



CITY OF PORTLAND, OREGON - PORTLAND TREES

Bureau of Development Services • Portland Parks & Recreation

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Tree Code Oversight Advisory Committee (OAC) Recommendations Report

December 2015

Committee Members

Linda Bauer, Pleasant Valley Neighborhood Association
Mark Bello, Urban Forestry Commission
Kris Day, Urban Forestry Commission
Bob Kellett, SE Uplift
Arlene Kimura, Hazelwood Neighborhood Association (co-chair)
Jim Labbe, Audubon Society of Portland
Nancy Seton, SW Hills Residential League
Helen Ying, Old Town China Town Neighborhood Association

Past Members (Jan – October 2015)

Phil Damiano, Development Review Advisory Committee
Jeff Fish, Fish Construction NW
Susan Steward, Building Owners and Managers Association (co-chair)
Justin Wood, Home Builders Association of Metropolitan Portland

Committee Staff

Mike Hayakawa, Tree Project Program Manager, Bureau of Development Services
Jenn Cairo, City Forester and City Nature Manager, Bureau of Parks and Recreation, Urban Forestry
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I. Executive Summary

Overview of process and key findings - to be added after 11/30 discussion

II. Process Overview

Committee Purpose

Commissioner Amanda Fritz formed the Tree Code Oversight Advisory Committee in December 2014 in anticipation of questions and policy issues related to the implementation of the substantially updated City code. The goal was to ensure ongoing public involvement during the initial implementation phase.

The Committee was asked 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
- Work with the Urban Forestry Commission to guide outreach by the Urban Forestry Commission subcommittee

Membership

Stakeholders from the building industry, Design Review Advisory Committee, Urban Forestry Commission, neighborhood associations and coalitions, conservation groups, traditionally underrepresented communities and the city at large were recruited as members via Commissioner Fritz's website and direct outreach to various stakeholder groups.

Commissioner Fritz appointed a group of 12 individuals with diverse backgrounds and experiences, but most importantly, the majority of Committee members were familiar with local government regulations and the systems necessary to implement them. Committee members expressed personal and professional commitment to the task of regulating trees and to provide useful input to meet the identified objectives.

In November 2015, a disagreement with a draft proposal led four members of the building and construction industry to resign their positions. The remainder of this report calls out instances when committee recommendations were made after the resignations of this stakeholder group.

Charter

Committee meetings were governed by operating protocols approved by the Committee. The protocols included the committee's purpose and established a decision-making process for final recommendations. The agreed-upon decision process required a simple majority when a quorum of two-thirds of the members were present. The charter also established that two co-chairs would be elected to moderate the meetings. Arlene Kimura, representing Hazelwood Neighborhood Association, and Susan Steward, representing Building Owners and Managers Association, were elected by the

members. The co-chairs traded responsibilities for leading the meetings, until the last four meetings, which were led by Arlene Kimura.

Definition of Success

Understanding that implementation of the Tree Code would continue on past the committee's tenure, the committee adopted a forward-looking definition of success to guide its work.

Success of the code:

- 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.

Success of the committee's work and process:

- Discussions during committee meetings are professional and balanced.
- The Committee provides City staff with useful advice that contributes to success of the code.
- Committee is able to complete its deliverables as stated in the protocols.

Success of the education and outreach effort:

- Portlanders are aware of the updated tree regulations and where to obtain more information.
- Portlanders understand the value of the urban forest to quality of life.

Committee Meetings

The committee met 14 times from December 2014 through December 2015. Meetings were generally held for 2 hours each month at city offices on weekday mornings. Each meeting was noticed to the public on the Portland Trees webpage (<https://www.portlandoregon.gov/trees/66873>). At each meeting, 10 minutes of public comment was reserved at the beginning for the committee to hear directly from people who had concerns with code implementation and suggestions for improvement.

All committee materials, meeting summaries and written public comment are posted to the webpage.

II. Work Plan

Over the course of the 13-month process, Commissioner Fritz, City staff and members identified 26 Tree Code policy questions and implementation issues requiring discussion. In some cases, specific tree removal proposals in 2015 led to the addition of new items to the workplan.

Each item was placed in a work plan and prioritized for consideration by the committee. Each of issues identified was placed in one of four categories:

1. Code intent and purpose (Why do we have a tree code? What are its goals?)

2. Implementation protocols and deliverables (What processes or staff have been put in place processes/staff to accomplish the Tree Project objectives? What are the adopted or needed policies that standardize decision-making?)
3. Code fixes and clarifications (Where is the Tree Code silent, unclear or inconsistent?)
4. Resources, staffing and budget (Are these sufficient to achieve project goals?)

