

SUBSTITUTE

ORDINANCE No. 184522 As Amended

Amend and consolidate existing tree regulations into new Code Title 11, Trees, adopt companion amendments in other Titles, and direct the establishment of customer service improvements and implementation funding (Ordinance; add Code Title 11 and amend related Titles)

The City of Portland Ordains:

Section 1. The Council finds:

General findings

1. Portland's urban forest is a unique community asset, providing a broad array of valuable ecological, social, and economic benefit, including cleaner air and water, reduced stormwater runoff, reduced landslide and flood impacts, carbon sequestration, neighborhood beauty and walkable streets, public health benefits, and enhanced property values.
2. Almost half the tree canopy in Portland shades City owned or managed property, while slightly more than half the canopy shades privately owned property. The Bureau of Parks and Recreation estimates that City's street and park trees generate aesthetic and ecological benefits worth \$21 million annually, and that the rate of return for maintaining these trees is almost \$4 for every dollar invested. Parks and Recreation also projects that the total replacement value of trees in Portland is roughly \$5 billion.
3. In 2004 the City updated its Urban Forest Management Plan, confirming goals to protect and enhance the urban forest (including reaching 33 percent tree canopy averaged over the city), establish and maintain resources to manage the urban forest, and ensure that the benefits of the urban forest are distributed so that they are enjoyed by all Portland residents. The Urban Forest Management Plan provides the main policy basis for the Citywide Tree Policy Review and Regulatory Improvement Project, although the project also supports the goals of the Portland Watershed Management Plan (2006) and the City's Climate Action Plan (2009), both of which call for enhancement of the urban forest.
4. The project originates from a grassroots push for reform of Portland's tree regulations. In 2005 the Southwest Neighborhoods Inc. (SWNI), Tree Committee published a report calling for reform of the City's tree regulations, and presented this report to the Urban Forestry Commission and members of the City Council. The report identified the need for stronger tree preservation requirements, stronger enforcement, and improved access to information about tree policies, programs, and requirements.
5. In 2006 the Bureau of Parks and Recreation led a multi-bureau effort to produce an action strategy to achieve the goals of the 2004 Urban Forestry Management Plan. The City Council accepted the Urban Forestry Management Plan *Action Plan* (UFAP) on March 15, 2007. The UFAP assigned a high priority to actions involving review and update of the City's tree-related policies, regulations, and associated procedures. Desired outcomes include the creation of a consistent, cohesive regulatory framework for trees, and that such

framework will enhance the urban forest through development and redevelopment. The Urban Forest Action Plan is provided as Appendix G of the Citywide Tree Project Report to City Council, December 2010 (Recommended Draft Report).

6. In fall 2007 the City Council launched the *Citywide Tree Policy Review and Regulatory Improvement Project*, directing the Bureau of Planning and Sustainability (BPS), then Bureau of Planning, to lead the effort with City Bureaus including Parks and Recreation, Development Services, and Environmental Services.
7. In fall 2007 BPS convened an interbureau project team which sponsored a collaborative project scoping process involving interviews with community stakeholders, briefings with local groups, and research on the tree policies and regulations of other cities in the region and across the country.
8. In spring 2008 BPS convened a 23-member Stakeholder Discussion Group (SDG) representing east-side and west-side neighborhoods, residential, commercial/industrial, and institutional development communities, the arborist community, and the environmental community, including Friends of Trees and Audubon Society of Portland.
9. The Stakeholder Discussion Group (SDG) met with the team regularly for almost a year, systematically reviewing a series of issue papers produced by project staff. The SDG expressed diverse views on the complexity, inconsistency, and gaps in existing City tree regulations, erratic and confusing tree preservation requirements and tree permit system, and the effectiveness of City tree inspections and enforcement. The Stakeholder Group also provided comments and suggestions for potential solutions.
10. In early 2009, project staff vetted a set of initial proposals that emerged from the SDG process. The initial proposals were presented to the Portland Planning Commission, Urban Forestry Commission, Sustainable Development Commission, Development Review Advisory Committee, Citywide Land Use Group, neighborhood organizations and watershed councils, and the Planning and Development Bureau Directors.
11. The initial proposals received general support from the various reviewers, including strong support for consolidation of City tree regulations into a single comprehensive code title, stronger requirements for tree preservation, planting, protection during development, and enforcement, and proposed customer improvements including a single point of contact, a 24-hour tree hotline, and a community tree manual. Reviewers generally supported a more standardized tree permit system, but cautioned staff to be mindful of impacts on homeowners. Reviewers also advised staff to avoid unduly increasing the cost of development.
12. Staff refined the proposals based on input from the vetting process, and on February 17, 2010 published the Proposed Draft for public review and hearings before the Portland Planning Commission and Urban Forestry Commission.
13. On February 12, 2010, notice of the public hearing was mailed to 621 parties on the project mailing list and Bureau of Planning and Sustainability legislative project mailing list. Two

