

# Exhibit A

## Treebate Program

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ENVIRONMENTAL SERVICES  
CITY OF PORTLAND

working for clean rivers

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*These are administrative rules of the Bureau of Environmental Services (BES) governing the issuance of Treebate utility bill credits for tree plantings in residential yards.*

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## **1. Applicability**

Any city sewer or stormwater utility ratepayer who plants a tree in the ground on their private residential property meeting the eligibility criteria of Section 5 may apply for a Treebate from the Bureau of Environmental Services (BES).

## **2. Purpose**

The Treebate Program provides a financial incentive to Portland residents to plant yard trees. The Treebate Program will supplement other Bureau tree initiatives to help plant trees on eligible properties in the City of Portland. The benefits of such investments include reduced stormwater runoff, increased evapotranspiration and groundwater recharge, increased filtering of air pollutants, the sequestering of carbon to reduce green-house gases, the stabilizing of soils to reduce erosion, and improved conditions for human and watershed health.

The Treebate Program adheres to the following guiding principles:

- A. Access.** Provide equitable access to the Treebate Program to all eligible Portland households.
- B. Economy.** Employ the most economical and efficient means to market the Treebate Program, provide technical assistance and program information, and process incentives.
- C. Effectiveness.** Enact polices and business practices that ensure the successful siting, planting, and maintenance of yard trees.
- D. Civic Engagement.** Use the Treebate Program to increase public understanding, involvement, and networking to advance stormwater management and watershed enhancement goals.
- E. Fiduciary Responsibility.** Enact accounting and financial management practices to ensure the most efficient and effective use of City resources to advance the goals of the Treebate Program.

## **3. Definitions**

These rules use terms described in the PCC Chapter 17.36. plus the following:

- A. “Facial Challenge”** means a challenge to a requirement that is based on an argument that the requirement cannot be applied fairly or reasonably in any situation. By contrast, an as-applied challenge is one based on an argument that a requirement should not be applied to the challenger’s particular situation because of factors that, in the challenger’s view, distinguish it from similar situations.
- B. “Trees”** are defined as woody plants that have many secondary branches supported clear of the ground on a single main stem or trunk with clear apical dominance [Huxley, A., ed. (1992). *New RHS Dictionary of Gardening*. Macmillan ISBN 0-333-47494-5]. Trees do not include woody plants such as shrubs, arborescent shrubs, specimens bred or pruned to maintain an artificially reduced canopy such as topiary, espaliered or pollarded specimens, small weeping varieties, or plants used to create hedges or other thick, closely-planted buffers or borders on private property.

## 4. Regulatory Authority

City Council previously authorized the Portland Treebate Program on November 4, 2009 with the adoption of Ordinance No. 183307 and reauthorized the Program on September 18, 2013 with the adoption of Ordinance No. 186252. City Council reauthorized the program on a permanent basis on May 2, 2018 with the adoption of Ordinance No. 188920.

## 5. Program Eligibility

The Treebate is available to Portland residents based on the following eligibility criteria:

**A. Property.** Trees must be planted in the ground on private property, and in locations outside of public rights-of-way. The private property must be located within the City of Portland and used as a residence. Eligible property may have up to four dwelling units per lot. Mixed-use developments do not qualify for Treebates. BES will rely on definitions set forth in Title 33 of the City Code when making determinations of eligible property.

**B. Applicant.** The applicant must be the City sewer or stormwater utility ratepayer for the property that is the subject of the Treebate application. The applicant need not be a City resident to be eligible for the program; however, the credit applies to the utility account for the property where the tree is planted.

### C. Trees.

**1. Eligible Trees.** Eligible trees meet all the following:

- a. *Height at Time of Planting.* Trees must be at least four feet tall at time of planting. Height is measured from the soil line to the highest-most point of the canopy.
- b. *Mature Tree Size.* Trees must grow at least 15 feet tall with a canopy spread of at least 10 feet wide at maturity. Edible fruit trees are exempt from the mature height and width requirement.
- c. *Spacing.* An eligible tree must be spaced at a distance from other trees and infrastructure to allow the tree the opportunity to reach its mature size.
- d. *Date of Planting.* Eligible trees must be purchased, planted and an application submitted to Treebate staff during a period that begins on September 1 and ends the following April 30.