Because of the complexity of the tree regulations and members lack of familiarity with the regulations and the systems in place, a significant amount of time was take to prepare members for their work. Staff provided training on the code and the programmatic systems in place for implementation.

The Committee considered and closed ## items. Many items remain open. The Committee either lacked sufficient information or sufficient time to fully consider the issue. In ## cases, the Committee recommends that an ongoing public process is needed to resolve an issue.

The full work plan can be found in the appendix. Each outstanding item contains an early recommendation for next steps to resolve the issue.

IV. Findings and Recommendations

A. General Committee Finding

Placeholder for general statement regarding tree code overall and implementation to date – to be added after 11/30 discussion

B. Specific Committee Actions

Specific actions taken by the committee are described below. Final recommendation on key actions are also attached in Appendix B.

1. Waiver Policy

Title 11 establishes procedures for waiving enforcement or tree replacement requirements due to “undue hardship” (11.70.150). The code requires a written policy for waivers be put in place. Based on information provided by staff, the committee concurred with applying waiver criteria modeled after the Portland Water Bureau's approach to hardship waivers. Details of the waiver policy include:

- Applies to tree removal on private property or in the adjacent right-of-way in non-development situations;
- Applies to owner-occupied properties; and
- Income eligibility is below 60% of Oregon median income for the household size.

2. Code Definitions

Title 11 lacks definitions for “building” and “attached structure.” This is important because removal of trees on private property is automatically allowed through a Type A permit if the tree is located within 10 feet of a building or attached structure. Tree Inspectors found that some applicants were relocating structures (such as a shed) and then requesting a tree removal permit. In this discussion the committee indicated that the allowance should apply to permanent structures that could be damaged by a tree

(such as a house or garage), as opposed to temporary structures that can be moved (such as a shed or chicken coop). Recommended definitions:

Building. A structure that has as a roof, is enclosed on at least 50 percent of the areas of its sides, and is built on a permanent foundation.

Attached structure. Any structure that is attached to another structure by a common wall, by a roof, or by structural connections that allow pedestrian access to both structures.

These definitions were forwarded to BPS to be included in the RICAP 8 code amendment package, which are scheduled to go to City Council in June 2016.

3. Outreach and Education

The Committee members provided input on the outreach plan during its development. Initially, most members provided ideas on outreach tactics during interviews with members before the first meeting. An initial plan was drafted in early 2015 and presented to the committee members for input. The plan includes goals, audiences, a tag line (“Call before you cut”), specific tools for outreach and a general schedule. The members prioritized potential tools, which informed a revision of the plan for implementation in mid- and late 2015. In addition, the committee voted on a design for a refrigerator magnet “give-away” that publicizes the tag line.

4. Interim Administrative Rule: Replanting Requirements for Tree Removal on Private Property, City-Owned and Managed Sites and Public Rights-of-Way

On April 20, 2015, an Interim Administrative Rule went into effect that addressed provisions in Chapter 11.40 and 11.50, primarily related to the amount of mitigation required when the code leaves that determination up to City Forester discretion. The interim rule applied to all tree removal in non-development situations and to development situation on city owned or managed sites and in rights-of-way. The committee reviewed the Interim Rule and provided comments and recommendations to staff and Commissioners Fritz and Saltzman for consideration. Committee comments on the Interim Rule are summarized below:

- **Public process was lacking for adoption and implementation of the Interim Rule.** Neither this committee nor the Urban Forestry Commission was consulted about the content of the Interim Rule before it went into effect. Future processes for interim rules should use a more robust public notification and outreach process prior to implementation.
- **Tree Project goals are missing from Interim Rule.** Add the broader goal: “To enhance the quality of the urban forest and optimize the benefits that trees provide.”
- **City Forester discretion has been unnecessarily reduced.** Title 11 gives significant discretion to the City Forester to use their expertise to determine appropriate replacement quantities when trees are removed in order to make progress toward meeting Title 11 and urban canopy goals. The Interim Rule goes too far in its attempt to define how this discretion is applied. 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.

- **City bureaus must be held to a high standard.** 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. City bureaus should be required to plant and retain more trees than the 2-for-1 replacement proposed on the sites they manage.
- **Opportunities to use tree credits should be retained.** 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.
- **Equity needed between Type A and Type B permits.** Use the same standard between the two permit types and rely on City Forester discretion when evaluating unique situations.

The Permanent Rule was filed on October 19, 2015.

5. Preserving Large Trees in Development Situations

Commissioner Amanda Fritz asked the Tree Code Oversight Advisory Committee to consider means by which the rate of removal of very large, healthy trees in development situations could be reduced. The current tree preservation requirement is to preserve at least one-third of the trees 12 inches and larger in diameter on private property. For trees removed beyond the 2/3 allowance for tree removal, a fee in lieu of preservation is required (see discussion under Item #6 below). Concerns were raised that all trees are treated the same, whether it is a 12 inch tree or an 80 inch tree, providing no incentive for large trees to be retained.

