

# 2015 Tree Code Review

Policy Options Report



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## Introduction

This report presents a summary and analysis of alternative Tree Code policy options for consideration by the Ad Hoc Tree Committee ('Committee'). The Committee will meet on January 25 and February 1, 2016, to discuss and select its preferred policy options, which will provide direction to staff to draft amendments to the Tree Code.

The Lake Oswego City Council charged the Committee with making recommendations for Tree Code amendments that would:

- Identify better ways to meet the intent of the Tree Code while responding to residents' desire for less stringent regulation;
- Reduce staff time and administrative overhead associated with tree regulations;
- Ensure that criteria prohibiting or allowing tree removal are clear and objective; and,
- Use an amend and revise approach rather than wholesale repeal and replacement of the Tree Code.

The Committee met once per month beginning in July 2015. Input from the public, information provided by Committee members and City staff, and recommendations made by a 2001 Tree Code Task Force were considered by the Committee to identify a number of policy issues to be addressed in the project. The policy issues selected by the Committee are:

- Science-based/Sustainability and Ecosystem
- Building/Development Code and Tree Code Compatibility
- Heritage/Significant Trees
- Type I and Type II Tree Removal
- Tree Code Administration
- Dead, Hazard, and Emergency Trees
- Mitigation

At the monthly meetings, the Committee identified a list of actionable items related to each issue, which are included as policy alternatives/options in this report. Each policy alternative/option is evaluated in this report with respect to the Council charge, its legal sufficiency, and whether it conflicts with any other City codes and standards. The current policy is described first to establish a baseline, or no-change option. Policy alternatives are then discussed in a comparative format with respect to the current policy and assessed based on the evaluation criteria. This is followed by a consideration of any other important factors, and a discussion of whether staff supports the policy alternative/option. Some policy alternatives/options are comprised of multiple concepts discussed by the Committee. Concepts that represent discrete policy options are listed individually. If concepts are mutually exclusive they are indicated in the discussion of the alternative.

The seven policy issues, above, that were selected by the Committee are not addressed individually because some represent aspects of other policy areas or the Tree Code as a whole. In addition, some recommendations involve overarching changes to the regulatory framework that affect all policy issues. These are addressed independently. The report concludes with a summary of the next steps.

## Policy Analysis

### Administration

#### Input

The main focus of input on the administration of the Tree Code relates to the Type II tree removal permit application process. Comments from the public as well as staff indicate that the notification and appeal period for Type II permits creates a burden on property owners who must wait approximately 30 days to receive their permits, and on staff who must conduct two separate site visits in reviewing the application. The comment and appeal process is also described as contentious, and concern was expressed that objections to Type II applications could be coming from people who are only indirectly affected or not affected at all by tree removal, such as those who live in other neighborhoods or cities.

Another common comment received from the public is the desire for an online process to apply for tree removal permits in order to provide a more convenient option for property owners and to reduce some administration burden on staff. This was also a suggestion of the 2001 Tree Code Task Force.

#### Current Policy

Most permit applications are submitted at the Planning counter by the applicant because the City does not have a publicly available online application process<sup>1</sup>. Applications for tree removal and tree cutting permits are currently available for download online, and with the exception of Type II permits, applications can be submitted in person, or by mail or e-mail. Applicants who wish to use this option must interpret the process to the best of their ability, including identifying the documentation that is required. In some situations the required documents are too large for the e-mail system to handle, in which case, applicants must submit

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<sup>1</sup> The City uses the State Accela permitting system for processing building and tree permits. This system has the capacity to allow development or tree professionals with Construction Contractor Board (CCB) licenses only to apply online. While this system is currently available to these professionals, it is not optimized, and as a result, there is limited use of online permitting at this time. Because Accela is operated by the State, the City has limited ability to make modifications to or to customize the permitting system.

their application by mail or in person. There is currently no provision for online payment except for applicants with a CCB license who use Accela to submit non-Type II applications. Other applicants must either send a check by mail or make a trip to City Hall to pay the application fee.

Type II permits must be submitted in person because the applicant is required to post a notice sign that is provided by the City when the application is submitted. The sign must be posted in a visible location on the property and a 14-day public comment period begins. During this time period staff visits the site to ensure the sign is posted and reviews the application for compliance with the approval criteria. Comments on pending Type II applications must be submitted in writing. Information such as name and address are currently not required for comments received; however, they frequently include this information. There are currently no restrictions on who may comment on a pending application. The greatest proportion of comments are received towards the end of the 2-week comment period. Within two business days after the end of the comment period, staff makes a second visit to the site to post a sign notifying the public of the tentative decision on the application, after which there is a 14-day appeal period. Since 2011 there have been 13 appeals filed, three of which were withdrawn, out of approximately 1,700 Type II applications. Of the appeals filed, two were filed by the applicant and 11 were filed by other parties. The current process results in a 28-day minimum turnaround for a Type II permit to be issued if no appeal is filed.

## **Policy Alternatives**

### **1. Improved Online Processes**

The Committee discussed the concept of online processes and expressed strong support of the idea. Related to this discussion, it was suggested that it can be difficult for property owners to determine the correct permit for a given situation, and that a single source of information for property owners to receive answers to most questions about tree removal would be helpful.

#### ***a. Establish a system to allow all permit applications to be submitted and paid for online.***

This concept was supported unanimously by the Committee during the November 16 meeting. The change would provide a more convenient process for property owners to apply for permits by making it possible for applications to be completed and submitted 24 hours a day and without a visit to city hall. In the event that more information is needed for a permit application, staff could follow up with the applicant via email. The change is meant to reduce the regulatory burden of the Tree Code while reducing staff time and administrative overhead related to

processing permits. The changes have no impact on the criteria for review for tree removal.

Online permit applications would theoretically reduce the perceived regulatory burden of applying for a permit. Applicants would still be required to submit the same level of documentation, and the costs of permits may not change, but an online application process is more convenient and could result in a reduction in the effort required for residents and property owners to obtain a permit. Integrating an online payment option is one of the main issues. If payments cannot be made online, then the benefit of an online application process is greatly reduced as applicants would still need to make payments by phone, mail, or in person. In addition, the City's current system for tree permitting is Accela, which is a system provided by the State of Oregon that is optimized for use by municipal staff and contractors, not the general public.

Accela may provide an interface that would allow the integration of a more user-friendly online permit application hosted by the City with the State-operated platform. Staff is still investigating this possibility. If feasible, this integrated system could collect and store the data needed for staff to review applications, potentially reducing staff time spent inputting application data into the system. However, this reduction in staff time for inputting data could be offset to some degree by a number of other factors. Payments would need to be processed by a third party, and this typically involves a fraction of each payment being kept by the party processing the information. Management of the payment processing contract would also require staff time.

The City is not able to directly customize the current state-operated Accela platform. The cost for the City to purchase and host its own Accela software (for building permits, development applications, tree permits, etc.) would exceed \$200,000, not including the third-party payment processing account and costs. Other options for online tree permit processing may be available, but have not been identified at this time. Staff will continue to investigate available options.

***b. Create an interactive website as source of information related to the Tree Code.***

This idea was proposed in a written comment from the public and was supported by a Committee vote of 19-1 at its December 7 meeting. It would provide a tool to assist applicants in determining which type of tree permit they need to apply for. The website could prompt input from users to direct them to the proper permit application for their situation. The website could also provide a list of applications that are pending and the relevant information for neighbors who are

interested in providing comments. This proposal is intended to reduce the perceived regulatory burden associated with the Tree Code by providing a one-stop website for residents and property owners to obtain or provide information related to trees. This could also potentially reduce staff time devoted to answering phone and counter inquiries about trees. This tool would not impact the criteria used to approve or deny permit applications.

The City already has application forms available online, and receives public comments through the City webpage, but these features could be consolidated and organized better to provide a more complete, user-friendly webpage. The page could guide users through the application process, provide answers to frequently asked questions about the Tree Code, direct applicants to the application forms, and allow public comments to be submitted. Providing a more convenient guide to the process of tree removal has the potential to improve satisfaction with the Tree Code. Design of a new webpage would require some initial time investment from the City's information technology staff; however, upkeep of the webpage would be fairly minimal. If the new tree webpage is easy to use and well-promoted, the Planning Department could expect some reduction in the time spent answering common questions about tree removal.

The changes represented by this policy option are administrative in nature, and do not involve any changes to the Tree Code. Establishing an online permit application and payment system would require an accompanying webpage to be effective. The benefits of an interactive webpage devoted to trees would not be diminished by the lack of online submission or payment. This policy option is well aligned with the Council charge, but there are concerns over the challenges of online application submission and payment and there is a need to coordinate this proposal with a review of the City's permit tracking software. These concerns are being addressed by City staff, but a final recommendation cannot be made until other options are fully evaluated.

## **2. Adjust Type II Permit Notification, Comment, and Appeal**

The notification, comment, and appeal process was discussed at the Committee's November 16 meeting. Public input, City staff, and the 2001 Tree Code Task Force suggested that the current notification and appeal process is long, and that some applications for Type II permits represent time sensitive situations. The second site visit made by staff to post the tentative decision adds costs for the City in terms of both materials and staff time. Staff suggested that this was an area where addressing these issues would require relatively simple changes to the Tree Code. The Committee

brainstormed potential alternatives in small groups and voted on the alternatives in a survey sent after the meeting.

**a. *Reduce the notification and appeal period to 14 days***

This alternative received a vote of 15-8 on the survey, one vote shy of a two-thirds majority, but is included due to the general consensus of the Committee. The notification and appeal periods would both be reduced to one week, half of the current time. It is meant to reduce the regulatory burden experienced by residents and property owners by shortening the time required for decisions to be made on Type II applications. However, part of the intent of the current code is to preserve trees that are considered important to the City, and public comments allow staff to receive information from people who are familiar with the details of a particular situation.

The longer comment and appeal periods provide more time for the public to voice their opinions and provide input. Comments about pending applications tend to come in towards the end of the established time period. Residents could be upset if the new process prevented their comments from being considered. This is especially likely in the period directly following any changes to the process if people feel as though they were not informed of the new procedure. Ensuring that people are properly informed of pending permits and the guidelines for providing comments or appealing a decision could compensate for the shorter comment and appeal period. Staff time spent reviewing applications would not change, but would require a faster turnaround. The criteria used to approve or deny the application would remain unchanged. This alternative could be achieved through a minor amendment of the code. Another alternative would be to keep the comment period at 14 days, but decrease the appeal period to seven days, for a total of a 21-day process. Staff supports this alternative if public access to information on pending tree permits can be improved.

**b. *Eliminate the second sign posting***

This concept did not receive a vote as an individual item, but was an aspect of several suggestions regarding administrative improvements. A single sign would be posted on the property which detailed the notification period, when the tentative decision would be made, and the timeline for appeals. The sign would also provide information about how interested parties could get further information. This would eliminate the need for the second site visit by city staff, greatly reducing staff time and administrative overhead associated with Type II permit application decisions. The change would not impact the regulatory burden experienced by property

owners, as a sign would still be posted on the property for the entirety of the review process. The criteria used to approve or deny the permit would not change as a result of this proposal.