**2. Ineligible Trees.** Ineligible trees include any of the following:

- a. Street trees;
- b. Trees planted within a public right-of-way;
- c. Trees that have been provided and/or planted through programs administered by Friends of Trees or other City subsidized programs;
- d. Trees planted to satisfy a condition of development;
- e. Trees planted to mitigate or replace the loss of existing trees;
- f. Trees planted on non-single family residential properties;
- g. Trees that do not grow to at least 15 feet tall with a canopy spread of at least 10 feet wide at maturity;
- h. Non-native, non-nuisance trees planted in Environmental Zones in violation of PCC Chapter 33.430; and

- i. The following trees on the City of Portland’s Nuisance Plants List:
  - i. Norway maple (*Acer platanoides*)
  - ii. Sycamore maple (*Acer pseudoplatanus*)
  - iii. Horse chestnut (*Aesculus hippocastanum*)
  - iv. Tree of heaven (*Ailanthus altissima*)
  - v. Cutleaf birch (*Betula pendula*)
  - vi. English hawthorne (*Crataegus monogyna*)
  - vii. English holly (*Ilex aquifolium*)
  - viii. Golden chain tree (*Laburnum watereri*)
  - ix. Princess tree (*Paulownia tomentosa*)
  - x. White poplar (*Populus alba*)
  - xi. Wweet cherry (*Prunus avium*)
  - xii. English laurel (*Prunus laurocerasus*)
  - xiii. Black locust (*Robinia pseudoacacia*)
  - xiv. European mountain ash (*Sorbus aucuparia*)
  - xv. Siberian elm (*Ulmus pumila*)

## 6. Application Requirements

A complete Treebate application must consist of the following information:

- A. **Application Form.** The applicant must complete and sign an application form provided by BES. BES may accept a legible electronic copy or facsimile of a completed and signed application form in lieu of an original document. The application form will list program requirements and document the applicant’s agreement to comply with those requirements.
- B. **Limit on the Number of Trees.** BES will limit the number of trees eligible for Treebates on any single property or in any single application to 5 trees for the duration of the program. BES may grant exceptions to this limit if:
  - 1. Program resources are available;
  - 2. The program has attracted a broad distribution of participating properties;
  - 3. The eligible trees are appropriately spaced to ensure their individual viability; and
  - 4. The eligible trees advance City goals for stormwater management and watershed health.

To earn an exception, the applicant may be required to submit a planting plan that includes new and existing tree species and spacing between trees and infrastructure.
- C. **Proof of Purchase or Receipt.** The applicant must provide proof of the purchase or receipt that documents the date of the purchase, the type of each tree, the final sale price for each tree, and the name and address of the seller. BES may accept a legible electronic copy or facsimile in lieu of the original proof of purchase or receipt.
- D. **Tree Care Pledge.** The applicant must agree to provide adequate water and care for at least three years and as long as is necessary to establish the tree following the planting of each tree. Established trees have enough root material to provide water for essential functions without supplemental irrigation. However, during prolonged or extreme drought conditions, supplemental irrigation may be necessary to avoid tissue damage and death of established trees.

- E. Tree Verification Audit.** The applicant must authorize BES staff to enter the subject property to verify the planting and care of trees that qualified for the Treebate Program.
- F. Public Database Records.** The applicant must authorize the City to include the subject property in GIS and other public database systems.
- G. Proof of Authority.** If the applicant is a tenant of the subject property, the Treebate application must include written consent for the planting of trees on the subject property, signed by the property owner. The written consent must identify the subject property, describe the location of planted trees, and contain a statement that the property owner authorizes the planting of trees as described in the application.

**7. Treebate Awards**

BES will award Treebates based on available resources and funding authority. BES may delay the awarding of a Treebate until the start of a new fiscal year or accounting period in the event that a valid application is received after available resources have been exhausted. BES may also delay the awarding of a Treebate if technical updates and/or issues interrupt the regular processing schedule. BES will not adjust the value of the Treebate or increase the Treebate award by adding accrued interest for the period of the delay.

- A.** Awards for edible fruit trees are based on tree type. Awards for non-edible fruit trees are based on mature tree size per table below. BES staff will make the final determination of tree type and mature tree size for the purposes of calculating the appropriate Treebate credit.
  1. Edible fruit trees are eligible for a Treebate equal to 50% of the cost of the tree to a maximum of \$10;
  2. Small-canopy trees are eligible for a Treebate equal to 50% of the cost of the tree to a maximum of \$20;
  3. Medium-canopy trees are eligible for a Treebate equal to 50% of the cost of the tree to a maximum of \$30; and
  4. Large-canopy trees are eligible for a Treebate equal to 50% of the cost of the tree to a maximum of \$50.

| <b>Mature Size</b> | <b>Minimum Mature Height</b> | <b>Mature Height x Width</b>                               |
|--------------------|------------------------------|--|
| <b>Large</b>       | <b>50 feet</b>               | <b>≥ 2,500 ft<sup>2</sup></b>                              |
| <b>Medium</b>      | <b>30 feet</b>               | <b>&gt; 1,000 ft<sup>2</sup>, &lt;2,500 ft<sup>2</sup></b> |
| <b>Small</b>       | <b>15 feet</b>               | <b>≤ 1,000 ft<sup>2</sup></b>                              |

- B. Method of Payment.** BES will provide the Treebate in the form of a credit or adjustment to the City utility account of the subject property described in the Treebate application. The credit will be applied to the stormwater management user service charges portion of the utility bill. For administrative convenience and efficiency, BES may accumulate accepted Treebate applications and process them in weekly or monthly batches. The City will not issue Treebate payments by cash or warrant.