public workshops were held on March 9, 2010 and March 16, 2010, at the Multnomah Art Center and Floyd Light Middle School, respectively. Project staff also provided briefings to other interested groups during this period, including the City's Development Review Advisory Committee and the Citywide Land Use Group. Outreach conducted for the project is outlined in Appendix D of the Recommended Draft Report.

14. The Planning Commission (PC) and Urban Forestry Commission (UFC) held a joint public hearing that began on March 23, 2010. The commissions continued the hearing and invited written and oral public testimony during three joint work sessions on April 13, April 26, and May 11, and additional separate work sessions on June 8, 2010 (PC) and June 17, 2010 (UFC). The Planning Commission closed the public hearing on June 8, 2010. The Urban Forestry Commission accepted public testimony until June 17, 2010. Final work sessions were held on July 27 (PC) and July 29, 2010 (UFC).
15. Staff sent electronic mail messages on March 15, May 26, and July 15 to inform the approximately 450 individuals and organizations on the project mailing list of upcoming Planning Commission and Urban Forestry Commission hearing/work session dates and opportunities to comment. These messages also noted that up-to-date summaries of the Planning Commission's and Forestry Commission's deliberations and directions to staff had been posted on the project website.
16. The commissions received testimony from 71 organizations and individuals. Most testifiers expressed strong support for consolidating regulations into a single tree code title, stronger tree preservation and planting requirements in development situations, a standardized tree permit system, more effective enforcement, and implementation of customer service improvements. A number of people recommended that tree size thresholds be reduced so that the proposed regulations would address smaller trees. Several representatives of the development community expressed strong concerns about the potential impact of proposed development standards on the cost of development and housing affordability. Several people opposed the proposed prohibition on planting trees on the City's Nuisance Plants List because that would prohibit future planting of Norway maple, which is an abundant street tree in Portland and is called for specifically in the Ladd's Additional Historic District Design Guidelines. Some expressed concern about the impact of the proposed tree permit system on homeowners. A number of testifiers, including City bureaus stated that the proposal was overly complex and costly. The written record of testimony submitted during the hearing process is in Appendix B of the Recommended Draft Report.
17. On July 27, 2010 the Portland Planning Commission unanimously approved the proposed draft with specific directions to revise the Proposed Draft for public review and a hearing before the City Council. On July 29, 2010 the Urban Forestry Commission unanimously followed suit.
18. The commissions approved revisions designed to simplify and reduce the cost of the proposal while maintaining anticipated tree canopy benefits to the extent possible. The commissions also approved specific revisions to the development standards including tree preservation exemptions for small lots and high coverage developments, and a reduction in the tree size threshold for application of the tree preservation standards. The commissions approved a

citywide tree permitting system with direction to establish a more streamlined tree removal permit system for homeowners on developed single dwelling lots. The commissions did not approve a request to delay the prohibition on future planting of Norway maple or an exception to allow planting of Norway maples in Ladd's addition, but directed staff to continue working with the neighborhood representatives to identify suitable tree replacement species.