***c. Limit comments to people who live in a specified area.***

This option was supported by a two-thirds majority of the Committee with a vote of 16-7. Commenters on pending applications would be asked to provide information about where they live. The comments would then be screened by staff based on limitations established in the code. From a legal standpoint, tree removal decisions (except for tree removal associated with Minor or Major Development Permits) are not considered land use decisions; therefore, limiting comments to those that reside within a defined area of the site is permitted, but it does raise ethical issues about who should be able to participate in local government decisions. There are a number of conceivable reasons why a person who does not currently live in close proximity to the property where an application for a tree removal is pending approval might wish to comment. They might be a past or future resident of the neighborhood, or have family in the area. They could work in the area, but reside elsewhere, or represent an organization (such as the Audubon Society) that has an interest in tree removal that may impact wildlife habitat.

Placing limitations on who is allowed to comment could reduce staff time spent reviewing comments, however this would be offset to a degree by the time spent checking to ensure comments are valid. This would not directly affect the criteria prohibiting or allowing tree removal, but could impact the consideration of information relevant to those criteria. In addition, the limits of the area from which comments would be accepted would have to be clearly and objectively defined. This change to the code would require the addition of a section detailing who would be qualified to make comments, and how that determination would be made. If the restriction was established to limit comments only to residents of the neighborhood then “neighborhood” would need to be defined; however, a more objective definition would be to specify a certain radius from the site (e.g., 100 feet or 300 feet). Finally, the Committee would need to decide whether residents who are not property owners would be eligible to comment.

***d. Email notification of pending Type II permit decisions to neighborhood associations***

This option was proposed during the November 16 meeting, but did not receive a formal vote. The option is included due to its simplicity. Notification of pending permits would be provided to neighborhood associations by e-mail, as

opposed to the current mail requirement. This would not impact the regulatory burden of the Tree Code or the criteria of review; it would only change the medium of communication. The reduction in staff time and the cost of postage is negligible, but the time for the neighborhood association to receive the notice would be greatly reduced.

All options presented as aspects of this policy alternative can be implemented individually or all together. No single option would reduce the impact of the others on regulatory burden, administrative cost, or criteria of review. The benefits would work in conjunction, meaning the selection of multiple options increases the effect. These changes all represent minor amendments to the code.

Due to the reduction in regulatory burden, staff time, and administrative cost, staff supports reducing the comment and appeal periods and eliminating the second sign posting. Email notification of Type II decisions to neighborhood associations is a simple change that results in time savings for both staff and the time it takes for neighborhood associations to receive notices. Staff does not support making changes to whose comments may be considered in the review of Type II applications because it limits public input.

## **Dead, Hazard, and Emergency Permits**

### **Input**

Both the public and staff commented that the definition of dead trees should include trees that are in severe decline, but are not yet dead. An example provided by a PGE forester described a situation where they were unable to help a customer remove a tree due to sprouts on the trunk of a tree with a dead top. The tree did not qualify as dead and the customer could not obtain a permit in the necessary timeframe. Staff also described examples where a tree had fallen against a structure or another tree or when a tree on private property causes a burst pipe. Trees in these situations that do not meet the current criteria for a dead, hazard, or emergency permit require the property owner to apply for a Type II permit. Removal of a tree in any of these situations under the Type II permit process is significantly more time consuming and expensive, both for property owners and the City, and can result in frustration with the Tree Code. It was suggested that changes to the definition of dead and emergency trees would help address these issues. The final issue raised was that the current hazard tree evaluation could better reflect industry standards.

Committee discussions on dead, hazard, and emergency trees focused on clarifying the issues identified by the public and staff. Support for the three recommendations for amending the dead, hazard, and emergency permits exceeded a two-thirds majority. Hazard tree evaluation was generally agreed to be beyond the expertise of the Committee as a whole and

the Committee unanimously agreed that staff should work with the City Contract Arborist to provide options and make a recommendation. Another common concern among Committee members was that hazard permits are abused by applicants in order to circumvent the Type II permit process.

### **Current Policy**

A dead tree is defined in the current code as “a tree that is lifeless. Such evidence of lifelessness may include unseasonable lack of foliage, brittle dry branches, or lack of any growth during the growing season”. The City Contract Arborist may have to visit the site to confirm dead deciduous trees in the winter time, or to review and confirm hazard tree reports prepared by the applicant’s arborist. There are some cases where retention of a dead tree could be required for wildlife habitat or natural processes.

Emergency permits require the tree to “present an immediate danger of collapse, and represent a clear and present hazard to persons or property”. Immediate danger of collapse is demonstrated if “the tree is already leaning, with surrounding soil heaving, and there is significant likelihood that the tree will topple and cause damage before a tree cutting permit could be obtained through the non-emergency process” but excludes “hazardous conditions that can be alleviated by pruning or treatment.” Dead, hazardous, and emergency permits have a flat fee of \$17 no matter how many trees are involved and require an application form, site plan, and photograph of the tree, which can be submitted by mail or in person.

A hazard tree is defined as “a tree that is cracked, split, leaning or physically damaged to the degree that it is clear that it is likely to fall and injure persons or property”. The current methodology included on the City’s Tree Hazard Evaluation Form is a quantitative approach developed by the Pacific Northwest Chapter of the International Society of Arboriculture (PNW-ISA). Hazard tree applications typically require a “hazard evaluation form” to be completed by a certified arborist using this approach. An overall risk rating is assigned by adding together points in each of three categories. The first category is probability of failure and ranges from 1 to 5 points based on the severity of defects observed. The second category is size of defective part and ranges from 1 to 3 points, with one point assigned for defective parts up to four inches in diameter, 2 points for defective parts measuring four to 20 inches in diameter, and 3 points for defective parts larger than 20 inches in diameter. The third category is target potential and ranges from 1 to 4 points based on the value and frequency and duration of use of what is located within striking distance of the defective part. Points from each category sum to the overall risk rating ranging from 3-12. Risk ratings from 3 to 5 are considered low, 6 to 8 are moderate, 9 to 11 are high, and 12 is extreme. Generally, trees that receive a risk rating of 9 or higher will satisfy the City’s hazard tree criteria, although this is not specified in the code. PNW-ICA used to offer a Tree Risk Assessor Certification for Certified Arborists, but the Tree Risk

Assessor Certification is not required by the City and is no longer offered by the PNW-ISA. The City's code only requires the applicant to submit an arborist's report prepared by a Certified Arborist, when needed.

### **Policy Alternatives**

#### **3. Expand the definition of "dead tree" to include a tree that is in severe decline.**

Although the current definition of dead tree is limited to trees that are completely lifeless, trees may be physiologically dead, in progressive decline, or otherwise non-viable before they appear completely lifeless. Some symptoms of severe decline include chlorotic foliage (leaves are unseasonably or uncharacteristically discolored), an overall thinning of the crown, twig and branch mortality, top dieback, premature fall coloration and defoliation, and abnormally abundant fruit and flower production. Trees may persist in a state of progressive decline for many years, or may die rapidly within one or two growing seasons. However, once a tree has entered a state of progressive decline, there is generally nothing that can be done to reverse the situation with few exceptions. Assessing dieback and decline can be complex and require the opinion of a qualified professional.

Consideration of an expanded definition of "dead tree" was supported by a Committee vote of 24-1 at the December 7 meeting. This policy alternative would involve amending the definition of "dead tree" to: "A tree that is lifeless, non-viable, or in a state of progressive and irreversible decline. Such evidence of lifelessness or decline may include unseasonable lack of foliage, brittle dry branches, lack of any growth during the growing season, chlorotic foliage, an overall thinning of the crown, branch mortality, top dieback, premature fall coloration and defoliation, and abnormally abundant fruit and flower production." Dead tree removal permit criteria would be edited to reflect the new definition, and a section added to establish that the City may require the applicant to submit an arborist's report confirming the trees is lifeless, non-viable, or in a state of progressive and irreversible decline.

Under the current code, a declining tree would require a Type II tree removal permit for the purposes of landscaping unless the tree was otherwise invasive, hazardous, or eligible for a Type I permit. Expanding the definition of dead tree to include trees that are non-viable or in a state of progressive and irreversible decline would provide added flexibility to permit the removal of declining trees more efficiently. This reduces the regulatory burden of the current code. Avoiding the more complicated processes for these situations also reduces the staff time and administrative overhead associated with the review of applications. While terms such as irreversible decline can be considered subjective, the factors listed that may be considered evidence establish objective review

criteria. These benefits are accomplished through a minor adjustment of a definition with few substantive changes elsewhere in the code. Other aspects of the code related to permit applications and review would remain unchanged. This policy alternative fits within all aspects of the council charge and is recommended by staff.

**4. Allow emergency tree permits for situations where a tree has partially fallen and is leaning on a structure or another tree.**

This concept was supported by a Committee vote of 23-2 at the December 7 meeting. The description of what qualifies under an emergency permit would be revised to indicate that trees that are leaning and are being propped up by a building or another tree, would qualify for an emergency permit even if there was no heaving soil or immediate danger of collapse.

This policy option represents a relaxing of the regulatory burden for trees that are no longer standing on their own. Trees in this situation would currently require either a hazard or Type I permit to remove, or in some cases a Type II permit. The emergency permit would allow people to remove these trees immediately if needed, then provide proof of the situation to retroactively obtain a permit. This also saves staff time and administrative cost reviewing what could potentially be a Type II permit. The criteria defining what would qualify as tree removal under this scenario would be clear and objective. Photographic evidence that the tree was being supported by a structure or another tree would be required. This would be a minor change to the criteria used to evaluate emergency permit applications, and is recommended by staff.

**5. Change the hazard tree evaluation approach**

This policy option was discussed at the December 7 meeting. The Committee voted unanimously to have staff develop and present a policy alternative that would improve the approach to hazard tree evaluation. The City contract arborist developed an alternative that consists of two parts: 1) switching to a qualitative approach to evaluating hazard trees and requiring the evaluation to be performed by a tree risk assessor qualified arborist, and 2) amending the definition of hazard tree to be more clear and objective. The recommended alternative is described below.

**a. Implement a qualitative approach to hazard tree evaluation**

In 2011, the International Society of Arboriculture published the Best Management Practices for Tree Risk Assessment, which describes the various approaches to tree risk assessment with a focus on assessing and evaluating risk from tree failures using a qualitative methodology. The assessor uses two matrices to derive an overall risk rating. The first matrix is used to estimate the likelihood of tree failure

impacting a specified target. The likelihood of failure is defined as improbable, possible, probable, or imminent. The likelihood of impact is defined as very low, low, medium, or high. This results in likelihood of failure impacting a target defined as unlikely, somewhat likely, likely, or very likely, which is used in combination with the severity of the associated consequences in the second matrix. Consequences of failure impacting a target are defined as negligible, minor, significant, or severe. This results in an overall risk rating from low to extreme. For example, a tree with a defect that has a probable likelihood of failure and a high likelihood of impacting a target with significant consequences would be rated high in terms of overall risk potential. The International Society of Arboriculture now offers a Tree Risk Assessment Qualification for Certified Arborists. This involves a 2-day class and written exam; Tree Risk Assessor Qualified Arborists must also retake the exam on a regular basis to maintain the Qualification.

