

June 1, 2015

MEMORANDUM

TO: Tree Project Oversight Committee
FROM: Tree Project staff
RE: Comments on Interim Rule on mitigation planting

Staff received a number of comments from Committee members and further reviewed the issues discussed and questions asked during the May, 2015, meeting. This memorandum address many of the issues raised during the meeting as well as the comments that were submitted.

Item 1: Public hearing for Administrative Rule review.

Discussion: A public hearing is required under Section 3.30.045 A.1.a, if a request is received. The intent of the code is to allow interested parties an opportunity to provide input in person. Staff will accept comments from those interested parties in a public format. Appeal requests must be submitted in writing no later than September 10, 2015.

Next step: Continue this process of collecting comments from the Committee and consider when drafting the permanent rule.

Item 2: The \$1,200 cap.

Discussion: The purpose of establishing this cap is to ensure equity between development and non-development situations. Currently, the Urban Forestry fee schedule includes a mitigation fee of \$1,200 in development situations and Council members wanted to ensure that mitigation fees paid by homeowners in nondevelopment situations would not exceed this amount. The Interim Rule caps the amount that a single dwelling resident is charged (per tree) at that same amount. For the cap to be raised, the Urban Forestry fee schedule must be amended and the Interim Rule must be amended to reflect the fee schedule.

Next step: Consider whether the \$1,200 cap is adequate to implement the intent of the code.

Item 3: Public works project that result in tree removal.

Discussion: Early involvement of Urban Forestry in City and Street Tree preservation (11.50.040 C.2) provides the procedural opportunity to (a) include Urban Forestry early in the process; and (b) identify ways that removal can be avoided or otherwise mitigate.

Next step: Provide training on public works and capital projects.

Item 4: Role of the Urban Forestry Commission.

Discussion: UFC will, by code, perform an advisory function. Meanwhile, UFC may hold a public hearing on the Interim Administrative Rule, may provide input during the process, and may appeal the City Forester or BDS Director decision is filed with the City. Any regulatory role by the UFC will require a code amendment.

Next step: Consider if the Oversight Committee would like to recommend that the UFC hold a public hearing on the Interim Administrative Rule.

Item 5: City Forester discretion vs. prescriptive standards.

Discussion: In many instances, Title 11 provides the City Forester with discretionary authority. This type of authority is warranted to allow the City Forester to use judgment in evaluating all the facts as they apply to code requirements, so that unique fact patterns can be taken into consideration. Such an approach, meanwhile, creates a challenge for Urban Forestry, to maintain consistency in the application of the regulations. The Interim Rule, as drafted, takes an additional variable into consideration. Section 11.05.010, among other things, recognizes the importance of balancing city plans and policies. The resulting Interim Rule was drafted to include a prescriptive standard to increase predictability and simplify the process. The tree project anticipated that some Administrative Rules would need to be developed to explain how discretionary criteria in the Tree Code would be applied.

Next step: Consider whether there is an alternative approach to implement the code.

Item 6: Interim rule process.

Discussion: Committee members expressed concern about the process by which the Interim Rule went into effect. Section 3.30.045 C.1 authorizes the Bureau of Development Services (BDS) Director to adopt interim rules “without prior notice upon a finding that a failure to act promptly will result in prejudice to the public interest.” Commissioner Fritz, as the Commissioner-in-charge, directed staff to draft the Interim Rule based upon such a finding. A number of projects, especially pending projects in the public right-of-way, would have been affected by the application of this regulation and as a result, it was decided that an Interim Rule would be implemented. Meanwhile, staff recognizes the importance of including the Committee and other stakeholders (such as the Urban Forestry Commission) on such matters from the start. This is an example of the type of standard that the code left to be resolved through administrative rule upon implementation and we found quickly that, due to the list of pending projects, staff would have to quickly adopt a set of regulations that would allow moving those projects forward. It is not expected that any other Interim Rules will be adopted in the near future.

Next step: Continue this process of collecting comments from the Committee and consider when drafting the permanent rule.

Item 7: Incorporating Committee comments into staff work on the permanent rule.

Discussion: The purpose of this exercise is to collect comments from Committee members on the Interim Rule, evaluate them, and consider them when drafting the permanent rule.

Next step: Continue this process of collecting comments from the Committee and consider when drafting the permanent rule.

Item 8: Tree credits

Discussion: Tree credits were previously given if higher quality trees were planted. This concept is not included in the Interim Rule for mitigation planting.

Next step: Consider the concept in the Interim Discuss