

DATE: August XX, 2015

TO: Commissioner Amanda Fritz
Tree Project staff

FROM: Tree Code Oversight Advisory Committee

RE: Comments on Interim Administrative Rule related to Replanting Requirements for Tree Removal on Private Property, City-Owned and Managed Sites and Public Rights-of-Way under Title 11

The Tree Code Oversight Advisory Committee was charged by Commissioner Amanda Fritz to:

- Provide community oversight, monitoring and review of tree code project implementation;
- Assess and provide feedback on what is and is not working related to project implementation, potentially leading to recommendations for code and/or administrative rules refinement;
- Provide Commissioner Fritz, staff from the bureaus of Development Services (BDS) and Parks (PP&R) with input and recommendations during the outreach, education and implementation, and monitoring phases of the tree project; and
- Work with the Urban Forestry Commission to guide outreach by the Urban Forestry Commission subcommittee.

As a body, we adopted our own definition of success related to the Tree Code at our March 2015 meeting:

- The code is implemented as envisioned and intended.
- People understand the purpose and value of having a tree code.
- On-the-ground implementation occurs transparently, consistently and fairly.
- Residents, businesses and developers are able and willing to comply with the code in the short and long term.
- Early implementation of the tree code contributes to meeting canopy targets as described in the 2007 Urban Forest Action Plan

Given our charge, adopted definition of success as well as the time devoted to understanding the Interim Administrative Rule, we believe it is our responsibility to provide comment. This document reflects the opinion of our 12-member committee.

Comment: Public process lacking for adoption and implementation of the Interim Administrative Rule.

This Committee first learned of the Interim Administrative Rule in early April and briefly discussed it one week before it went into effect. There was no opportunity for in-depth discussion or modification of the rule separate from the process provided all other residents. As Committee members volunteering time to this effort, we find the process used to be less than respectful and lacking transparency. We would expect, because of our charge, that issues of concern be brought to this Committee before policy action is taken so that we may consider it and have the opportunity to recommend a path forward.

Recommendation: [TBD]

Comment: Tree Project goals missing from Interim Rule

The Interim Rule lists four of the admirable goals of the original Tree Project that resulted in Title 11 adoption. However, it does not list or incorporate the broader purpose of Title 11:

“To enhance the quality of the urban forest and optimize the benefits that trees provide.”

By omitting this broader purpose, the rule undermines the intent of Title 11 and the original Tree Project.

Recommendation: [TBD]

Comment: City forester discretion has been unnecessarily reduced

Title 11 gives significant discretion to the City Forester to use knowledge of arboricultural practices, forest health, City policies and other factors to establish appropriate mitigation when trees are removed in order make progress toward meeting Title 11 and urban canopy goals. Under the Interim Administrative Rule, when up to inch-for-inch mitigation is triggered for removed trees, the City Forester now requires two trees be replaced for every one removed, regardless of the size or benefit of the tree removed. Alternately, a fee in lieu of preservation may be paid. While we understand and appreciate the need for predictability and certainty within the permitting system, the Interim Administrative Rule goes too far in its attempt to define how discretionary approval criteria is applied. This is especially true when trees are removed from City-managed owned sites or right-of-way (see next comment). If the Interim Administrative Rule becomes permanent as is, progress will be slowed or reversed toward increasing tree canopy and accruing the proven benefits that trees provide.

Recommendation: [TBD]

Comment: City bureaus must be held to a high standard

The Interim Administrative Rule established a maximum tree planting requirement during development of two trees per every tree removed for City owned or managed projects (for trees larger than 6 inches dbh) and for right-of-way projects (for larger than 12 inches dbh). City bureaus also must meet require density standards in both development and non-development situations when trees are removed. The Code allows the City Forester to establish mitigation of up to “inch for inch” for removed trees that meet the threshold. The City should set a high bar for its projects, serve as an example to its residents and businesses, and contribute to improving the urban canopy. As adopted, the Interim Administrative Rule will not achieve the goals of Title 11 and urban canopy targets if City bureaus are not required to plant and retain more trees than the 2-for-1 replacement on the sites they manage.

Recommendation: [TBD]

Comment: Opportunities to use tree credits should be retained

Title 11 allows Urban Forestry to use a prescriptive schedule to reduce tree replanting requirements if the species being planted is one that is native and desirable within city limits. Such trees are resistant to disease and well adapted to local weather patterns and soil conditions. With the establishment of replanting standards in the Interim Administrative Rule, the concept of tree credits appears to have been removed. Tree credits are a valuable tool that should be retained in order increase the number and size of native species.

Recommendation: [TBD]

Comment: Equity needed between Type A and Type B permits

Type A permits do not trigger up to inch-per-inch mitigation, but do require tree for tree replacement (one for one). The City Forester may waive the mitigation requirements if density standards are met. Under the Interim Administrative Rule, Type B permits require the City Forester to waive replanting requirements if density standards are met. This difference in replacement standards establishes a disparity and will likely lead to lack to tree replacement on those sites with larger trees.

Recommendation: [TBD]

Comment: Non-development mitigation cap should only apply to single family homes on fully developed lots

Within the City, there could be situations where a larger parcel contains a grove of trees and a single family dwelling. The owner could decide to remove some or all trees. In such cases, the homeowner should not be allowed to merely pay the \$1,200 mitigation cap. A large parcel with many trees provides significant environmental benefits to the City. City Forester discretion should be retained in this situation to determine the appropriate level of removal. The mitigation fee, as established by City policy, should only apply to fully developed lots with a single family residence.

Recommendation: [TBD]

Comment: Fee in lieu of preservation is set too low for development situations

When trees are removed from a city-managed or private site during development and the density standard is not met, the fee in lieu of preserving those trees is set at \$1,200 per tree according to City Council policy and implemented in the Urban Forestry fee schedule. While we understand that this fee was not set as part of the Interim Rule, we believe this level is too low for many situations. The topic of the \$1,200 per tree fee in lieu of preservation will be addressed in future recommendations by this committee.