This approach could lead to an increased regulatory burden experienced by residents or property owners. Since Tree Risk Assessors are not as common as Certified Arborists it could be more difficult or expensive for a permit applicant to obtain the services of a Tree Risk Assessor. This could change if the increased demand results in more Arborists obtaining the certification. This approach will not impact the staff time or administrative overhead associated with hazard tree evaluation. The approach does change the criteria used to determine if a hazard tree permit is approved. The new criteria are not inherently more or less objective than the current quantitative approach because all Certified Arborists are bound by a Code of Ethics; however, Tree Risk Assessor Qualified arborists are trained in the Best Management Practices for Tree Risk Assessment and may therefore be considered more qualified to provide a fair and accurate assessment of tree risk potential. This would also address concerns regarding the accuracy of hazard tree evaluations prepared by Certified Arborists working for tree service companies (versus consulting arborists working independently) resulting in the perception that tree removal is the ultimate goal as opposed to a fair assessment of risk potential.

**b. Amend the definition of “hazard tree” to be less subjective**

A more clear and objective definition would be based on the overall risk rating assigned by a qualified arborist with an application that demonstrates the risk rating is justified (or verified by the City’s arborist). For example, Tigard Municipal Code Section 8.02.050.H.2 defines a hazard tree as follows: “Hazard tree” means any tree or tree part that has been or could be determined by an independent Tree Risk Assessor to constitute a high level hazard requiring hazard tree abatement with an overall minimum risk rating of 8 for trees or tree parts up to four-inch DBH, 9 for trees or tree parts greater than four-inch and up to 20-inch DBH, or 10 for trees or tree parts greater than

20-inch DBH using the [quantitative] tree risk assessment methodology....” In Tigard, the quantitative methodology is used and the overall risk rating that constitutes a high level hazard is tied to the size of the defective part, with smaller parts resulting in a lower overall risk ratings and larger parts resulting in higher overall risk ratings.

As with the change to the hazard tree evaluation approach, this option seeks to improve the objectivity of the Tree Code, but does not impact the associated regulatory burden experienced by residents and property owners or the staff time and administrative overhead. The amendment would ensure that the criteria used to evaluate hazard trees are included in the definition of “hazard tree”.

All aspects of this policy alternative can be achieved by amending and expanding definitions within the Tree Code, and would have little to no impact on other areas of the code. Each approach provides a very standardized methodology for assessing risk potential and has advantages and limitations that require training and experience to be applied appropriately by a qualified professional. The City Contract Arborist’s opinion is that the quantitative methodology is more objective because the point system is based on very specific criteria that could be incorporated into the code in order to better define the risk rating methodology. However, the qualitative approach is quickly becoming a more widely used approach. The City Contract Arborist suggests that Tree Risk Assessment Qualified arborists be required if the qualitative methodology is adopted. A quick search on the International Society of Arboriculture “Find an Arborist” webpage identified 28 arborists with Tree Risk Assessor Qualification currently advertising their services in Lake Oswego.

## **Type I Permits**

### **Public Input**

Public input on Type I permits generally expressed a desire for the code to be more flexible. The degree of flexibility desired varied from allowing the removal of any number of smaller stature trees to limiting the types of property where a permit would be required. Other suggestions included expanding the size range of trees that can be removed with a Type I permit to include some trees that currently require a Type II permit. The 2001 Tree Code Task Force also examined issues related to Type I permits and suggested changing the size of trees allowed under Type I from 5-10 inches DBH to 6-12 inches DBH, and to allow some species of trees to be removed under the Type I process regardless of size.

Committee discussion on this issue reflected the range of opinions expressed in public input. Additionally, the Committee discussed other scenarios, such as eliminating the Type I permit from the code altogether. The counterargument to this suggestion was that the current Type I permit allows property owners flexibility to remove some smaller trees with a simple and

inexpensive process, but appropriately limits the number of trees that can be removed, and helps the City monitor the frequency of tree removal. The Committee was unable to reach a consensus on this suggestion. The idea of larger changes to the regulatory structure of the Tree Code in its entirety were a part of this discussion, but will be addressed in later policy options. Other Committee members expressed concern that the property owners could continually apply for Type I permits in order to prevent any trees from reaching a larger stature, eventually removing all trees from their property. Ultimately, the Committee was able to reach consensus exceeding a two-thirds majority on three adjustments to the Type I permit, discussed below, that were perceived to benefit property owners with minimal impact on the preservation of higher value trees. An additional proposal by the Significant Tree Discussion group is also included below because the Committee did not discuss or vote on the proposal due to lack of time.

### **Current Policy**

In the Tree Code, a “tree” is defined as “any woody plant having a trunk five caliper inches or larger in diameter at breast height (DBH), ... a woody perennial plant, often but not always with one dominant trunk, with the capacity to reach a mature height greater than 16 feet, and primarily referred to in the latest edition of Trees to Know in Oregon (Oregon State University Extension Service)”. Based on this definition, permits are not required for any tree under five inches DBH. Type I permits allow a property owner on a developed single-family residential lot to cut up to two trees between five and 10 inches DBH per calendar year, and simply requires a \$17 application fee and site plan, which can be submitted by mail, email, or in person. The DBH calculations for trees with multiple stems involve calculating the DBH below where the trunk branches into multiple stems. This means that some large shrubs such as rhododendrons and camellias can technically qualify as a tree and require a permit to remove. In fact, in one case, the School District had to apply for a Type II permit to remove mature rhododendrons that were over five inches DBH because a school property does not qualify for a Type I permit (Type I permits are only available to developed single-family lots). However, shrubs are not included in the latest edition of “Trees to Know in Oregon”, indicating that they are not meant to require permits for removal.

Type I permits may not be issued for trees that are protected as a condition of approval for a development permit, for properties on the City’s Historic Landmark Designation list, for heritage trees, for trees located in sensitive lands or the Willamette River Greenway overlay district, for trees located within the Oswego Lake setback, or located on property owned by the City of Lake Oswego or dedicated to the public, including parks, open space, and public rights-of-way. If the application demonstrates that the planned removal of a tree or trees qualify for the Type I permit, the permit is issued without further review.

## **Policy Alternatives**

### **6. Change the tree size parameters of Type I permits from between 5” and 10” DBH to between 6” and 12” DBH.**

Consideration of this change was supported by a Committee vote of 21-2 at the November 16 meeting. Review of tree regulations in other cities demonstrated that six inches was a more common DBH used to define trees for the purpose of regulation. The change would involve amending the trunk size used to define a tree from five inches to six inches DBH, and to increase the upper limit threshold for Type I permits from 10” DBH to 12” DBH. The 12” threshold for tougher regulatory considerations on tree removal is reflected in a number of other city’s tree codes, including West Linn.

This adjustment would ease the regulatory burden experienced by property owners by allowing slightly larger trees to be removed without a permit, and by increasing the size range of trees that qualify for a Type I permit, but would retain the cap that limits Type I trees to two per calendar year. Eliminating the permit requirement for some smaller trees will reduce staff time and other costs related to issuing the permit. The Type II permit review is significantly more involved than the Type I review. Allowing more trees to qualify for a Type I permit as opposed to a Type II permit will reduce the time and costs associated with more extensive application reviews. The current criteria of review that define the situations where a Type I permit may be issued are clear and objective. This adjustment does not impact the review process or the clarity or objectivity of the criteria for Type I permit applications.

This policy alternative would only require changes in the DBH used to define a “tree” and in the definition of the upper threshold of a Type I permit. No substantive changes to the review procedures used to approve or deny permit applications would be necessary. Due the reduced regulatory burden experienced by residents and property owners and the resulting reduction in staff time and administrative overhead achieved with only minor adjustments to the code, staff supports this alternative.

### **7. Adapt the Current Minor Forest Management Permit Model for Properties <1 acre**

This policy alternative was presented by the “Significant Trees” group during the December 7 meeting as an alternative to the current Type I permit. The concept would adapt the current Minor Forest Management section of the code for broader application. Under this policy alternative one permit could be issued each year to property owners for the removal of up to three trees, or four square feet of basal area per year, whichever is greater. This permit would apply to any lot that does not qualify as a “large forested tract”, regardless of the lot size or the amount of existing canopy cover on the site, but would not

be allowed if there is a pending application for a minor or major development permit. The permit would not allow the removal of trees that are:

- Protected by a condition of approval of a development permit
- Located on property on the City's Historic Landmark Designation List
- Heritage Trees
- Located within a Resource Conservation Overlay District
- Located within a Greenway Management Overlay District
- Located within the 25-foot Oswego Lake Special Setback
- "Significant trees" (defined)

This permit would replace the current Type I procedure. Type II, Dead, Hazardous, Invasive, and Emergency permits would be retained and the removal of additional trees that qualify under these permits would be allowed. The number of trees or basal area allowed to be removed per year under this modified Minor Forest Management permit would be a variation from the current Type I procedure and other proposed alternatives.

This policy alternative represents a reduced regulatory burden on property owners because they would be able to remove more or larger trees than the current Type I permit would allow. The City could see a reduction in staff time and administrative overhead if this alternative allows for the removal of trees that would otherwise be processed as a Type II permit, which involves a significant amount of staff time. The review criteria are number of trees or basal area removed. Both are clear and objective. The main difference between this alternative and the current Type I permit is that it would allow the removal of an additional tree, or a larger tree than currently qualifies for Type I, provided the tree is not considered "significant". This would involve repealing the provisions of the Code that establish the current Type I permit and replacing them with the modified Forest Management Permit. Staff is neutral regarding this alternative.

#### **8. Exempt shrubs from Tree Code regulations.**

This alternative was supported by a Committee vote of 21-2 at the November 16 meeting. The consideration of this policy alternative provides an opportunity to determine if the regulation of large shrubs is an intent of the Tree Code. The current definition of "tree" states that among other qualifications, a "tree" should be commonly referenced in the latest edition of "Trees to Know in Oregon" published by the Oregon State University Extension Service. Shrubs are not included in this publication, indicating that they are not intended to be covered by the Tree Code. However, the definition states that specific woody plants, including arborvitae, photinia, and English laurel, are exempt, making

it unclear if other shrubs qualify as a tree. Modifying the definition of tree to specifically exempt all shrubs would clarify this issue.

The overall impact of this change on the regulatory burden of the Tree Code, as well as staff time and administrative overhead, is negligible due to the rarity of these types of permit requests. However, the primary benefit of this policy alternative would be to improve the clarity and intent of tree regulations by more clearly stating whether shrubs require a permit for removal. This alternative would result in a simple revision to the definition of “tree” to specify that shrubs are not regulated by the Tree Code. This policy alternative is supported by staff.

