



Tree Project Oversight Advisory Committee

Meeting #5, **Draft** Meeting Summary

Monday, May 11, 2015

1900 Building, 1900 SW 4th Ave, Portland, OR 97201

Room 2500A

10:00 AM - 12:00 PM

MEMBERS PRESENT

Linda Bauer, Pleasant Valley Neighborhood Association

Mark Bello, Urban Forestry Commission

Kris Day, Urban Forestry Commission

Jeff Fish, Fish Construction NW

Arlene Kimura, Hazelwood Neighborhood Association (Co-chair)

Jim Labbe, Audubon Society of Portland

Nancy Seton, SW Hills Residential League

Susan Steward, Building Owners and Managers Association (Co-chair)

Justin Wood, Home Builder's Association

Helen Ying, Old Town China Town Neighborhood Association

Bob Kellett, SE Uplift

MEMBERS ABSENT

Phil Damiano, Design Review Advisory Committee

STAFF PRESENT

Jenn Cairo, City Forester/ City Nature Zone Manager

Mike Hayakawa, Tree Project Supervising Planner

Tim Crail, Policy Advisor to Commissioner Fritz

Mieke Keenan, Tree Project Program Coordinator

Anne Pressentin, EnviroIssues Consultant

Kimberly Tallant, BDS Supervising Planner

Stephanie Beckman, BDS Senior Planner

Nicole Pexton, BDS Management Assistant

OTHERS PRESENT

Karen F. Williams, Eastmoreland Neighborhood Association
Tren Haselton, Eastmoreland Neighborhood Association
Catherine Mushel, Eastmoreland Neighborhood Association
Eric Sorenson
Kurt Krause

BUSINESS

Welcome and Introductions

Arlene Kimura opened the meeting by thanking everyone for coming and having everyone introduce him/herself.

Approval of April Meeting Summary

Susan Steward opened the April meeting, not Arlene Kimura.

ACTION: April meeting summary approved with correction.

Public Comment Opportunity

Arlene Kimura acknowledged this opportunity for public comment.

Catherine Mushel of the Eastmoreland Neighborhood Association commented against communication line clearance pruning for three reasons:

1. They believe it is not necessary for the safety of workmen.
2. Pruning contradicts the use of Urban Forestry's Approved Street Tree lists. Trees approved for sites under high voltage lines must grow lower than 35 feet at maturity, so residents using these lists expect that their trees will not be pruned under the 35 foot height. Currently trees are pruned and topped at a 16 foot height.
3. They think best arboricultural practices would not allow lower clearance pruning, especially when young trees are topped.

Tren Haselton of the Eastmoreland Neighborhood Association commented that the clearance line pruning has been demoralizing, and has done damage to the credibility of the city on street trees. He hopes that people whose trees have been permanently damaged receive compensation to remediate the damage.

Karen F. Williams of the Eastmoreland Neighborhood Association echoed the previous two comments.

Question: Are there rules in the permit to prevent this type of pruning? Will they pay a fine?

Answer: All pruning has to be approved and permitted by Urban Forestry. If you see violations, call 823-TREE. Urban Forestry received several complaints on pruning in Eastmoreland, sent CenturyLink a letter stating that they were out of compliance, and met with CenturyLink management on this issue.

CenturyLink has been asked to respond in writing by the 15th on how they will remedy issues.

CenturyLink said they had problems communicating expectations with the contractors they use. They will not receive a penalty because it is their first violation, but they could be penalized in the future.

Jenn Cairo thanked the neighborhood for bringing it to Urban Forestry's attention.

Question: What is the rationale for pruning in the right of way for communication lines? Typically such lines are not dangerous. Why are utilities being allowed to do this pruning?

Answer: Code does allow utilities to do necessary pruning, does not define utility. Typically communications utilities are only removing branches a few inches away from lines, because if trees fall on lines it will disrupt connectivity.

Question: Should neighborhood associations forward addresses where trees have been pruned poorly to Urban Forestry?

Answer: CenturyLink is supposed to notify neighbors 15 days in advance. Try to notify CenturyLink directly first, but if that is unsuccessful call 823-TREE.

Question: Linda Bauer noticed PGE was out pruning trees last Friday and there were no door hangers distributed before they arrived. Is leaving door hangers part of the permit?

Answer: All permits require notification. Call 823-TREE if no notification was provided.

Comment: The approved street tree list says trees should grow to a maximum of 35 feet. If utilities prune under that height, then people may lose faith in the Tree Code.

Answer: More extensive pruning will take place above 35 feet, but pruning may occur below that height. Communication line pruning should be minimal.

Comment: Tree topping is forbidden by code, but young trees are being topped. There is an expectation from the street tree lists that trees will only be pruned for high voltage lines. Pruning for communication lines impacts morale in the neighborhoods.

