

## **Tree Project Oversight Advisory Committee**

Meeting #8, **Draft** Meeting Summary

Monday, August 10, 2015

1900 Building, 1900 SW 4<sup>th</sup> Ave, Portland, OR 97201

Room 2500B

10:00 AM - 12:00 PM

### **MEMBERS PRESENT**

Linda Bauer, Pleasant Valley Neighborhood Association

Arlene Kimura, Hazelwood Neighborhood Association (Co-chair)

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

Bob Kellett, SE Uplift

Nancy Seton, SW Hills Residential League

Mark Bello, Urban Forestry Commission

Kris Day, Urban Forestry Commission

Jeff Fish, Fish Construction NW

Justin Wood, Home Builder's Association

Jim Labbe, Audubon Society of Portland

### **MEMBERS ABSENT**

Helen Ying, Old Town Chinatown Community Association

Phil Damiano, Development Review Advisory Committee

### **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

Stephanie Beckman, BDS Senior Planner

Nicole Pexton, BDS Management Assistant

Jeff Ramsey, Urban Forestry Botanic Specialist

Elizabeth Specht, Urban Forestry Botanic Specialist

### **BUSINESS**

#### **Welcome and Introductions**

Susan Steward opened the meeting by thanking everyone for coming and having everyone introduce him/herself.

## **Public Comment Opportunity**

There was no public comment.

## **Urban Forestry Commission Interim Administrative Rule Hearing**

Mark Bello described the 2 hour hearing on the Interim Administrative Rule that the Urban Forestry Commission held on August 4<sup>th</sup>. Five people commented on the Rule, two of which were in favor of it and three against. Many others commented on the giant sequoia issue. Summaries and minutes are available. There is no comment from the Urban Forestry Commission yet on the Interim Rule.

## **Interim Rule Half Year Data**

Jenn Cairo led discussion on data collected since Tree Code implementation before and after implementation of the interim administrative rule. The goal was to monitor preliminary outcomes of Title 11.

Summary of Findings:

### **Non-Development**

- The interim administrative rule applied to only 2% of total tree removal and replanting permits issued in 2015, meaning they are Type B permits. The majority of tree removal and replanting permits are Type A.
- Prior to the adoption of the interim administrative rule, on average there was an 84% reduction in required replanting in cases requiring up to inch per inch mitigation, as compared to the maximum allowed under City Forester discretion.
- Type B permits are requiring less tree for tree replacement than Type A permits. Type B permits on average are getting less than tree for tree mitigation.
- Prior to the interim administrative rule, the ratio of large mature tree form plantings to removals was 1:1, and after IAR the ratio was 1:3. The sizes of street trees that replace removed trees is often smaller than removed trees.

### **Public Development Projects**

- Public projects take a long time, so the interim rule has been applied in very few public development situations since its adoption.
- The large scale of some past public development projects suggest that there is potential for greater cumulative canopy impact than non-development situations under the interim administrative rule.

## Other Staff Comments

Under Title 11 prior to IAR, code allows up to full inch for inch replacement, but to address specific tree cases, there were a lot of reductions to this requirement allowed, such as having an overstocked location, or not being able to continue healthy growth in that location. Reductions were determined using forestry practices.

There were many more Type A permits issued than Type B. In the winter months, there are fewer permits issued than in warmer months.

There are two steps involved in tree removal. First, will Urban Forestry allow the tree to be removed? Second, how to replace the removed tree? IAR only deals with the second step.

There are not enough data available to assess trends yet. The second row of table on p. 6 shows the ratio of trees planted to trees removed. There were 2.4 trees planted for each tree removed pre-IAR, and 0.8 trees planted for each tree removed after IAR. The goal of Title 11 is to increase tree canopy, so this is important to recognize.

It is important to note the types of trees getting planted. Large trees are more valuable than small trees because of volume of services provided.

Page 8 shows the net canopy change due to IAR-applicable permits. It is our intention to do ongoing evaluations of the code. There is a difference in canopy lost versus canopy planted pre and post rule.