**9. Allow Type I permits to be issued to remove fruit trees regardless of the size or number of the tree(s).**

This alternative was supported by the Committee by a vote of 21-2 in the November 16 meeting. It involves modifying the Type I permit criteria to allow for the removal of any quantity of fruit trees of any size. Fruit-bearing trees may create issues for property owners as falling fruit creates mess and can attract a number of insects or scavenging animals. However, consideration should be given to the fact that some fruit trees may be large and prominent or of historic value, and fruit trees are beneficial for wildlife. In addition, some fruit trees may be ornamental, and some species are flowering or without edible fruit. For example, Callery pears are a common street tree, but are flowering ornamentals, and many species of ornamental flowering plums have edible fruit, including several varieties that are commonly planted as residential street trees.

Distinguishing between common fruit trees that were planted for the purposes of growing fruit and ornamental flowering trees of the same genus should be considered if the intent is to make the removal of trees with fruits that are commonly eaten more efficient. Most edible fruit trees are relatively small in stature and are not significant to the neighborhood character. Typically fruit-bearing trees are located in the yards of private residences and are commonly requested for removal because they have not been well maintained. The code language could specify non-ornamental edible fruit trees or fruit trees that were planted for the purposes of growing fruit in the Type I permit criteria and allow staff to discern what constitutes a fruit tree under the intent of the code. Alternatively, the code could include a specific list of what is or is not considered a fruit tree under the Type I criteria.

Allowing the removal of these types of trees under the Type I, as opposed to the longer and more costly Type II process, represents a clear reduction in the regulatory burden of the Tree Code. By avoiding the costly and time consuming Type II application review, staff time and administrative overhead would be reduced. The criteria could be

written to be clear and objective, based on the consideration of ornamental and flowering fruit trees. Implementing this policy alternative would require adding a simple amendment to the Type I permit classification. Assessment of this alternative demonstrates that it complies with all aspects of the Council charge. Based on these determinations, staff supports this policy alternative.

## **Type II Permits**

### **Input**

The highest proportion of comments on the Tree Code were related to Type II permits. The input reflected a perception of unfairness in the review of Type II permit applications due to the subjective nature of the review criteria. A desire for clear and objectively measurable standards was expressed both in the comments received from the public and the Committee discussion. Concerns were also expressed in both public input and Committee discussions about the individual rights of property owners to manage their property as desired. Some of the more specific ideas presented through public input involved establishing standards based on the size and species of the tree to be removed, considering individual property and neighborhood characteristics in permitting decisions, and avoiding the potential for contentious situations between neighbors. There was also a desire expressed by both the public and Committee members to regulate tree removal associated with development more strictly than other tree removal because development typically involves the removal of more trees and has a far greater impacts to the neighborhood.

Establishing clear and objective standards for the review of Type II permit applications was the main focus of Committee discussions at its November 16 meeting. The most difficult criterion to interpret is the criterion that states that the tree removal cannot have a “significant, negative impact on the character, aesthetics, or property values of the neighborhood.” The value and significance of a tree’s contribution to the neighborhood’s treed character and aesthetics, and its resulting effect on property values varies among individuals and any person could argue that the removal of even a small tree could have a “significant negative impact on the character, aesthetics, or property values of their neighborhood”. For this reason, an applicant’s experience with the Tree Code can vary drastically. An applicant for Type II tree removal may experience more difficulty due to disputes between neighbors and/or a neighbor’s propensity to complain. The Committee was also advised that the current subjective Type II criterion creates uncertainty for both the applicant and neighbors who don’t know what factors or information staff considers in determining whether the criterion is met.

The complexity of the issues related to the Type II permit was apparent in the Committee discussions. Early discussions on Type II permits addressed the concept of what

constitutes a “significant tree” for the purpose of the review criteria and a discussion group consisting of six members of the Committee agreed to research the concept further and report back to the Committee. The discussion group made a presentation at the November 16 and December 7 meetings and suggested that the approximate age of a tree could be used to create a clear and objective definition of a significant tree. Significant trees could be defined as a tree of a certain size, which would vary according to the species of tree. The group determined that a list of significant trees by species and size should be recommended by the City Contract Arborist. The Committee did not specify how a definition of “significant tree” should be incorporated in the Type II criteria; however, such a definition could be beneficial in establishing greater protections for more desirable trees, such as native species, and could help to clarify when tree removal might have a significant, negative impact on the neighborhood if that criterion is retained.

During the November 16 meeting, the Committee divided into small groups to brainstorm how to improve the process of reviewing Type II applications. The Committee voted on the resulting ideas through an online survey conducted after the November 16 meeting. Those ideas with the most support are incorporated in the policy alternatives discussed below.

### **Current Policy**

Type II permits are the most time- and cost-intensive applications for both property owners to apply for and staff to administer. Type II permits are for the removal of trees for construction and/or landscaping purposes that do not qualify under a Type I permit (or other permit type). An applicant is required to submit an application form, questionnaire, site plan, and mitigation plan. The cost is \$148 plus \$17 per tree and a \$22 records retention fee (based on 2016 fees). After the application and supporting materials are submitted, a sign provided by the City must be placed in a visible location on the property and a 14-day public comment period begins, during which staff visits the site.

The criteria for issuance of a Type II tree cutting permit require the applicant to demonstrate that the tree removal is for landscaping or development purposes, will not have a “significant negative impact on erosion, soil stability, flow of surface waters, protection of adjacent trees, or existing windbreaks” nor a “significant negative impact on the character, aesthetics, or property values of the neighborhood”, and that the removal is not for the sole purpose of creating or enhancing views. Following consideration of these criteria, and within two business days of the end of the comment period, staff posts a sign at the site notifying the public of the tentative decision on the application and there is another 14-day period during which the decision can be appealed.

The majority of type II permit applications are approved; however, it is fairly common for an application to be withdrawn or for trees to be partially withdrawn from an application in

order to avoid denial of a permit. Partially or fully withdrawn applications are typically the result of the applicant being notified by staff that the application will not be approved because one or more trees do not meet the criteria for approval. An applicant will frequently elect to withdraw the application in order to recover a portion of the application fee if they do not wish to appeal the decision. In other cases, applications are withdrawn due to an error in the type of permit applied for (e.g., tree is hazardous or invasive) or due to neighborhood opposition.

### **Policy Alternatives**

#### **10. Establish a review system based on well-defined considerations that can be used to approve or deny permit applications.**

This policy alternative is partially based on the West Linn tree code. Under this model, the current Type II tree removal criteria would be eliminated and replaced with “approval and denial factors.” The “approval factors” would outline the reasons why a permit may be approved. These “approval factors” could either serve as considerations in the review of the removal application and would indicate a likelihood that the application would be approved, or could serve as the actual approval criteria that if met, would guarantee approval. The first option, where the factors are considerations, would allow greater flexibility for staff to preserve trees because the “approval and denial factors” would just be considerations and would be balanced if the approval and denial factors conflicted. For example, if the tree is damaging a house foundation and no reasonable alternative exists (approval factor), but it is a significant tree (denial factor), the tree would be approved for removal even though the denial factor applies due to lack of a reasonable alternative. Conversely, if a tree is damaging a sidewalk and a reasonable alternative exists (approval factor), and its removal would negatively impact soil stability (denial factor), the request would be denied because a reasonable alternative exists. If none of the approval or denial factors apply, then the tree removal request may be approved. This would allow flexibility to remove trees for any reason as long as the denial factors do not apply. This option would not result in purely clear and objective criteria; however it would be more clear and predictable for applicants and neighbors because all of the considerations are listed, which is not the case under the current Type II criteria. For decisions, staff would identify which factors contributed to the decision on the application, and the decision could be appealed.

Under the second option, the “approval factors” would serve as the criteria of review, and the existence of one or more of the circumstances in the approval factors would guarantee permit approval. If none of the “approval factors” were determined to exist for the proposed application, then staff would review the “denial factors”. If none of the denial factors applied, the application could be approved, but if one or more of the

denial factors did apply, the application would be denied. This second option would be clear and objective, but would not provide any flexibility for staff to address unique situations or to balance conflicting criteria and would likely result in more tree removal throughout the City.

For either option, applicants would be required to fill out a simple checklist to determine if any of the “approval or denial factors” applied to their request and staff would make a site visit to verify and evaluate the application.

**Following are the factors that the Committee supported as potential reasons for approving a Type II application.**

**“APPROVAL FACTORS”:**

***a. Damage to an existing structure by a tree***

This factor was supported by a Committee vote of 21-1 in the survey following the November 16 meeting. Staff would need to verify the damage during a site visit. The severity of the damage in these cases would need to be considered as well as whether the situation can be remedied through normal maintenance or pruning or other reasonable alternatives. The degree of damage necessary to approve permits under this consideration would need to be determined or else left up to staff to evaluate on a case by case basis.

This factor would have little impact on the regulatory burden of the Type II process as most property owners and residents facing this situation could expect their permit to be approved under the current code. It would also have little impact on the staff time and administrative overhead required for review of Type II permit applications. The benefit of this factor is the establishment of a more clear and objective criterion that can be indicated on an application and easily confirmed by staff during the site visit.

***b. Damage to private infrastructure such as walkways or plumbing by a tree***

This factor was supported by a two-thirds majority vote of the Committee (17-5) in the survey following the November 16 meeting. Staff would confirm the damage during the site visit. The applicant would need to demonstrate that the damage caused by the tree is ongoing and the damage could not be remedied through normal pruning or maintenance or relocation. The degree of damage necessary to approve permits under this consideration would need to be determined or else left up to staff to evaluate on a case by case basis.

This factor would help reduce the regulatory burden of the Type II process by ensuring that most property owners and residents with relatively severe damage and with no reasonable alternative would be issued a tree removal permit. The review process is similar to the existing process, so it would also have little impact on existing staff time and administrative overhead. As was the case with the first criterion of review under this policy alternative, the benefit of this factor is the establishment of a clear and objective criterion that can be indicated on an application and easily confirmed by staff during the site visit.

***c. Potential for damage due to tree's proximity to a foundation.***

This factor was supported by a two-thirds majority vote of 16-6 in a survey to the Committee following the November 16 meeting. The resident or property owner would indicate on the application that the tree(s) proposed for removal are located in close proximity to the foundation of a home or another structure such that damage to the foundation is imminent or likely as the tree grows larger. Staff would need to confirm the tree's proximity in the site visit. If the clear and objective policy option is selected, where approval would be guaranteed if the factor exists, the distance at which a tree would be considered too close to a foundation would need to be specified (e.g., the basal flare is within five or 10 feet of a house foundation). If the discretionary option is selected, where this factor would just be a consideration in the review, it would not be necessary to specify a distance from the tree to the foundation, but would be left to staff discretion based on the site visit.

This factor does not represent a relevant change in the regulatory burden of the Type II process because applications for trees that are too close to a home would likely be approved in most cases under the current review process. This would not impact the costs associated with the existing review process either, as the review process would be the same. The benefit of this factor would be to establish a clearer and more predictable criterion for review. A report from a qualified professional could be requested if staff was unable to make a clear determination.