ACTION:

- **Arlene suggested that discussion of notification procedures for street tree pruning be added to next month's agenda.**

Interim Rule

Mike acknowledged OAC concerns on timing of interim rule, and he walked through a proposed schedule of the administration rule adoption process. Permanent rule will be adopted in 180 days and

will provide greater clarity to areas where the code is inconsistent and will provide more discretionary authority. It is important that everyone gets written notice and ability to comment.

The interim rule went into effect on April 20th. There will be an open house on September 9th, a public hearing (if requested) on Sept 17th. The deadline to request a public hearing is Sept 10th. This rule can be appealed to City Council after rules are adopted.

Jenn walked through the details of the interim rule (see [Interim Rule Presentation](#) for more detail).

Question: Who will be the review body for the public hearing?

Answer: It is not clear who the review body would be.

Questions: Wouldn't the review body be the Forestry Commission?

Answer: This is the proposed adoption process. We are looking for Committee feedback on the process.

Question: Are removals cumulative on private property?

Answer: Yes, permits are tracked by property.

Question: Will federal properties be required to follow the tree code?

Answer: Other public entities are not required to comply, but there is a voluntary agreement by some non-city public entities that they will comply. ODOT has tried to voluntarily meet tree standards, but it isn't required.

Question: Is the interim rule the same as an administrative rule?

Answer: The interim rule ultimately must be adopted as an administrative rule.

Question: Why does the process for infrastructure repairs include consultation with Urban Forestry?

Answer: We want people to have a discussion with the City Forester on how to do sidewalk repair or design, but we don't want to dictate how people pursue sidewalk repairs.

Comment: The replanting requirement for public improvement projects limits replanting to two trees. This proposal misses the goal of mitigating trees based on the function they provide. It doesn't account for different environmental functions of trees. This is a very significant change.

Question: Does the non development cap apply only to owner-occupied single family residences?

Answer: The cap applies to all single family residences (based on development of property, not zoning), regardless of ownership.

Comment: Sometimes PBOT requires developers to make half-street and full-street improvements that require tree removals, even if the developer does not want to remove trees. The fee in lieu is

discouraging tree removals that developers don't want anyway. Is it possible to limit street improvements in areas with heritage trees?

Comment: Sometimes improvements are required on low traffic streets where neighborhoods don't want them. Perhaps there is a more optimal solution for everyone. This is an issue that needs clarification.

Question: Does the interim rule get applied based on the type of development, not the zoning?

Answer: Yes. It's based on the type of use. In commercial situations the \$1200 fee cap wouldn't apply.

Question: Trees in the right of way have to be removed during street improvements. Do all of these trees get replaced?

Answer: Replacement plantings are every 25 ft in the right of way, unless there is a curb cut or water line or similar infrastructure conflict that prevents trees from being planted. A maximum of two trees planted will be required for every tree removed. The same tree could count toward mitigation and density, but the site is required to meet the higher of replanting or density requirements.

Comment: There could be more creative approaches to right of way development. Part of the conversation should be understanding PBOT's needs. It might be interesting to look at how this might play out in a land division situation where someone pays the fee in lieu and then flips the property. Time limits in the code may allow more trees to be removed.

Comment: What if a developer has to take eight trees out in the right of way, but can only plant four trees to replace them?

Answer: The developer could plant four trees, and then pay for the other four that would have been planted if there had been room. Developers can plant more than one tree every 25 ft with forester approval, or plant another tree in the same watershed. The City Forester has discretion on where trees should go.

Comment: The approval process for interim rule gives adequate time for public comment.

Comment: Would like to get this on the record. There has been a lack of involvement from the Urban Forestry Commission and the Tree Code OAC. It does not feel like this has been an open and inclusive process, which undermines volunteerism and professional investment in code development. It feels disingenuous without any data to back it up. Lowering the standard for development will not likely achieve the goals of Title 11. Previously the mitigation standard was up to inch for inch, but did not require inch for inch mitigation. Now forester discretion is removed, which hinders goals of Title 11.

Comment: How do we get people involved who don't know much about trees if the process is already not open and transparent for people who are involved? How can we make this work? How can we make people's contributions feel valued?

Comment: Not happy with process, but supportive of cap on fee for non-development situations. Too much discretion in fees can create conflict when fees aren't equal between projects. More guidelines are preferable.

Comment: Committee's purpose is to help implement Tree Code, so from committee standpoint it is important to express that this process does not work.

Question: One of the Commissioners was going to put in a request for more people on the tree code. Did that go through this committee?

Answer: Adding more personnel to the Tree Code was part of budget discussions in Parks.

Comment: To what extent are we weakening the long-term commitment of citizens by implementing the rule this way? It would be helpful to go through Urban Forestry Commission to adopt this rule. It allows a thorough discussion of all issues. It might be helpful to appeal this rule to Council through the Urban Forestry Commission, so there could be the opportunity to discuss issues on both sides. It is time for a more formal process.

Question: Does the following process not allow the Committee to have input? We could take public comments and ratify the rule or not ratify it.

