



CITY OF PORTLAND, OREGON - PORTLAND TREES

Bureau of Development Services • Portland Parks & Recreation

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Tree Project Oversight Advisory Committee

Meeting #7, **Draft** Meeting Summary

Monday, July 20, 2015

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

Room 2500B

10:00 AM - 12:00 PM

MEMBERS PRESENT

Linda Bauer, Pleasant Valley Neighborhood Association

Jeff Fish, Fish Construction NW

Arlene Kimura, Hazelwood Neighborhood Association (Co-chair)

Jim Labbe, Audubon Society of Portland

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

Justin Wood, Home Builder's Association

Phil Damiano, Development Review Advisory Committee

Bob Kellett, SE Uplift

Helen Ying, Old Town Chinatown Community Association

Nancy Seton, SW Hills Residential League

Mark Bello, Urban Forestry Commission

MEMBERS ABSENT

Kris Day, Urban Forestry Commission

STAFF PRESENT

Jenn Cairo, City Forester/ City Nature Zone Manager

Mike Hayakawa, Tree Project Supervising Planner

Patti Howard, Policy Advisor to Commissioner Fritz

Mieke Keenan, Tree Project Program Coordinator

Anne Pressentin, EnviroIssues Consultant

Kimberly Tallant, BDS Supervising Planner

Nicole Pexton, BDS Management Assistant

Danielle Bohannon, Urban Forestry Botanic Specialist

OTHERS PRESENT

Eric Sorenson

BUSINESS

Welcome and Introductions

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

Mike gave a reminder of the purpose of the Tree Code and the Tree Code Oversight Action Committee. The Committee's work will culminate in a report to be presented to City Council.

Anne went over the updated workplan, which was updated to include items that the Committee has already accomplished. There were eight issues generated by staff, and additional questions and tasks that have come up over the course of the other meetings, such as the giant sequoias and the interim administrative rule. Open issues are in order of when staff and the Committee will be addressing them in priority order. New items are identified, such as arborist training.

Susan expressed concern that only four issues have been closed.

Anne responded that there has been progress on many issues, even though only four issues have been closed.

Approval of June Meeting Summary

ACTION: June Meeting Summary approved as drafted.

Public Comment Opportunity

Eric Sorenson

Eric Sorenson, landscape contractor, supports many goals of increasing Portland tree canopy. He expressed strong support to Commissioner Fritz and Commissioner Novick for coming up with interim rule. Many people he talks to are still surprised by the high and punishing fees. The high fees are negative reinforcement, which is not as effective as positive reinforcement. The Tree Code does not provide any carrots, only sticks. For example, there could be two adjacent 10,000 sq. ft. yards, one of which has no trees and one that has five to six trees. The neighbor without trees is left out of having to contribute to tree density. Eric recommended setting minimum standards for trees on all city lots. Many lots greater than 5,000 sq ft do not have trees. He also continues to see a lot of questions about permitting process, including the yellow ribbon.

New Commissioner in Charge of BDS

Question: Which Commissioner is in charge of this Committee?

Answer: BDS has been reassigned to Commissioner Saltzman, but Urban Forestry remains with Commissioner Fritz. Staff will communicate with both commissioners. There will be collaboration between the two offices, and the Committee's charge has not changed.

Question: Who makes the ultimate decision on an issue? Which Commissioner?

Answer: The Committee will make recommendations to both Commissioners on issues such as the giant sequoias. The Committee should be independent from Commissioners when making recommendations on an

issue. Mike told Committee members to bring up any issues they identify related to the new Commissioner to him.

Policy Recommendation on how to preserve very large healthy trees in development situations

Mike gave an overview of potential policy tools that could be used to preserve very large healthy trees in development situations, such as the Eastmoreland giant sequoias. Mike discussed this issue with regulators and people in the industry and tried to identify what the question was. The goal is not to limit development. He looked at tools that City Council has used in the past related to similar regulatory situations. The thresholds for what is considered a small, medium, and large tree are important. The majority of trees people see are less than 40 inches in diameter. It is not common to see trees greater than 90 inches in diameter. Our approach will depend on where we set the threshold.

Using a handout with a summary table and slides, Mike identified the pluses and minuses of each tool. Banning removal of large trees is not an option. It is important to keep in mind that purchasing a property to protect trees is not financially feasible in many situations.

Potential tools:

Size/species threshold

This tool would establish new or different regulations for trees that exceed a certain size or are a particular species.

Comment: We wanted requirements to be simplified so an arborist is not required on every job. If diameter needs to be measured, then an arborist would be required.