***d. Tree is in poor health***

This factor was supported by a two-thirds majority vote of 19-3 in the survey following the November 16 meeting. Confirmation of the tree condition would be verified during the site visit by staff. A tree that is in poor health will likely exhibit symptoms that are abnormal for the species. Detecting symptoms and distinguishing between what is normal or problematic can be difficult, especially to an untrained eye. Some symptoms and signs of a tree in poor health include: reduced growth, chlorotic foliage (unseasonable or uncharacteristic paleness of leaves), an overall thinning of the

crown, branch or top dieback, a history of branch failure, premature fall coloration and defoliation, abnormally abundant fruit and flower production, advanced decay, or other disease symptoms related to specific biotic (e.g. fungi, viruses, bacteria, insects, etc.) or abiotic (e.g. chemicals, soil conditions, etc.) disorders. A tree in poor health may also be overgrown with invasive species such as English ivy.

This factor does not represent a relevant change in the regulatory burden of the Type II process because applications for trees that are in poor condition would likely be approved for landscaping reasons under the current review process. This factor will not impact staff time and administrative overhead because it requires the same level of review as the existing Type II criteria. The indications of a tree that is in poor health could be listed with the factor to ensure clarity and predictability.

***e. Thinning to improve health of other trees.***

Consideration of this aspect of Type II permit review was supported by a two-thirds majority vote of 19-3 in the survey following the November 16 meeting. Thinning is a term used by foresters and is the practice of removing trees with poor form and reduced growth rates generally in order to maximize timber volume, generate immediate income, or produce wildlife habitat. Thinning involves the selective removal of trees to improve spacing, thereby improving the available growing space for the remaining trees to create a healthier stand. Thinning may also create openings in the canopy to allow sunlight to reach the forest floor, which can result in a more diverse understory layer. It is important to thin a stand before it becomes overcrowded in order to maximize growth of the remaining trees, maintain tree health, and avoid negative responses to thinning. Selective tree removal can also create wind throw hazards where trees have grown up adapting to the shelter from adjacent trees; removal of trees may predispose the remaining trees to failure in wind events. Some indicators of stability include relatively long live crowns, good height to diameter ratios, and good taper. Also, if a stand is thinned after it becomes overcrowded, the trees may be too stagnant to respond to the treatment.

Trees in forested stands undergo natural stand dynamics, whereby trees compete for growing space and some become dominant or codominant trees with relatively long live crowns and good form, while others are outcompeted and become intermediate in crown class or suppressed. Intermediate trees may be nearly the same height as codominant trees, but are smaller in diameter, generally have smaller live crowns, and are relatively more susceptible to wind throw if exposed. Suppressed trees become overtopped by surrounding trees and are generally not sustainable and in decline or dead. The removal of intermediate and suppressed trees to improve stand

health could be permitted under this factor. In some cases, it may also be appropriate to thin to remove codominant trees or particular species from a mixed species stand.

Confirmation that the tree removal constitutes a thinning scenario would occur during the review of the application and the site visit. The City could reserve the right to require a report from a qualified professional to substantiate the need for thinning and to assure the removal will not negatively impact nearby trees.

This factor would reduce the regulatory burden experienced by residents and property owners by allowing tree removal for the purposes of thinning. A qualified professional can recommend what trees to leave in order to meet the property owner's objectives and evaluate potential impacts to adjacent trees to avoid negative consequences. The complexity of this type of review, and the need for a qualified professional to assess the situation could lead to a slight increase in the administrative cost of review of this factor.

**Following are the factors that the Committee supported as potential reasons for denying a Type II application.**

**"DENIAL FACTORS":**

***f. Soil stability and water runoff issues***

Consideration of this factor was supported by a two-thirds majority vote of 18-5 by the Committee in the survey following the November 16 meeting. One of the current criteria for review of Type II applications requires that removal not have a significant, negative impact on soil stability or the flow of surface waters; however, no specific considerations or details are included in the criterion. This factor is difficult because conditions can vary greatly from site to site, but it can be made clearer and more predictable by including considerations. For example, erosion control permits are required by the City when the cumulative area of soil disturbance is over 500 square feet or when over 50 cubic yards of fill is proposed. An erosion control permit is also required if the disturbance is within 50 feet of a riparian area, such as a creek, river, or lake, even if the area of soil disturbance is less than 500 square feet. Other factors, such as rainfall, removal of other vegetation, and slope can impact the potential for erosion. This factor could include a list of considerations related to erosion, and permit approval could be conditioned on obtaining an erosion control permits, and/or minimizing the removal of vegetation or requiring stumps to be left intact.

Surface and stormwater issues could also be considered as a part of this factor. Lake Oswego has many springs, often with a surface expression. The removal of large trees can result in springs emerging. Tree removal can also have an impact on

stormwater systems. If the tree is located near stormwater infrastructure, including rain gardens, the removal of the tree could cause the infrastructure to cease functioning properly and these systems would need to be repaired or altered. Additionally, the City's proposed Stormwater Manual includes a provision that allows a property owner to receive a stormwater credit for the preservation of large evergreen trees. If an owner was allowed to remove a tree approved for stormwater credit, the stormwater management system on the site may need to be altered accordingly. The review of this factor could include a list of considerations to address these issues, and permit approval could be conditioned on the prevention of or remedy of those issues.

A list of considerations of potential issues with soil stability could be included with this factor. Staff could consult the 2013 Clackamas County Risk Map and the City's Soils Map to determine if the site has identified soil issues to help determine whether the removal could result in potential problems with soil stability. The City could retain the right to require a report from a qualified professional to substantiate that tree removal will not negatively impact soil stability. Tree removal applications could be conditioned to address soil stability issues, such as leaving stumps intact or minimizing vegetation removal.

These criteria of review do not impact the regulatory burden or the administrative costs of the Type II permit. The criteria are already considered under current review procedures, but because the specific considerations are not outlined, these criteria are not well understood by the public or staff. The change made to the code based on this factor would be a clarification of the considerations that will be assessed under the review criteria. This would greatly improve understanding by both staff and the public of the specific considerations.

**g. *Creation of a blow down hazard for other trees***

This factor was supported by a two-thirds majority vote of 16-7 by the Committee in the survey following the November 16 meeting. Removal of select trees from groups can impact the protection of adjacent trees that have grown up adapting to the shelter of these trees. Developing objective criteria for what constitutes a blow down hazard is challenging. Whether or not a tree will be predisposed to failure by adjacent tree removal depends on species, structure, site conditions, and more, and may require assessment by a qualified professional. One measure of stability that could be used, particularly for Douglas fir, is height to diameter ratio, which is the total tree height in feet divided by the diameter at 4.5-feet above ground level. Tall skinny trees are generally more susceptible to bending or breaking, particularly after dense stands are thinned. According to the USDA Forest Service *Field Guide for Hazard-Tree*

*Identification and Mitigation on Developed Sites in Oregon and Washington Forests* (2013), trees with 60-80% height to diameter ratios have low failure potential and trees with height to diameter ratios greater than 100% have high failure potential.

This criterion of review would not have a relevant effect on the regulatory burden or administrative costs of the application process for Type II permits. Professional judgment is required for this type of consideration due to the necessity of a site-specific assessment. The addition of this factor would help improve the overall clarity and objectivity of application review by clearly establishing what will be considered, and providing insight into how the assessment of this factor will be performed.

**h. *Tree is considered a “significant tree”***

This factor was discussed on multiple occasions by the Committee. Consideration of this concept as a criterion of review was supported by a two-thirds majority vote of 18-8 in the survey following the October 19 meeting, but was two votes short of a two-thirds majority with a 14-9 vote in the survey following the November 16 meeting. The identification of what is considered a “significant tree” would be necessary to ensure the factor is clear and objective. This factor could replace the current criterion that requires that the tree removal not have a significant, negative impact on the character, aesthetics or property values of the neighborhood, which is highly subjective.

Significant trees have been defined in many ways by other jurisdictions. In general, larger trees are considered to be of greater importance and some emphasis is placed on native species. A definition of significant tree could include objective criteria such as species, size, and general condition or horticultural quality, but might also consider more subjective criteria such as placement on the site, prominence, contribution to neighborhood aesthetics, rarity or uniqueness, or whether or not it is the right tree in the right place. A few examples from other jurisdictions are below:

- The City of Seattle defines an “exceptional tree” as one that is “designated as a heritage tree...” or “rare or exceptional by virtue of its size, species, condition, cultural/historic importance, age, and/or contribution as part of a grove of trees as determined by...” a specific methodology. The methodology is based on species and size and whether or not the tree is located within a grove. They provide an extensive list of threshold diameters for native and non-native species and criteria for determining the threshold diameter for any other species not included in the list. Trees that meet the size threshold or grove definition are not considered exceptional if a qualified professional

recommends removal of the tree based on a tree risk assessment. The City further provides criteria for what constitutes a qualified professional.

- The City of Hillsboro recently adopted development code amendments that include definitions of mature and specimen trees. Mature trees include any deciduous tree measuring eight inches and larger or evergreen tree measuring at least 30 feet in height. Mature trees require mitigation on a tree for tree basis. Specimen trees are defined more specifically based on species and diameter measured four feet above ground level and include any single Douglas-fir greater than 24 inches; and single grand fir, ponderosa pine, western hemlock, or western red cedar greater than 12 inches; any other single conifer greater than 20 inches; any single red alder, bigleaf maple, or Oregon white oak greater than 12 inches; or any other single deciduous tree greater than 20 inches. Specimen tree removal is only permitted when a Certified Arborist determines that the tree is a safety hazard, dangerous, or diseased, weakened, or dying; or a Registered Engineer determines that removal of the tree is necessary to accommodate construction equipment access; to accommodate necessary grading; or to accommodate proposed buildings or other improvements.
- The City of Portland previously had a list of significant trees in Title 33 (land divisions) based on species and size, but removed the list with recent code amendments. The current code emphasizes the preservation of trees 20 or more inches in diameter regardless of species and the importance of keeping grove trees intact. The City of Portland also extended its code to regulate tree removal on all properties. The City's permit application notes that a permit is typically granted for dead, dying, or dangerous street trees, or private trees that are dead, dying, or dangerous; within 10 feet of a building or attached structure; on the nuisance tree list; or up to four healthy trees smaller than 20 inches in diameter per calendar year. The application also notes that trees 20 inches and larger are generally not permitted to be removed because of excessive litter or mess, it is perceived to be too tall, obstructs a view, or causes too much shade, is costly to maintain, or presents a hazard that can be abated with treatment.
- The City of Tigard defines significant tree as "any tree or stand of trees of landmark importance due to age, size, species, horticultural quality or historic importance that has been approved as a significant tree by the Tigard City

Council or the designated city board or committee and which status has been accepted by the tree owner or responsible party” and significant tree grove as “a stand of trees that has been identified as significant through the Statewide Land Use Planning Goal 5 process. A Significant Tree Grove Map is maintained by the director of community development for the City of Tigard, or designee.” The City also offers two times canopy cover credit for the preservation of existing trees on development sites that are in good condition and suitable for preservation, based on a rating system outlined in the City’s Urban Forestry Manual. A Certified Arborist who is also Tree Risk Assessment Qualified is required to complete the assessment.