19. The Recommended Draft features:

- a. The Recommended Draft Report to City Council, December 2010, which documents the project purpose, process, and proposal through the Planning Commission and Urban Forestry Commission hearing process.
- b. Consolidation of City tree regulations into a new code title, Title 11, Trees (Exhibit A)
Title 11:
 - i) Addresses trees on public and private property and in development and non-development situations
 - ii) Reauthorizes, updates, and elevates the urban forestry program and Urban Forestry Commission
 - iii) Clarifies bureau functions, assigning primary responsibility to the City Forester for trees in non-development situations, and to the Director of the Bureau of Development Services for trees in development situations. The Chief Engineer in the Bureau of Transportation retains primary authority for trees as they affect the function of public rights of way and public utility infrastructure
 - iv) Establishes tree preservation and tree density standards to apply to all types of development. The standards are intended to encourage retention of larger healthy trees and to achieve the City's tree canopy targets, while also supporting City development goals. Applicants may, at their discretion choose meet the Tree Density standards by preserving existing trees, planting new trees, and/or paying a fee in lieu to the City's Tree Planting and Preservation Fund. Applicants may also choose to pay in lieu of meeting the Tree Preservation Standard into the fund. The Portland Bureau of Parks and Recreation uses money from the fund to plant trees anywhere in the same watershed (within the City) that the development took place – there are no designated sites. Exemptions from the Tree Preservation Standard are intended to recognize constraints on small lots sites with high building coverage. The standards are intended to be clear and objective and do not trigger discretionary review.
 - v) Clarifies tree-related requirements for public works and capital improvement projects
 - vi) Establishes a more standardized, predictable permit system for trees on public and private property. The updated permit system includes basic tree replacement requirements for dead, dying, dangerous trees and nuisance tree species, and clarifies the criteria to be applied in

reviewing requests to remove larger healthy trees or multiple trees. The updated permit system replaces an exemption for developed single family lots with a basic tree replacement requirement for trees that are 20 or more inches in diameter

- vii) Establishes a permit to allow limited tree pruning in environmental and other resource overlay zones, and a programmatic permit option for public agencies' routine tree-related activities instead of requiring individual permits
 - viii) Prohibits planting of tree species on the City's Nuisance Plants List on City owned or managed property including City rights of way consistent with the City's adopted invasive plant management strategy
 - ix) Incorporates provisions governing the Heritage Tree Program and updated directions for addressing Dutch Elm Disease as adapted from Ordinance 159750 which has now been superseded.
 - x) Consolidates, standardizes and clarifies procedures for enforcement and assignment of penalties
 - xi) Treats trees as a fundamental component of the City's green infrastructure and a basic site development requirement similar to stormwater management and erosion control. As such the provisions of Title 11 are not land use regulations.
- c. Companion amendments to various code titles where tree related provisions were moved into Title 11 or were needed to establish cohesiveness and consistency between titles. Amendments to Title 3, Administration; Title 8, Health and Sanitation; Title 14C, Public Order and Police; Title 16, Vehicles and Traffic; Title 17, Public Improvements; Title 20, Parks and Recreation; Title 24, Building Regulations; Title 29, Property Maintenance Regulations; and Title 31, Fire Regulations, are in Exhibit B of this ordinance.
- d. Specified Title 11 development standards and relevant enforcement procedures will be administered by the City outside Portland City limits in unincorporated areas of Multnomah County that are within the Urban Service Boundary. These regulations will be administered through the existing "Intergovernmental Agreement to Transfer Land Use Planning Responsibilities between City of Portland and Multnomah County (last amended per Ordinance No. 179313, June 13, 2005). This IGA is being amended through a separate ordinance to reference application of tree regulations as appropriate.
- e. Amendments to Title 33, Planning and Zoning, which complement the regulations of Title 11 and are addressed in a separate ordinance.
- f. Amendments to the Ladd's Addition Conservation District Guidelines to clarify that the prohibition on planting nuisance species trees applies and that the street plan guidelines will inform the selection of species to replace nuisance species street trees in the future. These amendments are addressed in a separate ordinance along with the Title 33 amendments.

g. Customer service improvements as described in the Recommended Draft Report and provided in Exhibit C of this ordinance, including:

- i) Upgrades to the City's electronic tree permit tracking system – necessary to improve program efficiency, transparency and enforcement, and to implement the 24-hour tree hotline.
- ii) Establishing a single point of contact for the public – responds to questions relating to tree programs and requirements, refers the public to appropriate city and community programs, assists in tree permitting.
- iii) Piloting a 24-hour tree hotline – checks into questions and complaints about tree cutting after weekday business hours and on weekends.
- iv) Developing a Community tree manual – provides information on tree care and best management practices, instructions and assistance to facilitate code compliance, and information on topics of interests such as fruit and nut trees, habitat trees, optimizing trees and solar energy systems.
- v) Pursuing Neighborhood Tree Plans - The Urban Forestry Program in the Bureau of Parks and Recreation is pursuing this action currently, and has recently received a grant from the East Multnomah Soil and Water Conservation District.