Answer: As part of NSFR submittal, an applicant has to answer if they have any trees over 70 inches. If answer is no, then no arborist is necessary.

Question: Will it become a checklist item to verify tree diameter when it looks close to 70 inches in aerial photos?

Answer: Any threshold will add complexity and a burden to staff time.

Comment: Are we getting ahead of ourselves? Thresholds are only a good idea if they are set at a specific level. Need data to discuss.

Comment: A 30 inch Douglas Fir is not an exceptional tree. We may need to consider different species and sizes.

Comment: We need to try our best to remain inside existing policy. There are thresholds already listed in the code, such as 12 or 20 inches.

Comment: It is possible to combine thresholds with the delay option, or other tools.

Mitigation fee

This tool would require applicants to pay a fee in lieu of compliance with regulation.

Delay

This tool would delay issuing a permit for a set period of time and provide notice to neighbors to give them the opportunity for alternative development or tree preservation.

Delay could provide opportunity for some neighborhoods to acquire lot.

Flexible development option/incentive

This tool would provide flexibility in development standard in exchange for tree preservation.

Modify development standards

This tool would change development standard. For example, the standard could change from requiring 1/3 of trees to be saved to giving greater weight to larger trees.

Approval criteria

This tool would add criteria to Title 11 to determine whether a tree may be removed.

Comment: Approval criteria –11.40.050 would create similar criteria for private trees. Approval criteria run the risk of becoming a land use decision on private property.

Answer: If you have approval criteria in Title 11, you have to add an appeal option. Currently under Title 11 an applicant must meet the standards or pay a fee in lieu. Approval criteria are discretionary, so there needs to be an appeal opportunity for the public to argue that staff misapplied criteria.

Special designation

This tool would create special rules for special trees similar to the existing heritage tree designation. The City can't designate a heritage tree without property owner's permission.

Comment: There could be a second special designation for trees over 30 inches, for example.

Property acquisition

This tool would use a fund to purchase property with exceptional trees.

Tree preservation and planting are already an option under Title 11. There is a fund available to purchase property, although it is not frequently used because planting trees is usually considered a better investment. The tool already exists, but more money and clearer policy would be necessary.

Comment: Property acquisition could be combined with easements using the Tree Preservation Fund.

Comment: It is not feasible for the city to acquire property. It is important to consider whether there is a city project that would benefit from having additional trees nearby. Doesn't the city have an interest in preserving sequoia trees in Lents/Darlington? Not every neighborhood will have the resources to acquire land to preserve large trees.

The Committee suggested adding two new options to the list:

Tree easement

This tool could provide a means of partial property acquisition, so a certain area of land with large trees could be protected on a site.

Comment: Mark Bello commented that property acquisition can be whole or partial, such as easements or covenants. Conservation easements could be an option.

Question: Who creates an easement?

Answer: You can create an easement for any purpose. If it is a city managed easement, then it requires Council approval. Private easements can be recorded at the county level.

Question: What would this be called?

Answer: Tree easement

Comment: Tree easements might be different in this case because it would not be connected to a land use review.

Answer: The largest trees on site would be preserved in an easement that would be linked to incentives. The easement could be outside Title 33 and be deeded to the Urban Forestry Commission. The Urban Forestry Commission or another body could maintain a heritage tree list.

Comment: The incentives would be different in land division situation rather than an easement via the property title.

Easement modeled after land division

This tool would be modeled after easements that occur during the land division process. In a land division, trees over a certain threshold could be considered a tract, which would be subject to incentives.

Comment: We should look at trees as physical land and part of the design process. Looking at them as a dollar value will not accomplish Title 11 and Urban Forestry goals.

Question: Would these tree easements and easements modeled after land divisions be implemented separately?

Answer: Yes.

Question: What does tract mean?

Answer: Tract As have benefits to the developers once they are created. They would be relatively rare and targeted to significant trees. These tracts could lessen tree density requirements on the site, building coverage, setbacks, PBOT requirements, etc in exchange for tree preservation. This would put trees on the same line of importance as sewer, stormwater, or landscape requirements.

Comment: You can only create a tract through a land division, so it would be a land use review appealed to the Hearings Officer. It is state law that it can only be done through a land division.

Comment: We would seek out city arborist opinion on trees that would provide greater value. Would the location of tree make lot functional? We need to keep these factors in mind.

General Discussion

Question: Whatever we come up with needs to not be cumbersome, both for staff and the public. Are there other tools that would not require a code change?

Answer: Special designation already exists.

Question: Have there been other trees besides sequoias that staff members have seen that would benefit? Are we changing the code based on one specific circumstance?

