



Bureau of Planning and Sustainability

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MEMO

DATE: September 15, 2016
TO: Urban Forestry Commission
FROM: Jeff Caudill, City Planner II
CC: Sandra Wood and Kathryn Hartinger
SUBJECT: RICAP 8 - Discussion Draft -Tree Related Elements

Thank you for providing us with an opportunity to brief you on Regulatory Improvement Code Amendment Package (RICAP) 8 at your September 15th meeting. RICAP is part of the Regulatory Improvement Workplan, an ongoing program to improve City building and land use regulations, as well as related procedures. RICAPs address simpler technical matters and clarifications, or refinement of existing policy, in a typically one-year cycle. Background on the Regulatory Improvement Workplan can be found in Attachment A.

The RICAP 8 Discussion Draft was released on August 29, 2016, for public review. Comments will be accepted until October 14, 2016. The document will then be updated based on input received and a RICAP Proposed Draft will be published in November.

The Discussion Draft includes a total of 17 proposed Title 11 amendments, including 10 items originally on the Regulatory Improvement Workplan and an additional 7 items identified more recently as needing immediate resolution.

This matrix below summarizes the proposed changes. For more detail please review pages 109 to 157 of the RICAP 8 Discussion Draft:

<https://www.portlandoregon.gov/bps/index.cfm?&a=588149>.



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RIW #	Item Name	Proposed Amendment	Code Section(s)	Summary of Update
MINOR POLICY ITEMS				
34	Heritage Tree - Penalties for Unlawful Damage or Removal	Modify Heritage Tree penalties to increase penalty for unlawful damage or removal on private property.	11.20.060; 11.70.080; Title 11 Trees Fee Schedule	Establishes new section within 11.70.080, Correcting Violations of this Title, to address Heritage Tree damage or removal - whether on private property or a City or Street Tree. Fee for damage is \$300 per inch and unlawful removal is \$600 per inch, similar to the maximum fees currently allowed for City and Street Trees. These changes would be incorporated into the Title 11 Trees Fee schedule.
37.	Ground Disturbance	Allow small amounts of ground disturbance without triggering tree plan requirements. Require tree plan for projects with exterior staging or construction but no ground disturbance.	11.50.040.A; 11.50.040.B; 11.50.070.A	#37 (1 st item) & #38 - Incorporates language to identify specific types of activities (e.g., additions or alterations within 15' of existing structures; repair and replacement of fences and decks; landscaping) exempt from tree preservation standards. #37 (2 nd item) - New language requires tree preservation in cases where there is a construction staging area of over 100 square feet and no ground disturbance.
38.	Root protection zone requirements	Allow reasonable separation between construction and required tree protection.		
36.	Minimum Pruning Threshold	Raise permitting threshold for pruning of branches to 1/2" from 1/4".	11.40.040	Increases minimum branch pruning permit threshold to 1/2" for City and Street Trees. This change addresses issues experienced by other City bureaus needing to trim branches out in the field. Root pruning threshold stays at 1/4".
40.	Root Protection Zone, Fencing	Clarify how tree protection applies when a portion of the root protection zone extends off the site onto an adjacent property or right-of-way. Provide allowance to use existing fences for tree protection.	11.60.030	Added language clarifies how to calculate allowable encroachment areas in cases where the root protection zone extends beyond the property boundary and makes clear distinction between existing and allowed new encroachments. New text specifically establishes the use of existing structures or fencing as a part of the required root protection strategy.



RIW #	Item Name	Proposed Amendment	Code Section(s)	Summary of Update
39.	Tree plan requirements	Require identification of dead, dying, dangerous or nuisance trees on the tree plan to meet on-site tree preservation and/or tree density standards.	11.50.070.A	Modifies code language to require the identification of all dead, dying, dangerous or nuisance trees in the tree plan. Would require an arborist report for essentially all tree plans.
35.	Timelines	Extend required timelines for City staff in appeals and Programmatic Permits to provide adequate time for City action.	11.30.040.D and .050.D; 11.45.030.C	Extends the required timeframe for a Type A and Type B appeal hearing to be scheduled from 45 days after the City Forester's decision to 45 days after the appeal was filed. Extends required decision on a Programmatic Permit from 90 to 120 days after the application was deemed complete.
41.	Enforcement	Add authority to levy liens and utilize other mechanisms for unpaid fees tied to tree code violations.	11.70.090; 11.70.100	Clarifies that City Forester and BDS director can utilize fees/penalties and citations to enforce tree code violations. Allows the City Forester to take action when fee payment is derelict, including delaying approval of subsequent applications, levying of liens, nuisance abatement and other enforcement actions.

