



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

Chloe Eudaly, Commissioner
Rebecca Esau, Director
Phone: (503) 823-7300
Fax: (503) 823-6983
TTY: (503) 823-6868
www.portlandoregon.gov/bds

Amendments to 11.50, Trees in Development Situations

DRAC February 15, 2018

Amendments

- Trees are subject to 11.50, Trees in Development Situations ONLY IF at least one tree is “impacted” by the development.
- Impact = disturbance within the Root Protection Zone (defined in 11.80.020.C).
- Clarifies that if not subject to 11.50, Trees in Development Situations, any tree removal must be approved through Urban Forestry Tree Permit subject to 11.40, Tree Permit Requirements.
- Establishes/clarifies appeal process for 11.50, Trees in Development Situations. Administrative Review with appeal to Code Hearings Officer.

Implications

- Will no longer need to provide tree protection fencing for sites where all trees are far from development (i.e. a front porch addition with one tree in the backyard, or new development on a large lot with many trees all located in the rear, away from development).
- Will no longer allow removal of 2/3 of trees through a development permit if no tree is impacted by the development. A separate permit from Urban Forestry is required to remove these trees.
- Will require trees shown on site plans for all development permits UNLESS there are no Private Trees 12 inches or greater, no City or Street Trees 6 inches or greater, and the Tree Density requirements do not apply.

Next Steps

- Passed City Council 2/7/18 to Second Reading on 2/14/18. Effective 3/16/18 if passed at 2nd reading.
- Service Level Update sent by 2/16/18

Questions?

Emily Sandy, BDS Code and Policy, 503-823-7828, Emily.sandy@portlandoregon.gov

CHAPTER 11.10 - ADMINISTRATION OF THIS TITLE

Sections:

11.10.010	Code Administration and Duties Performed.
11.10.020	Determining What Regulations Apply.
11.10.030	General Rules for Reading and Applying the Code Language.
11.10.040	Amendments to this Title.
11.10.050	Interagency and Intergovernmental Agreements.
11.10.060	Performance Guarantees.
11.10.070	Fees.

11.10.010 [No change]

11.10.020 **Determining What Regulations Apply.**

A. Determine whether the proposed activity will require a development permit.

1. Generally, if the proposal will require a development permit, the regulations of Chapter 11.50 apply to the proposal. Chapter 11.50 will identify when its requirements apply. If those requirements do not apply, then the requirements of Chapter 11.40 will apply. Chapter 11.50 will also direct readers to other regulations relevant to the proposal. Tree preservation and tree removal proposed as part of a development permit must be reviewed and approved as part of the development permit, regardless whether the regulations of Chapter 11.50 apply or if the proposal is exempt from the regulations. Approved activities may not commence until issuance of the development permit.
2. If the proposal will not require a development permit, the regulations of Chapters 11.30 and 11.40 apply to the proposal. Chapter 11.40 will also direct readers to other regulations relevant to the proposal.
3. The regulations of those chapters are specific to City, Street, and Private Trees as defined in Chapter 11.80, Definitions and Measurements.

B. For regulations pertaining to Heritage Trees, refer to Chapter 11.20.

11.10.030 [No change]

11.10.040 [No change]

11.10.050 [No change]

11.10.060 [No change]

11.10.070 [No change]

DRAFT CODE CHANGES

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.
- 11.50.090 Administrative Review.
- 11.50.095 Appeals.

11.50.010 [No change]

11.50.020 **When a Tree Plan is Required.**

A tree plan is required in conjunction with all development permits, unless there are no Private Trees 12 inches or greater, no City Trees 6 inches or greater, and/or no Street Trees 3 inches or greater in diameter, and 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, or when tree preservation does not apply per Subsection 11.50.040.A.1, see Chapter 11.40.

11.50.030 [No change]

11.50.040 **Tree Preservation Standards.**

(Amended by Ordinance Nos. 187675 and 188278, effective April 14, 2017.)

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: On sites where these regulations do not apply, tree removal is subject to the requirements of Chapter 11.40, Tree Permit Requirements.

a. On sites. Development activities ~~where with ground disturbance or a construction staging area greater than 100 square feet on unpaved~~

~~portions of the site 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) There are Private Trees 12 or more inches in diameter and/or City Trees 6 or more inches in diameter; and~~

~~(2) The following activities are proposed within the root protection zone of a regulated tree, as defined in Subsection 11.60.030.C.1.a:~~

~~(a) Any amount of ground disturbance; or~~

~~(b) A construction staging area greater than 100 square feet on unpaved portions of 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 or construction staging not limited to existing paved surfaces 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. On sites that are less than 5,000 square feet in area.

3. On sites that have existing or proposed building coverage of 85 percent or more.

24. 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.

35. Trees exempted from this standard by a land use decision.

46. 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.
57. Repair and replacement of existing fences and decks that are not changing in footprint or length when no trees are to be removed as a part of the project.

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. General tree preservation.

~~(1) Tree preservation is not required for development activities within 10 feet of existing primary structures, garages, or detached accessory structures permitted as living space if the submitted tree plan confirms the following:~~

~~(a) Tree removal is not a part of the project; and~~

~~(b) Ground disturbance will not occur in the root protection zone of any existing tree on site, as defined in Subsection 11.60.030 C.1.a.~~

(21) 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.

(32) 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**

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

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 Subsection 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 [No change]

11.50.060 [No change]

11.50.070 Tree Plan Submittal Requirements.

(Amended by Ordinance No. 188278, effective April 14, 2017.) 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. Any construction staging areas on site;
3. Proposed alterations including structures, impervious area, grading, and utilities;
4. 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~~ Private Trees at least 12 inches in diameter and all City Trees at least 6 inches in diameter located completely or partially on the site, that are at least 6 inches in diameter. On City-owned or -managed sites, the City Forester may require smaller size trees be shown.
- (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. For all trees shown to be retained on the tree plan (including those beyond the development impact area), tree protection methods detailed in Subsection 11.60.030 C. shall be implemented. Protection may be achieved using the Prescriptive Path or Performance Path.

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.

5. 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 [No change]

11.50.090 **Administrative Review**

- A.** Whenever a decision has been given under this Chapter, a property owner or property owner's representative may have the notice reviewed by the BDS Director or City Forester, as applicable. If a review is sought, the owner or owner's representative shall submit a written request to the City within 180 days of the date

of the notice. Such review will be conducted by the BDS Director or City Forester, as applicable. The owner or owner's representative requesting such review will be given the opportunity to present evidence. Following the review, the BDS Director or City Forester, as applicable, will issue a written determination.

B. Nothing in this Section limits the authority of either the BDS Director or City Forester to initiate a proceeding under Title 22, Hearings Officer.

11.50.080 Appeals

A determination issued as stated in Section 11.50.090 may be appealed to the Code Hearings Officer, as provided for in Chapter 22.10 of City Code. All appeals from the Code Hearings Officer's determination in accordance with this Section will be by writ of review as authorized by Section 22.04.010 of the City Code and ORS 34.010-34.100.