## 8. Inspections and Enforcement

**A. Site Visits for Tree Verification Audits.** For the purpose of administering the Treebate Program, BES staff may enter upon the land or premises of an eligible property granted Treebate credit. BES staff will produce proper identification and gain consent from the property owner or occupant who submitted the application. The purpose of such entry is:

1. To determine the eligibility of trees which are the subject of a Treebate application;
2. To determine if the applicant has provided sufficient water and care as required by the Treebate Program, and
3. To provide technical assistance regarding the proper siting, planting and care of yard trees.

Failure to provide access to the property will be a violation of the requirements of the Treebate Program. BES staff will prepare a report of findings of every site visit and provide, upon request, a written copy to the applicant within 30 days of the site visit. BES will retain a copy of such report.

**B. Enforcement.** BES may exercise the following remedies.

1. **False Filings.** In the event that an applicant files false information to receive a Treebate or files a duplicate application for a Treebate, BES will recover via credit reversal on the applicant's utility bill any Treebates that have been awarded to the applicant for any property.
2. **Failure to Comply with Application Requirements.** The City is authorized to recoup a Treebate award, plus interest, if BES determines that the applicant has failed to comply with program requirements. BES will provide an administrative hearing to consider testimony from the applicant before making a final determination in such matters.
3. **Collections.** BES is authorized to employ any legal means to recoup Treebates, accrued interest, civil penalties, collection costs and related overhead that are imposed on an applicant as a result of a hearing to determine remedies for false filings or failures to comply with program requirements.
4. **Disqualification.** BES may permanently disqualify an applicant or a property from participation in the Treebate Program as a remedy for a violation of the program requirements or administrative rules.

## 9. Administrative Review and Appeal

A person may request reconsideration of a BES decision through administrative review as described in this Section. After the requestor has exhausted all BES administrative review, the requestor may file for an appeal of a decision with the Code Hearings Office (CHO) per Portland City Code Title 22. A person may only appeal a decision that is subject to administrative review by BES.

**A. Administrative Review Requests.** A person to whom a notice was addressed will have 20 business days from the date the notice was issued to submit a written request for administrative review of a decision described in the notice. The requestor must provide all information known to the requestor that supports an assertion made in the written request for administrative review. The requestor must provide such

information via graphic, written, or recorded communication, or in person at the administrative review meeting. BES will hold an administrative review meeting within 15 business days of receipt of the written request for administrative review unless BES determines in its reasonable discretion that a delay is justified. The requestor may provide detailed information in writing in lieu of attending the administrative review meeting.

**B. Non-Reviewable Items.** A BES decision made under these rules is subject to administrative review except that BES will not grant administrative review for the following:

1. Treebate Program eligibility requirements;
2. Treebate Program application requirements;
3. A BES decision to delay payment of a Treebate until the start of a new fiscal year or accounting period in the event that a valid application is received after available resources have been exhausted;
4. A BES staff determination of the expected mature tree size of a Treebate applicant's tree for purposes of calculating the appropriate Treebate credit;
5. Any formula set by these rules for calculating the amount of a Treebate credit; and
6. A Facial Challenge – as that term is defined in these rules – to a requirement in these rules or associated City Code, or to any technical standard.

**C. BES Evaluation.** BES will use authorizing City Code, the provisions of these rules, City records, and the testimony and documentation provided by the requestor to make a final determination on the issue that is the subject of the administrative review.

**D. Final Determination.** BES will issue to the requestor a written determination within 15 business days of the administrative review meeting unless BES determines that extenuating circumstances justify a reasonably longer period of evaluation. The written final determination will provide information about the process for filing an appeal to the CHO.

## **APPENDIX A – Background Information**

The City of Portland manages stormwater runoff as a valuable resource to replenish groundwater supplies that feed cool, clean water to rivers and streams. Portland’s average annual 37 inches of rain creates about 20 billion gallons of stormwater runoff per year. In addition to pipe infrastructure, Portland’s approach is to manage stormwater where rain falls with facilities that work like natural systems and also help meet other community goals.

In July 2008, the Bureau of Environmental Services launched the Grey to Green Initiative, a comprehensive effort to restore and protect the health of Portland watersheds through investments in green infrastructure. Trees are an essential component of the Bureau's goals to manage stormwater more effectively. Trees deliver significant and cost-effective stormwater management benefits by intercepting stormwater where it falls.

Treebate is an incentive program that encourages Portlanders to plant new trees in their residential yards for the stormwater management and complementary benefits trees provide that help the bureau meet multiple watershed and human health goals. The program serves to educate ratepayers about the benefits of trees, incent tree planting, and provide opportunities for ratepayers to have positive, personal interactions with the Bureau. Treebate is a valuable tool that supports the City’s ongoing efforts to increase and diversify urban tree canopy and manage more stormwater on site.