TECHNICAL AND CLARIFICATION ITEMS

17.	Amenity Bonus	Match the maximum allowed amenity bonus for preserving trees to other amenity bonus maximums.	33.120.265	Modifies the multi-family (i.e., R3, R2, and R1 zones) tree preservation amenity bonus to be consistent with other bonus options in this section. The proposal reduces the density bonus from 5 percent to 2 percent for each tree preserved beyond the Title 11 Tree Preservation requirements. A maximum density bonus of 10 percent will be established for tree preservation. Current code establishes no individual maximum for tree preservation (up to the 50 percent total maximum). All other options have a maximum of 5 or 10 percent bonus. A mixture of amenities can be combined up to a 50 percent density bonus.
42.	Liability for ROW Trees	Clarify owner responsibility for the maintenance of trees in all rights-of-way adjacent to their property.	11.05.110.B; 11.60.060.A	Adds text to include tree maintenance in unimproved rights-of-way as the responsibility of property owners, in addition to sidewalks and street planting areas. This change should address any property owner confusion related to these areas.



RIW #	Item Name	Proposed Amendment	Code Section(s)	Summary of Update
43.	Title 33 Landscaping Standards and Tree Removal Permits	Clarify language ensure compliance with Zoning Code requirements along with tree code compliance.	11.40.020.C	BDS reported some confusion related to landscaping standards when trees are removed via a fee-in-lieu payment. Clarified language to ensure applicants are aware that fee-in-lieu payments cannot be used to meet landscaping requirements.
44.	Table Reference	Correct reference to tree density requirements for development impact area.	11.50.030	Reference in the table incorrectly identified Option B when it should be Option A.
21.	Non-conforming upgrades	Align tree density with Title 33 required non-conforming upgrade.	11.50.050.A.2 <i>See also 33.258.070</i>	Modifies code language to be consistent with Title 33 upgrade triggers.
45.	Tree Preservation and Protection near Development Impact Area	Update language to ensure protection measures are implemented for trees located within 25 feet of the development impact area.	11.50.070.A	Added text to confirm that tree protection methods must be implemented in the development impact area for any tree within 25 feet of the development impact area boundary. Existing language is silent on this requirement.
46.	Root protection zone, permissible encroachments	Clarify 25% area/50% allowed distance encroachments at property lines and structures.	11.60.030.C	See item #40 above.
47.	Definition of Removal	Update definition of “Removal” to clarify code intent. Current code is vague when it comes to removal of roots.	11.80.020.B 11.80.020	Updated the definition of tree removal to better address the potential impact of removing roots on tree viability.
48.	Definitions	Incorporate new definitions for tree, building, and attached structure.		Incorporated new definitions of terms currently used in Title 11, including “tree”, “building”, and “attached structure.” These additions will avoid confusion in interpretation.
49.	Tree plan carryover	Clarify how tree plans carryover to different project phases.	N/A	No changes proposed for this item.



Attachment A, Regulatory Improvement Workplan Background

On June 26, 2002, the Portland City Council approved Resolution 36080, which sought to “update and improve City building and land use regulations that hinder desirable development.” This was the beginning of the Council’s charge to build an effective process of continuously improving the City’s code regulations, procedures, costs and customer service. The resolution also directed that a procedure be formulated to identify both positive and negative impacts of proposed regulations. This Impact Assessment is now conducted as part of all projects where changes to City regulations are considered.

In August 2003, Council assigned ongoing responsibility for coordination of the implementation of the Regulatory Improvement Workplan (RIW) to the Bureau of Planning and the Bureau of Development Services. The two bureaus established a process for developing future work plans. The components of this process include the following:

An online database of potential amendments and improvements to the Zoning Code and Tree Code. Items are suggested by City staff, community members, and others;

The Regulatory Improvement Stakeholder Advisory Team (RISAT); and

Presenting the Planning and Sustainability Commission (PSC) with future workplan lists at the same time as proposed code language for the current workplan.

Both bureaus periodically review potential amendments and improvements to the Zoning Code and Tree Code and, with the assistance of the RISAT, rank the identified items and propose a workplan for the next package. This list of potential amendments is reviewed and adopted by the PSC at a public hearing. The list selected for each package is not a list of amendments, but a list of issues and areas that will be researched and analyzed; each issue may or may not result in amendments to the code. The resulting packages are called a Regulatory Improvement Code Amendment Package (RICAP) and are numbered RICAP 1, RICAP 2, and so on. The current RICAP effort is RICAP 8.

After PSC adopts the workplan for the next RICAP package, the Bureau of Planning and Sustainability, with assistance from the Bureau of Development Services, analyzes and develops a recommendation for each issue. If an amendment to the Zoning Code or Tree Code is recommended, code language is also developed.

As with all projects that amend the City code, notice is sent to interested parties and all neighborhood and business associations. Open houses and public meetings are held when warranted. PSC holds a public hearing on the proposed amendments to the Code and forwards their recommendations to City Council. City Council holds another public hearing and then makes the final decision on any code updates.