Answer: Wait until data come in to see whether large trees are being removed from permits.

Comment: Anecdotally, Jim Labbe thinks there is a problem with removing large, healthy trees that needs to be addressed.

Comment: Mark Bello noted that an inventory of trees may exist by neighborhood in the next few years, so we will have the information to analyze whether the threshold is accurate. The Committee could start by setting threshold high to minimize impact, and then see whether threshold is useful down the line.

Comment: In the two examples with where large healthy trees were preserved, the onus was on the neighborhood, which is not the sign of a successful system. The burden should not fall on the neighborhood to save these trees.

Comment: Right now we don't know enough about existing trees in the city. Can we speed up the process to have better information?

Anne Pressentin led the Committee in a discussion:

Which tools are non starters?

Which tools are most promising?

Comment: The Committee should prioritize tools based on ease of implementation. Threshold size, mitigation fee, flexible development option/incentive and delay are the easiest options. Modifying development standards and creating approval criteria would be most difficult. To clarify, modifying development standards would fall under Title 11, but flexible development falls under Title 33.

Comment: Four tools look like they could be implemented quickly and two tools already exist (special designation and property acquisition). Two would require additional discussion (approval criteria and modifying development standards). We need more data on identifying appropriate thresholds. We need to define large, healthy trees.

Summary results of discussion:

- Committee decided that all potential tools will stay on the list for now and none should be removed.
- Committee supported using an online survey or another tool between meetings to refine the list of potential tools and recommendation
- Two tools were added to the list:
 - Tree easements (similar to conservation easement; to be held by Urban Forestry or an NGO)
 - Easement that is modeled on land division process

ACTION: Continue discussion at next meeting.

Interim rule: Replanting requirements for tree removal on private property, city-owned and managed sites and public rights-of-way

Mike referred to the Interim Rule summary distributed at the meeting. Mieke walked through the situations identified in the table.

Summary

The biggest sticking point so far on the interim rule is that people are confusing tree code requirements, interim rule requirements, and the \$1200 cap. It is important to understand what is a code requirement and what is an interim rule requirement. The Committee should focus comment on language in the interim rule.

Non-Development Situations: The interim rule applies when up to inch per inch mitigation is required. The intent of the interim rule is to set what minimum density standard is.

Development Situations: The interim rule places a cap for how much mitigation is required in development situations, which changes mitigation from up to inch per inch to a maximum of two trees for each one removed. The tree code calls for a minimum of tree for tree replacement and the interim rule creates a maximum tree replacement requirement. This also applies to capital improvement projects on city owned property and in the right of way as well as public works projects.

The \$1200 cap in non-development situations is not associated with interim rule; it is a policy directive from the City Council. The rule references the cap but does not create it. The cap only applies to single family development, not capital projects or public works.

The interim rule applies when:

- For private, city, and street trees in non-development situations when the potential for inch per inch mitigation is triggered. In this code, mitigation is triggered when removing more than four healthy, non-nuisance trees that are 12 inches DBG and larger and removing a healthy tree 20 inches DBH or greater. Nuisance species trees are exempt on private property.
- In non-development, mitigation is going to start on site if tree density falls below minimum standards. If density is met on site, the next step is to ensure density is met in the right-of-way. The applicant will need to replant to meet the minimum standard if either is not meeting the density standards in 11.50. These tree removal permits are type B, which has more oversight than Type A permits. If the site meets all density requirements, then the applicant can remove trees without replacement.

Tree inspectors can waive the minimum density requirement if there is no room for trees on site, for either a Type A or Type B permit. Should there always be a minimum planting requirement? Should there be waivers? There has to be approval criteria for Type B permit. Mitigation is triggered only when Urban Forestry allows a tree to be removed.

If you're only removing one 13 inch apple tree on large site, then you should not be required to plant 4,000 sq. ft. of canopy coverage. The interim rule is structured so that you don't have to plant more than you're removing.

Applicants do not have to mitigate for nuisance species trees on private property. Mitigation does apply to nuisance species trees on city owned property.

It is important to keep exemptions and size thresholds in mind. Trees less than 12 inches are not regulated on private sites. Nuisance species and dead/dying/dangerous trees are exempt from inch per inch mitigation on private property in non-development situations, but still need to mitigate tree for tree.

On city owned/managed sites using city funds to improve the site, Title 11 sets a mitigation threshold of healthy trees 6 inches or greater. Mitigation comes into play when City Forester approves removal of those trees. Developers need to bring in their plans at the conceptual stage to have them reviewed. The interim rule says trees are mitigated at a maximum of two trees per one removed. Code says that site has to meet density requirement in addition to mitigation, so the intent was to keep mitigation low. The two requirements together are going to stock the site with trees, and the applicant will pay a fee if there is no room on the site to meet the both requirements.