20. On December 23, 2010 a notice of Portland City Council Hearing and the availability of a the December 2010 Recommended Draft to City Council was mailed electronically to 566 individuals and organizations on the Citywide Tree Project mailing list. On January 18, 2011 a notice of Portland City Council Hearing for the Citywide Tree Project was mailed to 756 individuals and organizations on the project mailing list and the Bureau of Planning and Sustainability's Legislative Master Mailing List, along with a follow up electronic mailing.

21. On January 19, 2011, a public open house was held to answer questions on the Recommended Draft to Council. Twenty-six residents and organization representatives attended the open house.

22. On February 2, 2010, the City Council held a public hearing on the December 2010 Recommended Draft. Forty individuals and organization representatives testified at the hearing and about 60 submitted written testimony on or before the hearing. City Council members and staff introduced a number of amendments to the Recommended Draft to Council.

23. The City Council directed the Bureau of Planning and Sustainability to work with the Bureaus of Development Services, Parks and Recreation, and Environmental Services, and other bureaus to address remaining bureau concerns. The Council directed the bureaus to identify areas of agreement and issues in which there were different viewpoints, along with the pros and cons of the different choices. The bureaus developed lists of issues and options and held a work session on February 16, 2011. The directors of the Bureaus of Development Services, Parks and Recreation, Environmental Services, and the Bureau of Planning and Sustainability met on February 25, 2011 and agreed on a set of potential amendments to bring to the City Council for consideration. A memorandum to Council with attachments,

including potential amendments, was posted for public review, and announced via electronic mail to an updated list of 664 recipients on March 4, 2011.

24. On March 9, 2011 the City Council continued the public hearing and invited public testimony on the potential amendments to the Recommended Draft to Council. The Council provided direction on the amendments and invited additional written testimony on the amendments through March 16, 2011. Twenty individuals and organizations testified at the hearing and more than 30 submitted written testimony between February 2 and March 16, 2011. The City Council directed staff to develop any additional code language needed to carry out their direction on the amendments, and to return to them for action on the amendments on April 6, 2011. Title 11 Amendments to the Recommended Draft to Council are presented in Exhibit F.
25. The proposal described in the Recommended Draft Report to City Council is estimated to generate and/or preserve approximately more than 100 additional acres of future tree canopy per year through a combination of improved tree preservation and planting, more than 10 times the canopy that would be attained by putting the same amount investment into City tree planting efforts alone. Amendments approved by the City Council likely reduce canopy benefit slightly.
26. Approximately 85 percent of the additional tree canopy will be generated through implementing the new Title 11 tree preservation and tree density standards that will apply in development situations. Additional tree canopy enhancement will be attained through implementing the updated tree permit systems outlined in Title 11 and amendments to Title 33, Planning and Zoning.
27. The adoption of Title 11 and other amendments will be phased for implementation in part to provide for additional staffing and funding needed to successfully meet project goals and avoid adverse impacts on existing programs, and as indicated in Exhibits D, Tree Canopy Estimates, Financial Impacts and Budget Proposal section of the Recommended Report to City Council, and E. Financial Impact Statement. (Note: Exhibits D and E have been updated and will substitute for corresponding exhibits in Volumes 3 and 4 of the Recommended Draft to Council, December 2010.) The Two thirds of the costs are expected to be covered by increases in development and land use review fees, capital project funding. Other ongoing program costs are associated with the improved tree permit system and hiring a single point of contact to assist the public and help process permits. These functions would not be fee-supported and would require general fund dollars or other sources of funding. One-time costs for initial project preparation (training, development of procedures and informational materials, outreach, etc.), permit tracking system upgrades, vehicles for tree inspectors, and the community tree manual are also expected to require general fund dollars or funds from an alternative source(s).
28. The commissions approved a phased project implementation and funding approach, as proposed by the directors of the bureaus of Development Services, Parks and Recreation, Environmental Services, and Planning and Sustainability. Project implementation will take place over three fiscal years. In FY 2011 – 12, activities would focus on permit tracking system upgrades, staff training, development of informational materials, and public outreach

