

August 12, 2015

TO: Commissioner Amanda Fritz
Commissioner Dan Saltzman
Portland Bureau of Development Services
Portland Parks and Recreation, Urban Forestry

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, Development Services (BDS) and Parks (PP&R) staff 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; and
- 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 during discussions at a special meeting Aug. 10 and follow up communication. Please consider the following comments during the review process of the Interim Administrative Rule.

Comment #1: Public process was lacking for adoption and implementation of the Interim Rule.

This Committee first learned of the Interim Administrative Rule in early April and discussed it one week before it went into effect (April 20). There was no opportunity for discussion or modification of the rule separate from the process provided all other residents. As Committee members volunteering time to this effort, we find that 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.

In addition, there was insufficient public outreach from the Bureaus to alert the public of the change and comment opportunity. The Urban Forestry Commission held the only public hearing to date on the interim rule.

Recommendation: Future processes for interim rules should use a more robust public notification and outreach process prior to implementation.

Comment #2: Tree Project goals are missing from Interim Rule

The Interim Administrative 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: The goal should be included in the Rule.

Comment #3: 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 replacement quantities when trees are removed in order make progress toward meeting Title 11 and urban canopy goals. The City Forester has stated it is the intention of Urban Forestry to be accountable, transparent and consistent when applying and enforcing Title 11. 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 to 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: A graduated replacement schedule should be considered to establish replanting requirements. In addition, a combination of factors should be identified and used when determining replanting levels to build in accountability, transparency and consistency and ensure equal treatment of all applicants.

Comment #4: 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 Committee believes that

public trees are an important resource and mitigation for their removal constitutes the protection of a valuable public resource. These include City Trees and Street Trees. The Committee is concerned that the Interim Administrative Rule, as drafted, lowers the replacement standard. The City, in replacing trees, has greater flexibility than in many private situations. City projects should be held to a high standard. 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: 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.

Comment #5: 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 Rule, the concept to 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: The Committee recommends that the tree credit policy that was in effect prior to the adoption of the Interim Administrative Rule be reinstated and applied as part of discretion practiced by the City Forester.

Comment #6: Equity needed between Type A and Type B permits

Type A permits, which are administrative in nature and do not trigger up to inch-per-inch mitigation, require tree for tree replacement, or one for one. The City Forester may waive the mitigation requirements if density standards are met. Under the Interim 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. The Committee is concerned that the application of the site density standard results in an inequitable mitigation requirement between Type A and Type B permits and overlooks an opportunity to address the City's canopy goals.

Recommendation: Use the same standard between the two permit types and rely on City Forester discretion when evaluating unique situations.