For Right-of-way improvements the minimum threshold changes from 6 inches to 12 inches in some situations according to Title 11. If there is a fully improved street and you are making a change, such as paving or installing a sidewalk or planting strip, then the mitigation threshold is 6 inches. If the street is unimproved or partially unimproved then the threshold is 12 inches for mitigation. Title 11 raises the threshold to 12 inches because large trees could already exist in this unimproved area, so mitigation could dramatically increase the cost of street improvements. Right-of-way improvements do not have to meet density standards in addition to mitigation requirements; mitigation can count toward the density requirement.

Question: Who enforces the mitigation requirement on city property?

Answer: If there is no room on site, the applicant will pay a fee in lieu or plant on a different site.

Comment: Is the public privy to this information on where trees or planted? Nobody seems to know.

Answer: The Committee could recommend an addition to the rule that trees have to go on site first, and then the applicant can choose to plant off site.

Comment: Where mitigation occurs should be part of the permit record.

Staff Comment: Code gives the project manager discretion to determine whether to plant on site, in the same watershed, or pay the fee in lieu. Currently there is no hierarchy among those options.

Staff Comment: Talk to the City Attorney – it could be part of City Forester discretion to determine priority order of mitigation options. This discretion should be part of the administrative rule.

Question: Do environmental zones put any other requirements on right-of-ways?

Answer: Yes, the zoning code regulates trees in e overlay zones. Those requirements are typically more restrictive than the tree code. More mitigation is required.

Question: What happens if a tree exceeds the size threshold in right of way?

Answer: The City Forester needs to approve tree removal first. You could meander a sidewalk around a large tree. It is the City Forester's obligation to retain trees whenever possible. There are not a lot of tools to limit removal of trees in the right-of-way in the code.

Question: The Urban Forestry Commission is holding a hearing on August 4th at 5:30 on the interim rule. What code sections should I be looking at for each item?

Answer: Mieke will add the code sections to the interim rule summary.

Question: Is there a process within PBOT for looking at different options for preserving trees in street improvements? Maybe that would limit the need for mitigation?

Question: Why was mitigation required for a tree thinning project at Leach Botanical Gardens when they already meet density requirements?

Answer: That site has programmatic permit that requires mitigation. If they were just removing some trees that weren't under that permit in a non-dev situation and the property was already fully stocked, then they would not be expected to mitigate.

Question: Does the code apply only to situations that happened after Jan 1st?

Answer: Yes, tree violations that occurred before the tree code went into effect are subject to the rules at the time of removal.

Using a PowerPoint, Anne went over comments the committee made on the interim rule prior to the July meeting.

Question: How do we integrate comments from Urban Forestry Commission?

Answer: The Committee can comment separately or together with the Urban Forestry Commission.

Committee Options for Interim Rule Comment

Arlene Kimura: The Committee has 2.5 weeks before the comment deadline on August 12th. We could have a small group hammer out comment on interim rule and write a recommendation, which staff could send out to the Committee and allow three days for comment, then finalize. Should we move forward with this path and who wants to work on committee?

Comment: Another option could be to send comments to the Urban Forestry Commission, attend their public hearing, and then take anything that comes out of that meeting to form a recommendation.

Comment: The Urban Forestry Commission is going to try to submit comments by the deadline. The comments will be policy based, not technical.

Staff Comment: It is helpful to give specific recommendations, not high-level comments.

The Committee could also hold a special meeting on August 10th to discuss the final recommendation on the interim rule prior to the comment deadline.

Summary results of discussion on Interim Rule:

- Committee members reiterated they want to comment on the interim rule as a group.
- Committee members requested two additions to the summary chart:
 - Code citations
 - Information that describes what is in code now and how interim rule is different or builds upon code
- Committee requested that staff summarize committee's comments on the interim rule to date and provide to members for review by Aug. 3
- Hold special meeting Aug. 10 to finalize comments on the interim rule.

- Committee requested the following documents:
 - PowerPoints used at meeting
 - Edited version of summary sheet of Interim Rule
 - Interim rule as a Word doc to aid with commenting

ACTIONS:

- **Mieke will add requested information to the table, and Nicole will distribute.**
- **Requested documents will be distributed to the committee**
- **Aug. 10 meeting will be scheduled to discuss final comments on interim rule**
- **Staff will summarize committee's comments on interim rule**

ADJOURN: 12:20 PM

DRAFT