- On development sites in West Linn, the City’s arborist determines which trees are significant based on “consideration of their size, type, location, health, long term survivability, and/or numbers.”

The Significant Tree Discussion Group formed by the Committee proposed that certain species of trees could be considered significant, with the determination based on the size of the tree, similar to the City of Seattle’s approach. An age that was considered as significant would be determined, and the definition would reflect the approximate size of the species at that age. A table included in the code could provide the species-specific thresholds that qualify as significant. This strategy would be both clear and objective, but would leave little flexibility for staff to respond to unique cases.

An alternate strategy for addressing the concept of a “significant tree” would be to establish clear considerations that can be objectively measured, but allowing a subjective determination based on those considerations. Staff could identify a tree as significant based on consideration of factors such as the species, size, health, and/or location of the tree. If the preservation of native trees should be emphasized, then this factor could specify that special consideration for determining significance is given to certain native species over a certain diameter (e.g., Douglas firs that are 20 inches DBH or greater). More subjective measures could also be considered, such as historical visual, and/or ecological significance. This would provide the flexibility needed to respond to individual situations while providing a clear indication of how the decision is made.

Inclusion of this factor does not impact the regulatory burden or administrative costs associated with Type II permit application review. The current review procedures consideration of “significant negative impact on character and aesthetics...” implies the intent to preserve significant trees; however, it is not understood what considerations staff currently reviews. Establishing a list of considerations that will be used to

determine if a tree is significant would greatly improve understanding and predictability and better guide decisions made when significant trees are involved.

**i. The sole purpose for removal is to provide or enhance views.**

This factor was not specifically identified by the Committee at its November 16 meeting; however, in the survey following the at its October 19 meeting, the Committee elected not to include the consideration of allowing tree removal for the purpose of views as one of its policy issues for this project. Additionally, the Council charge specifies that the amendments to the Tree Code should meet the intent of current Code. The current Code includes this factor as a criterion and if it is not carried forward in the amended Code, could result in a significant amount of tree removal throughout the City. As a result, staff recommends that this factor for denial be included.

A change from the current Type II criteria to a review of the “approval and denial factors” outlined, above, do not impact the overall regulatory burden of the Type II permit or the administrative costs of Type II permit review, as the considerations are generally a part of the current review criteria. The primary benefit would be to more clearly define for staff and the public what factors will be considered for Type II permit applications, and to provide more predictability in how the factors will be applied. Not all of the proposed criteria are purely objective, but a certain level of subjectivity is necessary for staff to respond to unique situations. In addition, consideration of issues related to the social benefits of trees requires a level of subjectivity, as it can be difficult if not impossible to objectively measure those benefits. This policy option reflects standards of review already used by staff, and therefore does not represent drastic changes to the current policy. Based on this assessment, staff supports this policy option, provided the “approval and denial factors” are considerations that would be balanced if the approval and denial factors conflict.

**11. Regulate tree removal for development more strictly than other tree removal requests.**

This policy option was supported by a Committee vote of 21-5 in a survey following its September 21 meeting. The main issue is that more trees tend to be removed for development purposes, which often has a negative impact on the character and aesthetics of the neighborhood. This was discussed as being a particular concern in neighborhoods with a lot of development pressure, such as the First Addition-Forest Hills neighborhood. Several members felt that in order to effectively preserve trees, stricter regulations for tree removal for development purposes should be considered as well as incentives that would more effectively encourage the preservation of significant trees on the site. Other than the

general suggestion to regulate tree removal for development purposes differently, the Committee did not vote on specific recommendations to address how that would be implemented. The following options are based on related discussions by the Committee on significant trees and encouraging the preservation and planting of native trees.

**a. In addition to the consideration of the “approval and denial factors” outlined in Alternative #9, above, require the preservation of “significant trees” (defined) for development, unless it can be shown that no reasonable alternative exists to allow development permitted by the zone.**

This criterion is similar to the existing criteria that the removal not have a significant, negative impact on the character and aesthetics of the neighborhood, but is more restrictive in that it requires the preservation of trees that are defined as “significant” regardless of whether or not their removal would have a significant, negative impact on the character and aesthetics of the neighborhood. For example, if a builder wants to remove a 22-inch fir to construct a driveway, under the current standards, it could be approved even if there were reasonable alternatives to site the driveway if its removal would not have a significant negative impact on the character and aesthetics of the neighborhood. Under this proposed criterion, if for instance, all viable Douglas firs that are 20 inches in diameter or greater are defined as “significant”, the builder would be required to preserve the tree because the tree is “significant” and there are reasonable alternatives.

This option would increase the regulatory burden on property owners by potentially increasing the costs of development in order to accommodate more trees; however, it would improve predictability by providing clear and objective standards. Greater predictability provides more certainty for builders, property owners and neighbors and could decrease the number of contentious applications. This option could slightly decrease the amount of time staff spends reviewing an application because it would no longer be necessary to make a subjective determination on the impacts the removal would have on the neighborhood. An amendment to the existing Type II criteria would be necessary, but it would not involve any major changes to the existing Tree Code. Another issue to consider is that “development” would need to be defined in order to clearly define the situations in which this criterion applies. Staff supports this alternative.

**b. Require more mitigation when “significant trees” (defined) are removed.**

This is a regulatory approach to encourage the retention of significant trees and would only apply to tree removal associated with development. Mitigation for the removal of significant trees could be increased to a 2:1 or higher ratio.

This option would increase the regulatory burden on property owners by increasing the amount of mitigation that would be required and costs associated with mitigation. The standard would be clear and objective and would not increase staff time or costs since mitigation is already reviewed and inspected for development applications under the current standards. This option would not involve a significant change to the current code. Staff supports this alternative.

**c. Allow the number of required mitigation trees to be reduced when “significant trees” (defined) are preserved on the site.**

This is an incentive-based approach that rewards development that retains significant trees on the site. The number of required mitigation trees could be reduced by a specified amount for every “significant tree” that is preserved. Mitigation could be reduced by a certain number of trees for every significant tree preserved, but a cap could be imposed so that the reduction does not exceed a certain percentage of the total mitigation trees required. For example, mitigation could be reduced by one tree for every “significant” tree that is preserved, not to exceed 25% of the total mitigation trees required. So in a case where an applicant retained three “significant trees” on the site and is required to plant a total of seven mitigation trees, the applicant would be allowed to reduce their mitigation requirement by two trees, which is 25% of the total mitigation trees required (rounded up).

This option could potentially reduce the regulatory burden on property owners by providing an option that could reduce the amount of mitigation that is required. It is clear and objective and does not increase staff costs or review times. It would also not involve any significant amendments to the Tree Code. Staff supports this alternative.

## Mitigation

### Input

Most of the input received from the public on mitigation related to providing more flexibility to mitigation requirements in situations where a new tree might not be desired, such as when the property contains a lot of trees, or space is limited. Concern was also expressed over the care of mitigation trees. Other suggestions for improvements to the mitigation requirements were taken from the 2001 Tree Code Task Force. These included reducing the required size of mitigation trees from two inches to 1.5 inches and requiring mitigation trees to be native when a native tree is removed. It was suggested that 1.5 inch nursery stock is more widely available, and that the survival rate of smaller trees is higher. Requiring that native trees be replaced with native mitigation trees reflects the value of those species to the urban forest.

The Committee discussion on mitigation largely reflected the input received from the public to allow more flexibility in the mitigation requirements. An example of a condominium complex was provided to demonstrate a situation where current mitigation requirements created a cycle in which trees were constantly being removed and replanted due to a lack of space and dense canopy cover. Pictures of mitigation trees were also provided to demonstrate the visual difference between 2-inch and 1.5-inch mitigation trees.

### **Current Policy**

Mitigation is required for all Type II and emergency tree permits, and may be required for invasive tree permits if the trees are removed from the public right-of-way or Sensitive Lands, or if the tree was part of an approved landscape plan. Restocking may also be required under major forest management permits. Trees must be mitigated at a 1:1 ratio and must either be a minimum 2-inch caliper deciduous tree or a six- to eight-foot tall evergreen. One exception is the current reduced minimum size threshold for mitigation for invasive tree species removal from a Resource Conservation or Resource Protection Overlay District, which is either a minimum one-half-inch caliper deciduous tree or a minimum 2-foot tall evergreen tree. The smaller sizes are more suitable in natural areas and provide some incentive for invasive species removal. Payment in lieu of planting mitigation is allowed only if staff determines that no feasible alternative exists to replant on the site. The payment in lieu of planting fee is \$127 per tree (based on 2016 fees). Mitigation required as part of a building permit or a minor or major development permit is inspected by staff - usually prior to the final building inspection. Mitigation that is not associated with a building permit or a minor or major development permit is generally not inspected because the total number of permits needing inspection exceeds staff capacity.

### **Policy Alternatives**

The Committee discussion during the December 7 meeting resulted in a number of suggestions for determining when exceptions for mitigation requirements could be allowed. A formal vote did not occur on these policy considerations, so all options discussed by the Committee are addressed below.

#### **12. Allow for exceptions to mitigation requirements based on an adequate stock of existing trees on the site. Following are alternative measurement criteria for determining adequate stock:**

##### **a. If a minimum tree canopy cover exists on the property**

Review of permit applications could involve assessing the current level of canopy cover on the property, as well as canopy cover that extends over property

lines when the trees providing the canopy are located on abutting or adjacent property. Canopy cover provided by trees on abutting or adjacent properties could count. The current GIS-based map system used by the City allows for a fairly accurate measurement of canopy cover; however, the aerial photographs in the map system are updated on an annual basis and may not reflect the actual site conditions if tree removal has occurred since the last update. For this reason, canopy cover would need to be verified on site.

Another issue is determining the minimum percentage of canopy cover on a site that would be required in order to reduce or eliminate the number of mitigation trees. Ideally, the percentage would be established on a rational basis, such as clearly defined tree canopy goals for the City, a percentage identified according to the zone (e.g., higher density zones would require less canopy cover) or by neighborhood, or available planting area on a site. Alternatively, an arbitrary percentage, such as 50% could be selected with the idea that any lot in the City that has 50% or more canopy cover over the entire site is adequately stocked with trees.

Reduction of the mitigation requirements based on the existing canopy cover on site would represent a reduced regulatory burden for some residents and property owners. The percentage of canopy cover required for property owners to be granted an exception to the mitigation requirements could be clearly and objectively defined. However, measuring and verifying the existing canopy cover as a part of the application review would need to be completed by staff. As such, this would represent an increase in the administrative time and costs of application review. Due to the difficulty of establishing a minimum canopy cover, and because this option would increase staff administration and costs, staff does not support this option.

