

Occasionally, trees located on private property are impacted by a capital improvement project (CIP) located on a city-owned or managed site or right-of-way. Currently, removal of these trees (if necessary) and mitigation are regulated by the Administrative Rule and reviewed and permitted through the capital improvement project permitting process, as opposed to requiring a separate review and permitting process for the trees on private property.

Proposed Changes

Sub-paragraph 11.50.040.C.1.c below will codify the intent of reviewing private property trees impacted by a capital improvement project as part of the CIP, rather than as a separate permit process. It clarifies that they are regulated as either a City or Street Tree, and thus subject to the standards in 11.50.040.C.2. These standards are further defined in the Administrative Rule. Thus, the mitigation requirement for approved removal of these trees would be as required in 11.50.040.C.2 and the Administrative Rule for Development Projects on either City Owned or Managed Sites or Rights-of-way, depending on the location of the capital improvement project.

**PROPOSED CODE LANGUAGE
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 Changes Proposed]

The regulations of this Chapter support and complement other City development requirements, with a focus on achieving baseline tree preservation and total tree capacity on a site, considering the anticipated use and level of development. This Chapter regulates the removal, protection and planting of trees through the development process to encourage development, where practicable, to incorporate existing trees, particularly high quality or larger trees and groves, into the site design, to retain sufficient space to plant new trees, and to ensure suitable tree replacement when trees are removed. It is the intent of these provisions to lessen the impact of tree removal and to ensure mitigation when tree preservation standards are not met.

11.50.020 When a Tree Plan is Required. [No Changes Proposed]

A tree plan is required in conjunction with all development permits, unless the site or activity is exempt from Section 11.50.040 Tree Preservation Standards; Section 11.50.050 On-Site Tree Density Standards; and Section 11.50.060 Street Tree Planting Standards. If multiple development permits are required for a development proposal, including demolitions and subsequent construction, the same Tree Plan shall be included with each permit. For tree removal when no development permit is required or following completion of the development permit, see Chapter 11.40.

11.50.030 Development Impact Area Option For Large Sites and Streets. [No Changes Proposed]

Where development is proposed on a site larger than one acre or where work is occurring in the street and is not associated with an adjacent development site, the applicant may choose to establish a development impact area. For sites using the development impact area option, tree preservation requirements shall be based on the trees within the development impact area and tree density will be based on meeting Option B as applied

only to the area within the development impact area. Trees may be planted to meet tree density requirement elsewhere on the site.

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.

1. Private Trees.

a. General tree preservation.

(1) 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. (2) 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 the number of two-inch diameter replacement trees 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 as allowed by 11.50.040.C.1.a(1) above, the number of replacement trees required for removal of trees below the 1/3 requirement is based on the largest tree or trees proposed for removal. See Section 11.15.010.

Table 50-1
Number of Required Mitigation Replacement Trees

<u>Size of Tree Removed (inches in diameter)</u>	<u>Number of Replacement Trees</u>
<u>At least 12 and less than 20</u>	<u>2</u>
<u>At least 20 and less than 35</u>	<u>4</u>
<u>At least 35 and less than 50</u>	<u>6</u>
<u>At least 50 or more</u>	<u>10</u>

b. Preservation of trees 50 inches or greater.

- (1) Retention. All trees 50 or more inches in diameter must be preserved unless mitigation and notice occurs per 11.50.040.C.1.b(2) and (3), below. Preservation of these trees may also be used to meet the retention standards for general tree preservation in 11.50.040.C.1.a(1), above.
- (2) Mitigation. If a tree 50 or more inches in diameter is removed, payment into the Tree Planting and Preservation Fund is required equivalent to the cost of 10 two-inch diameter replacement trees. The payment is calculated using the per-inch Restoration Fee for Tree Removal in the adopted Portland Parks and Recreation Fee Schedule for Title 11. See Section 11.15.010. Mitigation of these trees may also be used to meet the mitigation standards for general tree preservation in 11.50.040.C.1.a(2), above.
- (3) Notice. If a tree 50 or more inches in diameter is proposed for removal, the property owner or the property owner's designee must post a notice on the site. The posted notice is for notification purposes only. The notice does not provide opportunity for public comment on the proposal or for appeal of the proposal. The property owner or the property owner's designee must provide a signed certification to the Bureau of Development Services that the notice was posted on the site as part of the development permit review process. The development permit may not be issued until the business day following the day the notification period is completed. The notice must:
 - Be posted on the site for at least 14 calendar days,
 - Be posted within 10 feet of the street lot line nearest the tree; the notice may not be posted in the public right of way,
 - 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 tree(s) to be removed including the diameter inch size(s), and

- 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 per 11.50.040.C.2, below.

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. [No Changes Proposed]

- 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

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

Canopy size category (at maturity)	Number of trees required per size of tree area	Min. required planting area per tree (min. dimension)
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 Changes Proposed]

- A.** Where these Regulations Apply.
 - 1.** This Section applies to projects within or fronting on any City-owned or -managed streets.
 - 2.** For alterations where the project value is more than \$25,000, the cost of required Street Tree improvements is limited to 10 percent of the value of the proposed development.
- B.** Exemptions. The following are exempt from the Street Tree planting standards of this Section:
 - 1.** Development activities associated with the following:

- a. Additions, alterations, repair or new construction where the project value is less than \$25,000;
 - b. Activity that is limited to the street, and does not modify or create sidewalks, tree wells, or tree planting areas; or
 - c. Demolition Permits.
 2. Where physical constraints preclude meeting the Street Tree planting requirement because:
 - a. Existing above or below grade utilities prevent planting Street Trees; or
 - b. The design of the street will not accommodate Street Tree planting because the planting strip is less than 3 feet wide, there is not a planting strip, or there is insufficient space to add tree wells.