Answer: This was not a perfect process, but there were practical considerations that went into it. We're all new at implementing Title 11. As we administer the rule, we find more issues to address. We will try to avoid implementing a rule change this way in the future. Anything tree project related should go through the committee so members have the opportunity to discuss it.

Comment: Individuals in this committee could write a minority letter, would it be considered part of testimony?

Answer: We encourage the committee to read rule carefully and come up with specific comments and recommendations, and comment on the process.

Comment: There are a lot of trees coming down and situations we didn't anticipate. Trees are being removed in developed neighborhoods at a staggering rate in a hot market. This process is taking the tree code in the wrong direction. I don't think there is agreement on the committee and I think we should revisit the interim rule next month to develop comments.

Arlene commented that the timeline for administrative rule adoption isn't a problem. The OAC just want to decide whether to comment individually or as a group. Don't know if we can cover all comments in a monthly meeting.

Comment: It's a concern to keep rolling over all decision-making to future meetings. I am happy with staff coming forward with proposals based on comments and we say yay or nay.

Anne Pressentin suggested that the group decide to try to come to consensus on whether to comment as a group or individually at the next meeting, but allow for a minority report if there is no consensus. There should be no decision-making over email, but questions can be raised and information shared if staff members are copied so the email chain can be part of public record.

Question: What can we do over email? How can we formulate a group opinion?

Mike: Want to avoid debate over email, because it may not be productive.

Anne: Anything in email can be taken out of context. The OAC could also decide to meet more frequently or have longer meetings. We want to make sure we are moving discussions forward in a respectful way that allows everyone to comment.

Comment: It would be useful to hear ideas for improvement on email if everyone has a chance to review.

ACTION:

- **Everyone can submit comments to Mike and Mieke by May 18th. Mike and Mieke will then compile comments and circulate them to everyone before the next meeting.**

Comment: It important to remember that purpose it to look at Code as intended. If there are problems, then we can tweak it. If not, we should wait 12-18 months and see how it works. There is concern that the committee could debate a lot of things they aren't relevant to its purpose.

Urban Forestry Fee Schedule

The OAC skipped this item since it was informational only. The fee schedule has already approved by Council.

Urban Forestry Land Use Review fees

Jenn Cairo explain that it is the time of year when all infrastructure bureaus look at fees, and if there are changes they have to be approved by City Council. Parks is funded almost entirely through the general fund, except for System Development Charges and tree permit fees. Other bureaus have questioned why Parks isn't recovering its costs. We opted not to last year, but this year Parks is trying to recoup some costs of regulating city's trees.

Fees have a part to play in implementing Title 11. The inspections being proposed are functions Parks has been performing under General Funds, and it is important for Parks to be doing inspections. Because the inspections aren't fee supported, there have not been enough staff members to cover all inspections. Parks hasn't had a process line in TRACs, so it has to insert itself and has not routinely been part of these reviews. TRACs programmers will have to program a role for Parks staff to perform work when fees are charged. There is usually a fee increased tied to the Consumer Price Index (CPI) increase each year (around 1.0%). Parks elected not to do a CPI increase this year, but every year they will look at fees and make changes as necessary.

Parks is proposing four new fees, one each for Land use reviews, Early Assistance meetings, Early Assistance meetings and notes, and Pre-application Conferences. The fees range from \$136 - \$273. Parks chose those fees based on a given rate for the staff time it takes to complete the process, such as receiving applications, reviewing TRACS and GIS, conducting site visits, writing up responses, and communicating with staff and interested parties.

Comment: The builder gets charged for the same work twice sometimes for land use reviews and building permits, and often less work is completed the second time.

Answer: Second planner has to make sure work completed matches what was approved.

Question: Is there a mechanism on fees to track and control any excess fees? How can we figure out how to prevent large surpluses while allowing for some reserves?

Answer: Jenn will ask finance manager how we will deal with excess revenue.

Question: In the past, service was not done frequently. Does Urban Forestry need fees to do service more frequently? Is the plan to add more staff to complete work?

Answer: Yes, that is purpose of fees if they produce enough revenue. Currently Urban Forestry is projected to collect \$50,000, which is not enough to fund a staff person, so they will have to rely on general funds and other Title 11 positions to complete the work.

Question: We have been told there isn't enough staff to enforce tree codes. How to fix that?

Answer: We do have a vacant tree inspector position that we are filling. We will be using these fees to pay for tree inspectors to enforce the tree code. We are still trying to figure out how many people we need to do the work. Our projections are based on old permit volumes, so it is difficult to get accurate estimates of fee revenues.

Comment: A pre-application conference may not be worth any money if there is no site visit. Mark suggested that it comes with a guarantee of a site visit, or no fee will be charged.

Action item:

- **Ask how surplus tree permit fees would be addresses in the City budget.**

Miscellaneous Items

The next meeting will be on June 8th, and it may start at 9 AM and last three hours with a break. Committee members will be notified in advance if the meeting will start earlier.

ADJOURN: 12:00 PM