Since Title 11 went into effect, there has not been enough time for capital improvement project to go from start to finish, so staff took a project that was almost through permitting and did a case study using conditions for the old tree code, Title 11 pre-IAR, and Title 11 post-IAR. On the bottom three rows of the table on page 9, replanting requirement changes according to which code is applied. Under the old tree code the maximum replanting requirement would have been 405 trees, 377 under Title 11 pre-IAR, and 106 post-IAR. The dollar value of payment in lieu also changes in old tree code versus post-IAR Title 11. The number of trees that could be bought using mitigation funds decreases as well.

Question: In Public development, projects can take a while to get going. Is there data collected on public projects that came in before the Interim Rule?

Answer: Prior to IAR, there weren't good data sources available to track public projects. Trees removed and trees replaced have been tracked, but they are tracked better under current practice.

Question: What is the definition of a large, medium, and small tree?

Answer: Tree size definitions are covered in the Bureau of Development Services' Tree and Landscaping Manual.

Question: There were 10 large trees removed pre-IAR, 21 removed post-IAR? Is that seasonal or due to rule?

Answer: Not as many large trees are getting replaced. Pre-IAR, if a large tree came out, a large tree was replanted. Post-IAR, less than half of large trees were replaced with large trees.

Question: What type of cases are the 18 tree removals? If it's a street improvement, then adding a large tree back in might not be appropriate.

Answer: This is for non-development only, not capital improvement projects. One of the intentions of the code is to force agencies to be creative in right-of-way situations where room for trees is scarce.

Comment: For right-of-way improvements, it would be helpful going forward to track the geography of where these tree removal issues come up due to equity concerns. It would be interesting to see where we are losing trees.

Response: That should not be difficult to track using GIS. There are important nuances to track, such as species type.

Question: Is encouraging species diversity in public works project a recommended practice?

Answer: Yes, it is part of the code. If a project has over 24 trees to plant as part of an approved plan, then no more than 40% should consist of a single species. Projects submitted prior to Title 11 did not have that policy tool. There are approved lists of street trees, and we use street tree inventories to see which species might be overrepresented in updating those lists.

Question: If developer goes through a land use review, does he still need to get a type A/B permit to remove trees? For example, a recent subdivision required 93 tree removals.

Answer: It depends on right-of-way requirements. Anything under Title 33 would not require an A/B permit. For tree planting, Title 11 standards would apply during the building permit phase. Situations in which IAR applies are few – only in healthy tree removal in non-development or development on public owned property.

Question: How are tree removal data under Title 33 tracked? Omitting those data will skew canopy figures.

Answer: Title 33 tree removals are a BDS issue.

**ACTION: Address Title 33 tree removal data at the next meeting.**

Comment: ITAP needs to include additional fields beyond an average # of inches and trees removed. It should be part of ITAP development.

Question: Is there a provision in IAR for people to appeal a type B permit?

Answer: Not under rule, but yes under code.

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

Mike Hayakawa went over draft memo on IAR comments from the OAC. He is trying to come up with specific recommendations while taking into account minority/dissenting comments.

**1) Process – timing was not optimal.**

It is unlikely that a similar issue will reoccur during this committee's tenure.

Comment: What is missing is the development of the rule in the BDS black box. City Forester was not involved in development of this rule.

Comment: Putting dollar figures in IAR is not helpful. Fees should be adopted as part of annual fee changes.

Comment: Our recommendation is to acknowledge that the Urban Forestry Commission stepped up to fill the gap in public process. Decision makers should recognize comments that came from the public hearing.

Question: Fees adopted weren't part of a public process? IAR or regular?

Answer: Separate process to adopt fees.

Comment: Comments from IAR related to \$1200 are not related to rule since the fee is determined elsewhere.

Staff Comment: There will be notice going out on Sept 3<sup>rd</sup>, so there will be additional opportunities for public comment if a public hearing is requested.

Staff Comment: The public draft will reflect comments received on the interim rule. We are currently in bureau/commission comment period, next is the public comment period. If we had more staff/money resources, then we would not have compressed this process into a few months. It is not reflective of what Council would have preferred.

Comment: The Urban Forestry Commission was not called on to comment, but had to take the initiative. At the public hearing, 50 people came, 5 had comments on the rule, out of which 2 were for it and 3 against.