Specific recommendations are summarized below:

- **Consider adding a new tree size threshold for very large trees, with additional standards and discretionary land use review requirements.** The current prescriptive tree preservation standard should be retained for smaller trees. However, additional requirements should apply for the removal of very large trees. A threshold of 50 inches was suggested.
- **Explore options to change the standard to encourage preservation of large trees.** The current standard provides no incentive to preserve larger trees over smaller trees. Changing the standard so it is based on the total diameter of tree inches would encourage the preservation of larger trees because the required number of inches would be satisfied with fewer trees.
- **Explore options to add flexibility in the zoning code to make it easier to preserve trees.** The Citywide Tree Project included several “flexible development standards” that are available to projects that preserve trees. The committee is supportive of providing additional flexibility, particularly for preservation of trees over a certain threshold (20 inches was suggested). Support was expressed for reduced setbacks, waiving parking requirements in single-dwelling zones, and allowing parking and required outdoor area in the front setback.

6. Fee in Lieu of Preservation

The current fee in lieu of preservation is \$1,200 per tree removed beyond the allowable 2/3 of trees from a site. This is based on the City’s labor and supplies costs in 2009 to plant and maintain two 2-inch trees for two years (11.50.040.C). The question as to whether the fee in lieu of preservation is set at an appropriate level was raised by committee members, as well as the public. Specific recommendations are summarized below:

- **Update fee schedule to reflect the current cost of tree planting and maintenance.** Recent estimates prepared by Urban Forestry suggest that the current fee is significantly lower than the actual cost to the City. The majority of the Committee agreed that the fee should be updated to reflect the true cost to the City to plant and maintain trees.
- **Implement a graduated fee schedule based on the size of trees removed.** The current fee in lieu of preservation requires the same fee be paid regardless of the size of the tree removed. The majority of committee members support a graduated fee schedule that would require a higher fee when larger trees are removed. It is recommended that there be a minimum of three mitigation tiers and a cap on the total number of replacement trees the fee is based on. Some members of the Committee also suggested that the fee be based on a combination of the tree size and species to recognize the ecological value of smaller native trees.

7. “Stop-gap” Code Amendments

Commissioner Amanda Fritz asked the committee to review and provide comment on a proposal for an immediate code amendment to address the loss of especially large trees in development situations. In summary, the proposal called for inch-for-inch mitigation for trees 48 inches in diameter and larger and a 7 day notice. The proposal was opposed by some members of the committee and led to resignations of four members. The remaining committee members were supportive of a “stop-gap” measure to address the issue, but had several recommendations for changes as outlined below:

- **Decrease the threshold for inch-for-inch mitigation to 35 inches DBH.** Data from August 2015 shows that by decreasing the threshold, about 7 percent of trees removed in development situations would be subject to inch for inch mitigation requirement. With a 48-inch threshold, less than 3 percent would be affected.
- **Increase the notification timeframe to 21 – 30 days.** The committee supports the addition of a neighborhood notification requirement prior to large tree removal. However, additional time is needed to allow time to ask questions and potentially work with the permit applicant to identify alternatives to tree removal.
- **Relook at the idea of prohibiting the removal of large trees.** As an alternative to a moratorium, the committee requests that the City Attorney evaluate whether prohibitions of large tree removal can be considered when such action would not result in all economic viability of a property being removed.
- **Add a sunset clause.** The committee recommends a sunset clause be added to the proposal so it is clear it would only apply until larger Title 11 reforms are adopted.

C) Additional Recommendations – to be added after 11/30 discussion

1. Monitoring and Additional Data

Ongoing priority; suggestions for additional data collection

2. Consistency in Regulations

Maintain consistency between development and non-development situations where possible

3. Leadership through City Projects

City projects should be held to a high standard

4. Role of Urban Forestry Commission

Continued work on tree code issues

5. Coordination with Other City Policies/Codes

Additional coordination needed to further tree canopy goals; consider tree canopy/Title 11 when adopting new policy and regulations

6. Placeholder for Additional Recommendations or Code Issues

V. Appendix

- A. Work plan table with recommendations for future
- B. Detailed recommendations on specific committee actions
 - Interim Administrative Rule: Replanting Requirements for Tree Removal on Private Property, City-Owned and Managed Sites and Public Rights-of-Way
 - Recommendation on Preserving Large Trees and Fee in Lieu of Preservation
 - Stop-gap Title 11 code amendment proposal