**b. If a minimum number of trees exists on the property**

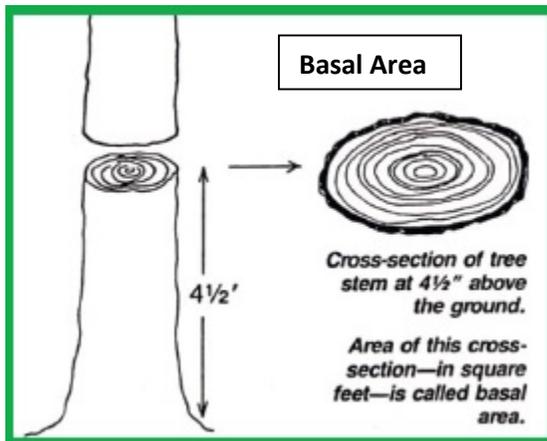
For this option to work, all of the trees on a property would need to be illustrated on the site plan submitted with the tree removal application if the applicant wanted to eliminate or reduce the mitigation requirements. On-site verification by staff may be necessary. The main issue would be determining the minimum number of trees that would need to remain on the site in order to qualify for a reduction or waiver of the mitigation requirements. The number could be based on objective measurements, such as the size of the property or the available planting area; however, the number of trees that can reasonably be accommodated on a site is highly variable depending on species and site conditions. For this reason,

the number of trees on a site is generally a poor measurement of determining whether mitigation should be required.

This option would reduce the regulatory burden associated with mitigating tree removal for some residents and property owners, but would increase the amount of time and effort to prepare the application. This option could also increase the administrative time and costs depending on how the tree numbers on the site would be assessed (particularly if species is taken into consideration). This option could be written as a clear and objective standard; however, given the other concerns discussed above, staff does not support this option.

**c. If a minimum basal area exists on the property**

This option would allow exceptions to mitigation requirements based on calculations of the total basal area of trees on a property. “Basal area” means the cross-sectional area (in square feet) of the trunk of a tree measured at 4.5 feet above mean



ground level at the base of the trunk. In order to calculate the total basal area on a site, the applicant would be required to provide a site plan illustrating the location and DBH of all trees on the property with the application. Staff would then need to calculate the total basal area of trees on the property. Based on the size of the property, if the number of trees met or exceeded a set level, then mitigation

requirements could be either partially or completely waived.

While the exceptions to mitigation requirements would represent a reduction in the regulatory burden experienced by applicants, this would be offset to a degree by the burden of measuring the DBH of all trees on the property. Staff would then need to use this information to calculate the total basal area on the property, thereby increasing the staff time required for permit review. Once the determination of the total basal area of trees on the property was made, the criteria set to provide exceptions to mitigation requirements could be clear and objective. While this measurement methodology is similar to that used for the existing Forest Management Permits, the number of properties that can qualify for Forest Management Permits is limited due to the minimum size of tree canopy required to qualify under this permit. Extending this measurement methodology to all permits

requiring mitigation would significantly increase the number of applications that staff would have calculate basal area. Staff's position on this policy alternative is neutral due to the increased burden on property owner's and the additional staff time needed to calculate basal area and possibly verify on site.

This policy alternative would reduce the regulatory burden of mitigation for property owners by providing relief from mitigation requirements if certain conditions were determined to exist. However, all of the measurement options represent an increased burden in either the information needed from the applicant or staff review, or both. In situations where the mitigation requirements were waived, staff would not need to inspect the mitigation, however, if the removal is not associated with a building permit or a minor or major development permit, staff would not inspect the mitigation anyway. All three options represent clear and objective criteria for determining mitigation requirements and all three options could be achieved through minor amendments to the code. Given the increase in complexity and difficulty in establishing minimum levels of trees or canopy under each option that are clear and objective, yet flexible enough to apply citywide, staff does not recommend policy alternatives 'a' and 'b', above, and is neutral on 'c'.

As an alternative to policy options 'a' through 'c', above, staff recommends that the Committee consider keeping the existing exception that allows payment in lieu of replanting when there are no feasible opportunities to replant on or off-site, but to amend this code section to specify how staff will determine if there is no feasible opportunity to replant. For instance, it could specify that staff will consider available planting space, the existing development and landscaping scheme, and existing canopy cover. This provides a clear understanding of the considerations, but allows sufficient flexibility to address each site individually.

### **13. Allow for exceptions to the mitigation requirements based on the purpose of the permit.**

Other options for allowing exceptions to mitigation requirements that were discussed by the Committee related to the purpose of removal under a Type II permit. The Committee discussed the following scenarios as reasons why required mitigation might be reduced or waived:

#### **a. If the tree removal is propose for thinning to improve the health of other trees.**

If the purpose of a Type II permit is to thin a stand of trees in order to improve the overall health of other trees, then replanting trees could be counter-productive. Staff would need to make a determination on whether mitigation would be required based on the information provided in the application and a site visit.

**b. If the tree is removed to improve solar access.**

If the purpose of a Type II permit is to improve solar access on a property, planting mitigation trees could also be counter-productive. Staff would need to make a determination on whether mitigation would be required based on the information provided in the application and a site visit. In addition, the exception could only be granted where the applicant concurrently applies for a building permit to install solar panels or devices, or to construct a structure designed for passive solar energy use.

This option would reduce the regulatory burden experienced by property owners by allowing exemptions from mitigation requirements in situations where replanting trees could counteract the reason trees were removed. The exemptions to the mitigation process would reduce staff time by eliminating the need to address mitigation as an aspect of the application review and approval. Objectively confirming that the proposed tree removal would act to thin a stand to improve the health of other trees would not be an issue. Clear and objective review of tree removal to improve solar access would be more difficult unless it is tied to a building permit to install or construct solar systems. In addition, tree removal for this purpose may not always be approved under the current Type II review criteria or the revised Type II criteria outlined in this report. These changes would involve minor adjustments to the Tree Code. Staff supports the option to reduce mitigation when the purpose of removal is necessary for thinning (for tree health) and where the applicant concurrently applies for a building permit to install solar devices or other planned solar features.

**14. Reduce the required size of mitigation trees:**

**a. To 1.5" caliper**

The 2001 Tree Code Task Force recommended reducing the required size of mitigation trees to 1.5 caliper inches due to increased availability (for instance, it is very difficult to find 2" Oregon white oak trees) and evidence of higher survival rates of smaller caliper mitigation trees. This concept is meant to increase the options available for the mitigation of tree removal. It would not reduce the quantity of mitigation required or the situations where mitigation requirements apply. Reducing the minimum size requirement for mitigation trees from 2" caliper to 1.5" caliper could provide property owners with a wider selection of species to choose from and reduce the cost of replacement trees. These slightly smaller trees can be expected to establish relatively faster than larger nursery stock and grow to meet or exceed the size of larger nursery stock in a shorter time frame. This is also the minimum size recommended by the City Contract Arborist that would be suitable for high use areas, including street trees, parking lot trees, or trees in high use park settings

because small trees in these location are more susceptible to damage and vandalism.

**b. To allow seedlings**

Another proposal discussed by the Committee was to allow seedlings to be used for mitigation. Seedlings can be purchased in large quantities at a much lower cost. They are easier to plant, but are fragile and thus can have a lower rate of survival, particularly in high use settings like residential yards, parking lots, and active-use parks. This concept would require a determination of the proper number of seedlings to require for the mitigation of tree removal. Ensuring the effectiveness of mitigation efforts if seedlings are allowed would require monitoring efforts by staff.

Seedlings are generally less suitable for mitigation because they are more susceptible to damage, take longer to replace the lost function of removed trees (particularly aesthetics), and may be overplanted and unmanaged. Nevertheless, the City does encourage planting seedlings, primarily through Arbor Week events and activities. For the past two years, the City has given away more than 100 native tree seedlings donated by Bartlett Tree Experts during Arbor Week. In addition, the City's Parks Department planted over 43,000 native plants to restore and enhance public open spaces and natural areas during 2015, including many tree seedlings.

Reducing the required size of mitigation trees would reduce the regulatory burden of tree mitigation by reducing the costs associated with purchasing and planting mitigation trees. Reduction of the size of mitigation trees to 1.5 inches would have no impact on the staff time and administrative overhead required to ensure compliance with mitigation requirements. Allowing seedlings to be used as mitigation trees would involve making changes to the review of mitigation efforts if effectiveness was a concern. Changes to the Tree Code to ensure effective mitigation efforts when seedlings are used would be more complicated, and establishing objective criteria would be another challenge. Based on this assessment, staff recommends allowing 1.5 caliper inch trees to be used for the mitigation of tree removal, but not seedlings. Staff does support and recommend the City continues its efforts to plant seedlings for restoration and to encourage property owners to plant seedlings outside of mitigation required for tree removal.

**15. Generate a list of desired mitigation trees.**

The Committee discussed a suggestion to generate a list of desired mitigation trees that an applicant could be required to select a tree from in order to satisfy the mitigation requirement. The City currently provides a list of trees that may be used to mitigate tree

removal in a publication called “Right Tree in the Right Place”, but an applicant is not required to select a tree from that list. The City also maintains a Master Plant List in LOC Chapter 50 Appendix 50.11.004. A brief review of the Lake Oswego master plant list by staff suggests that there is a need to update the Master Plant List. Some species could be added while others, such as invasive tree species currently on the Old Town street tree list, could be removed. The “Right Tree in the Right Place” publication would be a good resource for generating a mitigation tree list, but it could be updated to highlight native species. The publication includes useful information such as the common and scientific names of the trees, the size, height, and spread at maturity (30 years), the tree shape, appropriate type of soil and amount of sun exposure, whether the trees are suitable for planting beneath power lines, and any other notable remarks. In general, more specific criteria related to mitigation trees would help residents and property owners make an educated selection from the wide range of mitigation trees available.

This policy option could impact the regulatory burden of the Tree Code because it would limit the selection of mitigation trees that a property owner could choose from. It would not alter the criteria used to approve or deny a permit application and would not involve amending the Tree Code beyond referencing the list, if required. Staff does not recommend this policy option because it reduces the flexibility of property owners to plant trees of their own choosing. A better option would be to allow conditions of approval to be imposed to require an owner to plant a certain type of mitigation tree only when significant trees are removed.

#### **16. Require native tree removal to be mitigated with native trees.**

The importance of native trees to the urban forest was frequently addressed during Committee discussions. It was suggested that when native trees are removed with permits that require mitigation, that the mitigation trees should also be required to be native. The mitigation tree would not necessarily need to be the same species of tree as the tree removed. This option would help maintain, if not grow, the stock of native trees in the Lake Oswego urban forest.

This policy option increases the regulatory burden of the Tree Code by limiting the species of tree that the owner can select from to satisfy the mitigation requirement. This option would not create a meaningful impact on the time and cost of application review, and the criteria of the amendment would be clear and objective. The amendment would not require a significant change to the Tree Code and reflects input received with respect to the value of native trees. As such, staff supports this policy alternative.

### **17. Incentivize the planting of Douglas Firs.**

In addition to amending the Tree Code to reflect the value of native trees in general, Douglas firs were identified as a species of particular importance to the character of Lake Owego. In order to incentivize the planting of these trees, it was proposed that mitigation requirements could be reduced if Douglas firs were planted. The reduction ratio for Douglas firs would need to be established.