C. Street Tree Planting Requirement.

Any proposed change in width in a public street right-of-way or any other proposed street improvement, including the development of new public streets, shall include areas for tree and landscape planting where practical. Utility connections and specifications for planting such areas shall be integrated into the site plan. Specific locations and species will be determined by the Responsible Engineer and City Forester. Planting in public streets shall meet the specifications in Chapter 11.60 and the following:

1. One Street Tree shall be planted or retained for each full increment of 25 linear feet per side of street frontage. When the required number of trees cannot be planted, a fee in lieu of planting may be required. For City projects, required trees that cannot be planted within the improvement area may be planted elsewhere in the same watershed, instead of paying a fee in lieu of planting.
2. For projects affecting 200 linear feet of frontage or more, the applicant shall consult on the design of such improvements with the City Forester early in the project design phase to identify opportunities to integrate existing trees and maximize new Street Tree planting considering the planter width, the location of existing and proposed utilities, and visibility requirements.

3. When new streets are being created in association with a land division, Street Tree planting may be deferred until the completion of the building permit on each new lot, subject to City Forester approval.

11.50.070 Tree Plan Submittal Requirements. [No Changes Proposed]

A tree plan submittal shall include the following information. The tree plan information may be combined with other relevant plan sheets. The submittal shall include:

- A. Site Plan Requirements. The site plan shall include the following information with sufficient detail to show that the proposal complies with this Title.
 1. Existing improvements;
 2. Proposed alterations including structures, impervious area, grading, and utilities;
 3. Existing trees:
 - a. Trees on the site. Indicate the location and the diameter size of:
 - (1) Any Heritage Trees and trees required to be preserved as part of a condition of land use approval. These shall be clearly labeled.
 - (2) All trees completely or partially on the site that are at least 6 inches in diameter.
 - (3) Trees smaller than 6 inches in diameter shall be shown when proposed to be retained for tree density credit. On City-owned or –managed sites, the City Forester may require smaller size trees be shown.
Applicants using the development impact area option as described in Section 11.50.030, need only identify the trees on the site inside and 25 feet beyond the edge of the development impact area.
 - b. Trees in the street. For the street area adjacent to the development site or development impact area, indicate the location and the diameter size of:
 - (1) Any Heritage Trees and trees required to be preserved as part of a condition of land use approval

- (2) All trees within the adjacent street that are at least 3 inches in diameter.

Applicants using the development impact area option within the street when not associated with development of an adjacent site as described in Section 11.50.030, shall identify trees 3 or more inches in diameter inside and 15 feet beyond the edge of the development impact area. When the 15 foot distance extends onto property outside the street, provide estimates of tree size and location for trees 6 or more inches in diameter on these properties. For City projects, the City Forester or project arborist may determine which trees on adjacent properties shall be identified per this Subsection.

4. Proposed tree activity:

- a. Indicate trees to be retained and proposed tree protection measures meeting the specifications in Chapter 11.60. Trees that are retained but are not protected in accordance with the protection requirements in Chapter 11.60 may not be used to meet preservation or density standards.
- b. Indicate trees to be removed. It is the applicant's responsibility to obtain the appropriate consent from the adjacent property owner for tree removal when the tree is only partially on the site.
- c. Show location, species, planting size and number of trees proposed to be planted. Trees to be planted shall meet the specifications in Chapter 11.60.

- B. Narrative requirements.

1. If alternative tree protection measures are proposed, documentation addressing the requirements in Section 11.60.030, Tree Protection Specifications, shall be included.
2. If a tree is to be exempted from tree preservation standards based on poor tree health or condition, supporting documentation from an arborist shall be included.
3. If a tree is to be exempted from tree preservation standards based on it being listed on the Nuisance Plants List, supporting documentation from a landscape professional or an arborist shall be included.

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

- A. When changes are necessary to an approved Tree Plan and the changes will not affect compliance with any applicable conditions of a land use review, the change may be reviewed as a revision to the approved development permit. Any proposed revisions to the Tree Plan will be approved upon demonstrating the applicable tree preservation and density standards are met. When development activity has already commenced on the site and the applicant is proposing to retain alternate trees not previously shown to be protected, an arborist report will be required that documents the alternate tree is healthy and has not been injured by the development activity.
- B. Emergency Tree Pruning or Removal. Emergency pruning or removal of trees is regulated by this Chapter as follows:
1. If an emergency exists because the condition or location of a tree presents such a clear and present danger to structures or the public that there is insufficient time to obtain a tree permit, the hazardous portion of the tree may be removed without first obtaining a revision to an approved tree plan.
 2. Any person who removes a tree under the provisions of this Section shall, within 7 days of such action, apply for a revision to the approved tree plan. The application shall include photographs or other documentation to prove that an emergency existed. The BDS Director will evaluate the information to determine whether an emergency existed. Failure to submit an application or provide information documenting the emergency nature of the event may be pursued as a violation per Chapter 11.70.