to prepare for code implementation, and production of the community tree manual. An initial, cost-neutral set of Title 33 code amendments will go into effect as outlined in a separate ordinance. Project ramp up activities are expected to be funded through a one-time allocation from the General Fund. Title 11, amendments to other titles, and remaining Title 33 amendments, fee increases and ongoing general funding will go into effect mid-year FY 2012-13. One-time general funding will also be needed for BDS during this "transition year" to allow for adequate accrual of fee revenues. In FY 2013-14, the program would be funded through fees, CIP dollars and ongoing general fund allocation. One-time general funding is anticipated to terminate at that time. This phased-in approach is intended to provide time for City bureaus to gear up and to educate Portlanders about the regulatory updates, and for the local economy and City budget to stabilize sufficiently before implementing the updated regulations.

29. The Citywide Tree Project is expressly listed as a component of Portland's strategy to comply with Metro's Title 13, Nature in Neighborhoods Program. Completion of the Citywide Tree Project is also cited as an upcoming accomplishment in the City's 2009-2010 annual National Pollutant Discharge Elimination System (NPDES) and Stormwater Program compliance reports to the Oregon Department of Environmental Quality.

NOW, THEREFORE, the Council directs:

- a. Adopt the *Citywide Tree Policy and Regulatory Improvement Project – Planning Commission and Urban Forestry Commission Recommended Draft Report to City Council, December 2010*, and Bureau of Planning and Sustainability staff memoranda (and attachments) to City Council dated March 4, 2011 and March 31, 2011 which provide supplemental documentation of legislative history and intent.
- b. Establish Title 11, Trees, in accordance with Exhibit A, and as amended per Exhibit F.
- c. Amend Titles 3, Administration; 8, Health and Sanitation; 14C, Public Order and Police; 16, Vehicles and Traffic; 17, Public Improvements; 20, Parks and Recreation; 24, Building Regulations; 29, Property Maintenance Regulations; and 31, Fire Regulations in accordance with Exhibit B, and as amended per Exhibit F.
- d. Adopt the commentary of Exhibits A and B, and as amended per Exhibit F as legislative intent and additional findings.
- e. Adopt the recommendations of Exhibit C, Customer Service Improvements section of the Recommended Report to City Council.
- f. Adopt Exhibit F, including code amendments, and amended commentary and descriptions which provide additional documentation of legislative intent.

- g. The bureaus of Parks and Recreation and Development Services will report to City Council during in the FY 2011-12, 2012-13, and 2013-14 budget processes, on plans to fund the project, including administration of Title 11 and Title 33 amendments and customer service improvements as informed by Exhibit D, Tree Canopy Benefits, Financial Impacts and Budget Proposal and Exhibit E, Financial Impact Statement. , including potential increases in development and land use review fees, and allocations from the general fund.

Section 2.

1. The Council declares that Directives a, e, and g of this ordinance shall become effective 30 days from adoption
2. To provide time to the City to prepare to administer Title 11, Trees and other elements of this proposal, the Council declares that Directives b, c, d, and f shall become effective on February 1, 2013, pending Council approval of staffing and funding for implementation.

Section 3. If any section, subsection, clause or phrase of this Ordinance, or the code amendments it adopts, is for any reason held to be invalid or unconstitutional, that shall not affect the validity of the remaining portions of the Portland City Code and other identified documents. Council declares that it would have passed the Portland City Code and other identified documents, and each section, subsection, sentence, clause, and phrase thereof, regardless of the fact that any one or more sections, subsections, sentences, clauses, or phrases of this Ordinance, may be found to be invalid or unconstitutional.

Passed by the Council:

APR 13 2011

Commissioner Mayor Sam Adams
Prepared by: Roberta Jortner
Date Prepared: March 31, 2011

LaVonne Griffin-Valade
Auditor of the City of Portland

By

Susan Parsons
Deputy