Mieke Keenan described the public process from Aug. 12<sup>th</sup> on. Bureau/Commission deadline is August 12<sup>th</sup> (OAC, UFC, and bureaus). Staff will work to update the rule based on comments received, once approved by Commissioner Fritz and Commissioner Saltzman they will be incorporated into next version

and sent out for public review. There is a mailing list of 400 people to receive updated rule. Public notice will go out on Weds, Sept 2<sup>nd</sup>. Come out on open house on Weds 16<sup>th</sup>, not a formal hearing. That is also the deadline for requesting a public hearing. The public hearing would be a staff-held hearing, not City Council or Hearings Officer. Once rule is finalized, it will be filed with City Auditor's office by October 18<sup>th</sup>. Once filed, anybody who feels aggrieved can appeal to City Council on the rule. Council will make decision on whether to update rule based on comments.

Question: Does a person need to have standing to appeal? Does someone need to come to the public hearing to appeal?

Answer: Code only says a person who feels aggrieved. A person does not need to come to the public hearing.

***Recommendation: There wasn't enough outreach prior to the IAR, this won't happen again.***

**2) Tree project goals are missing from interim rule.**

***Recommendation: Add the goal to the interim rule.***

**3) City forester discretion has been unnecessarily reduced.**

Comment: Jim Labbe is working on comments to submit to everyone. The City Forester used to have ranges for tree replacement based on size of tree removed within that range.

Staff Comment: How City Forester discretion is used is a key factor. It is intention of Urban Forestry to be accountable, transparent, and consistent.

Question: If a neighbor wants to remove a tree for a deck/playground, how do they mitigate if they don't have space to replant a large tree?

Answer: Provided that permit is approved, staff will analyze the condition and type of the tree to be removed, and the space available for mitigation. Staff want to have the least negative impact on the property. If it's a big healthy tree, then the mitigation requirement should be higher. Code suggests that staff should consider an owner's needs. There is also the opportunity to plant in the right-of-way.

Comment: A homeowner will not be able to look online and see what they can do if there is more City Forester discretion. Less discretion means more predictability.

Response: Giving scenarios and other information could increase predictability. Using discretion is more complex, but it is difficult to manage forestry goals without discretion for tree type and condition. We still want to have a consistent, valid method. Complexity would be the staff's burden, not the property owner's.

Question: Would an increase in discretion open up more opportunity for people to challenge staff?

Answer: Staff are still operating according to standards outlined in policy.

Comment: Recommend that we have a graduated, published schedule that is easily digestible based on size increments of trees. This may result in less discretion, but could bridge the gap between staff and the public.

Question: Is it better to be vague and have more wiggle room, or to provide more certainty?

Answer: Title 11 offers the opportunity to waive required mitigation in certain situations. It is the conditions of the trees that can factor into mitigation.

Comment: City Forester administers tree code in non-development situations. It is appropriate to say City Forester discretion has been unnecessarily reduced. Is this a change to lessen discretion happening without a problem to proceed it? The City Forester is competent and transparent, so discretion within parameters is appropriate.

***Recommendation: Consider thresholds and criteria for when discretion can be used, along with the procedures involved. List the factors that City Forester can take into consideration.***

#### **4) City bureaus must be held to a high standard.**

Comment: It's not about a higher standard, it is about the city not undermining what is already in place. The IAR is going to lower the standard compared to property owners.

Comment: Replacement of city owned trees and trees in public right-of-way should be held to a higher standard.

Comment: Public trees should be held to the same standard as private sector. In cases of appeal, the City Forester has discretion.

Comment: Commercial property owners have to maintain trees in public right-of-way even though they had no say in species type, etc.

Comment: Say higher rather than high, since some consider the standard to already be high. Ask the City to have higher standard for themselves, since they have more flexibility in how they can work with the code.

Comment: How do we define higher standards?

Comment: We are protecting public investment in infrastructure, so it is not unreasonable to hold it to a higher standard. Property owners dealing with cracked sidewalks could be addressed in other policies.

Comment: Street trees on private property are different than street trees as part of a capital improvement project.

Comment: In non-development situations, could there be a higher standard for public property than private property?

Response: Was talking about development situations, will clarify in comments.

Comment: Development sets out minimum tree for tree mitigation, not a maximum. There is no cap in mitigation.

Response: Staff have interpreted that minimum as the maximum, to be consistent with other parts of code.

Comment: City bureaus should look to enhance Title 11 goals whenever possible in public projects.

Response: City bureaus don't always have enough money to plant trees.

Response: Requirement for early consultation with City Forester to avoid significant tree impacts.

Comment: City Hall remodeling 10-12 years ago removed lots of maple trees. If remodeling City Hall today, would higher standard be keeping those trees?

Response: From a forest management perspective, we would look at a project and determine whether it is more valuable to keep trees that are there or start over. It depends on the species and condition of existing trees. This is where discretion helps.

Comment: City owners should be held to a higher standard, not must, to limit potential challenges.

Response: Should statements in the code are difficult to enforce.

Comment: How to define high standard so that it is meaningful?

## **5) Opportunities to use tree credits should be retained.**

Comment: What and when are we talking about tree credits? If you plant a native species tree, do you not have to plant as many?

Response: In the past, tree inspectors had discretion to plant higher value species to cut mitigation requirements. There is a tendency for people to plant smaller flowering trees because they are aesthetically pleasing, but larger trees are more valuable.

***Recommendation: The committee is in favor of using tree credits.***

## **6) Equity between Type A and Type B permits.**



Comment: We should always be asking for one for one mitigation for both permit types.

Comment: Setting a minimum of one for one mitigation across the board would be a better way to achieve city's goals.

Question: Is one-for-one mitigation mandatory if the site already has a forest?

Answer: Type A is default one-for-one but the City Forester can waive mitigation. Could type B be the same?

Question: Could we add trees to developed or undeveloped right-of-way?

Answer: Unless we know a development project is imminent, we will plant a tree in undeveloped right-of-way.

***Recommendation: Just have consistent wording between both permit types.***

#### **7) Non-development mitigation cap should only apply to single family homes on fully developed lots.**

Question: The way code is written now, this is bringing standards in line with each other. For example, it doesn't make sense that a private homeowner in a non-development situation should pay \$5,000 for mitigation when with a development permit it would be \$1200.

Answer: The different policy for development situations exists to encourage the development of housing. Charging high fees for tree removals on private property in non-development situations is rare. There is also the potential for hardship waivers.

Comment: There is disparity between non-development and development, so let's consider removal more comprehensively within development process. Narrowing the cap preserves that policy intent.

Question: What is the public benefit of this policy? What is the benefit of cutting down a tree when there is no future development planned? Is it for future marketing and development flexibility or do we want to prioritize tree canopy?

Comment: Homeowners may want to take tree down for solar reasons.

Comment: Limit where \$1200 is applied as written, but propose reevaluation of directive.

Comment: Acknowledge that \$1200 is not part of rule, but still comment.

***Recommendation: The committee made no recommendation.***

**8) Fee in lieu of preservation is set too low for development situations. \$1,200 is too low.**

Question: Is this part of the Council directive and not the IAR?

Answer: Correct.

Comment: Have not had enough discussion to arrive at consensus that \$1200 is too low.

Question: Should there be a sunset clause on interim rule pending evaluation of Title 11?

Answer: Administrative rules can't sunset legally, but you can appeal and make changes.

Comment: We don't enough data to property evaluate, so revisit in 2-3 years (both admin rule and Title 11).

Comment: Our charge is to monitor the code and come back with problems/issues. If we have problems with the IAR, we can come back to council at the end of 18 month period.

Comment: Add in comment about not putting dollar amounts in admin rule.

Response: Interim Rule should reference fee schedules.

Question: Are we addressing the \$1200 fee at this time?

Answer: Just mention there is some concern, not we believe. Note that it is a topic of discussion, but take out last comment on page 3.

***Recommendation: Note that the fee is an issue that the Committee is still considering, but remove it from the comments on the interim rule.***

**ACTION: Staff will compile comments and submit them prior to the August 12<sup>th</sup> deadline.**

ADJOURN: 12:10 PM