This policy alternative reduces the regulatory burden of mitigating tree removal by allowing residents and property owners an option for reducing the mitigation requirements. Simple reductions in mitigation requirements based on the species would not have a measurable impact on the staff time and associated costs of application review. The standards of review for proposed mitigation when Douglas firs are planted could be defined clearly and objectively and consideration would need to be given to the planting site to assure that it is suitable for Douglas firs (e.g., there is enough growing space and the site does not contain hydric soils, etc.). This change could be added without making drastic changes to the code. For these reasons, staff supports this policy option.

### **18. Require mitigation for all tree permits.**

Currently, mitigation is only required for Type II, emergency, and some invasive permits (restocking may also be required for major forest management permits). At the September 21 meeting it was suggested that exceptions to mitigation requirements could be provided based on canopy cover; however, this policy alternative was coupled with the stipulation that mitigation would be required for all permits, including those issued for dead, hazard, and emergency trees. This concept was originally rejected by a Committee vote of 7-19 in the survey following the September 21 meeting, but it was unclear whether the Committee was rejecting the entire concept or just one aspect (exceptions to mitigation based on canopy cover, or requiring mitigation for all permit types). The concept of allowing exceptions to the mitigation requirements in a number of potential situations, including canopy cover, was raised again at the December 7 meeting and is included as a policy alternative in this report. The concept of requiring mitigation for all permit types was also raised again at the December 7 meeting, but the conversation diverged and the concept was not fully discussed or voted on. This policy alternative is included since it was a part of the original concept of allowing exceptions to mitigation requirements and the Committee renewed discussions on this option.

This policy alternative would require residents and property owners to replace trees any time a tree is removed from a property, regardless of species or condition. Dead, hazard, and emergency permits would have mitigation plans added to the information required when applications are submitted. This would represent an increase in the

regulatory burden of the Tree Code. One issue to consider is that property owners who are applying for time-sensitive emergency or hazard permits may not be prepared to select a mitigation tree at the time of application. As a result, this requirement could result in poorly selected and/or placed trees. Mitigation would not be inspected unless the removal is associated with a building permit or a minor or major development permit. As such, any increase in staff time needed to review applications would be negligible. This would be a clear and objective criteria of review, and could be achieved through minor amendments to the tree code. Staff is neutral on this policy alternative.

**19. Allow property owners to mitigate based on their individual needs and site conditions.**

Another policy option discussed by the Committee was to allow mitigation requirements to be determined on a site-by-site basis considering the individual needs of property owners and the site conditions. Application for tree removal would need to include the proposed mitigation plan, as well as a summary of the needs and conditions that the property owner wants to be considered during the application review. These factors would need to be assessed by staff during a site visit in order to confirm the information provided.

This policy alternative represents a significant reduction of the regulatory burden related to mitigation requirements. However, the mitigation requirements would not be uniform and instead would be dependent on each applicant's situation. This type of individual review and assessment of the appropriate mitigation requirements would increase the staff time required to review an application. Mitigation requirements based on individual situations would be largely subjective, and it would be difficult to question or determine the accuracy of the applicants needs as presented in the application. This alternative would involve relatively major changes to the current Code's mitigation requirements. Staff is neutral on this policy alternative.

## **Tree Protection**

### **Input**

Though the Committee did not specifically identify tree protection as a policy issue for consideration, the Committee had several discussions about issues related to tree protection. Both the Committee and public comments expressed concern over contractors and developers failing to abide by an approved tree protection plan, and a lack of oversight of those plans by the City. In addition, there were concerns about damage to trees as a result of trenching that may not require a tree protection permit. Other comments related to the futile protection of trees that have a high likelihood of future removal, such as trees located in close proximity to development.

## **Current Policy**

An applicant must submit a tree protection plan for review and approval by the City prior to conducting any development activities including, but not limited to, clearing, grading, excavation, or demolition work on a property or site that requires a ministerial, minor, or major development approval. The permit cost is \$80. The applicant is required to install a 6-foot chain link fence around the tree protection zones (typically the dripline of the trees) and to attach signs on the fencing stating that the fencing is a tree protection zone, not to be disturbed unless prior approval has been obtained from the City Manager and arborist for the project. There is no authority in the current Tree Code to allow conditions of approval to be imposed on tree protection permits that could help better protect trees during construction. The minimum presumptive fine for a tree protection violation is \$145 for a tree protection sign violation, and \$545 for all other violations. A Judge may raise these fines up to a maximum of \$1000 per offence. The revenue collected from tree protection violations goes to the Court, not the Tree Fund. If the tree protection violation also results in damage to the tree that meets the definition of “removal” in the Tree Code the City may also impose an enforcement fee of \$117 for trees that qualify as Type I and \$537 +\$37 per tree for all other removal violations. In addition to those fines, the City may impose a standard restoration fine of \$82 per caliper inch, or an increased restoration fine of \$160 per caliper inch for “significant” trees. The enforcement fees go to the Court, but the restoration fees go into the City’s tree fund. The judge has authority to reduce the restoration fees.

## **Policy Alternatives**

### **20. Require tree protection plans for development such as plumbing permits and certain projects within the public right-of-way that are not ministerial, minor or major development.**

This policy alternative is the result of Committee discussion during the October 19 meeting. Concern was expressed over the destruction of tree roots that resulted in the eventual death of the tree. While this policy alternative never received a formal vote for consideration, it is included to reflect this discussion.

This alternative would involve modifying the applicability of tree protection to include construction activities associated with plumbing permits and public improvements. This policy would increase the regulatory burden of property owners because it would increase the type of activities that may require a tree protection permit. It could also increase staff administration by increasing the number of tree protection applications that would need to be inspected; however, it would be offset to some degree by less enforcement activities to investigate potential violations. No changes would be necessary to the standards or criteria of review for tree protection permits. Staff supports this policy

alternative because although the regulatory burden would be increased for property owners because more development would require a tree protection permit, it could decrease investigations of violations overall and would better protect trees. There is no reason why excavation for a foundation should require trees to be protected, but trenching for a utility would not.

**21. Establish the authority to allow conditions of approval to be applied to tree protection plans.**

In the December 7 meeting the “Trees and Development” discussion group, which was tasked with investigating ways in which the Code could be improved to better preserve trees in development situations, suggested requiring the removal of invasive species of trees and/or ivy. They also suggested requiring status reports and arborist oversight of tree protection efforts. Conditional authority for tree protection would need to be added to the Tree Code in order for staff to impose these requirements. Conditional authority for tree cutting permits is currently provided by in LOC Article 55.02, Tree Removal, but is not provided for in LOC Article 55.08, Tree Protection.

This policy would increase the regulatory burden on property owners by allowing conditions to be imposed during tree protection review, which is currently not authorized by the code. Property owners and developers could benefit from a decreased likelihood of violations and the associated burdens. This alternative would require a code amendment to include the authority to impose conditions of approval. The permissible conditions of approval can be clearly and objectively defined. Staff time and administrative overhead could increase as a result of determining if conditions of approval are necessary, and what conditions will be applied, but could be offset by fewer violation incidents. Staff supports this policy alternative because it has potential to better protect trees and prevent time-consuming and costly violations.

**22. Require a deposit for trees to be protected. If the trees survive two years after the conclusion of construction the deposit is returned.**

This alternative was discussed at the December 7 Committee meeting during the presentation by the “Trees and Development” group, but no vote was taken. This alternative would require a refundable deposit to be submitted to the City in order to assure the protection of trees during development. After a 2-year period, if the trees were in good condition, the deposit would be refunded. If the trees were found to be in decline or died due to development activities, the deposit would not be refunded and a violation may be issued.

This alternative would increase the regulatory burden on property owners a great deal because it would tie up a potentially considerable amount of money for two years and

could be problematic in the case of a property sale. It would also significantly increase staff administrative time and costs to track and monitor the refundable deposits and to investigate the trees after a 2-year period. From a legal standpoint, if the tree dies within the 2-year period, there is the question of whether or not the construction activity was the cause of the tree to decline and/or die. Requiring a deposit does not eliminate the proof problem of what caused the tree to die. If it were found at the end of the 2-year period that the tree had declined or died, there (1) still needs to be a finding that the construction activity caused the tree to decline or die, and (2) there would need to be a procedure for the owner to challenge the finding that construction was the cause of death or declining health.

The City would also need to require the recordation of a tree maintenance covenant on the property for the 2-year period stating that at the end of the period, the deposit would be returned. That raises the issue of who the deposit is returned to if the property is sold. To alleviate this complication, the Code could specify that the deposit is delivered to the then owner of the property. This would give the financial benefit to the property owner, burdened with maintaining the tree and would avoid the need for staff to track down the developer to either return the deposit, or to notify them that we are keeping the deposit. Given the increased burden on both the property owner and staff, staff does not support this policy alternative.

**23. Require the applicant's arborist to submit status reports on the tree protection measures during stages of construction.**

This alternative was discussed at the Committee's December 7 meeting and is modeled on the City of Tigard's tree protection inspection requirements. It would require the project arborist to perform semimonthly (twice monthly) site inspections for tree protection measures during periods of active site development and construction, document compliance/noncompliance with the approved tree protection plan and send written verification with a signature of approval directly to staff within one week of the site inspection. The frequency of site inspections could be decreased if approved by staff.

This alternative would increase the regulatory burden on property owners by increasing costs associated with hiring an arborist to perform the inspections, but may be offset to some degree by a decrease in costly and time-consuming investigations for potential violations since there would likely be better oversight of tree protection. The amount of staff administration time and costs would be slightly increased in order to review the inspection reports, but may result in fewer violations to investigate. Staff would be given discretion to reduce or not require inspection reports for small projects. Staff supports this recommendation as it would improve accountability by the property owner

for protecting trees without increasing staff administrative costs and could reduce costly violations for property owners.

#### **24. Increase fines for tree protection violations.**

This policy option was suggested by the “Trees and Development” discussion group, who was tasked with investigating ways in which the Code could be improved to better preserve trees in development situations. Members of the discussion group recommended increasing fines for tree protection violations as a strong deterrent to violating tree protection requirements.

The proposed alternative to the current fine structure is based on a formula used by the City of Aspen, Colorado for the valuation of trees. The formula uses basal area, or pi times half the tree diameter squared ( $3.14 \times (D/2)^2$ ), multiplied by a dollar value to determine the total value of a tree. The dollar value can be fixed for all trees, as is the case in Aspen, or vary by species or in the case of a “significant tree”. The value used by Aspen is currently \$38. As an example, this value used with the City of Aspen’s formula results in a 12-inch tree being valued at \$4295.52. It is unclear whether this proposal is intended to apply to all tree protection violations, even if the violation does not result in actual damage to the tree(s). For example, if the tree protection violation was issued for storing materials in the tree protection zone, but it was determined that no long-term damage was caused by the violation, under the current code, a fine of \$545 would apply, but under the proposed structure, that could be increased to several thousands of dollars for a minor infraction.

Staff notes that if a tree protection violation also causes damage to a tree that would result in its removal as defined by the Tree Code, the City can also impose an enforcement and restoration fee associated with the damage/unauthorized removal. For example, under the City’s current fee structure, if a 12-inch tree is not properly protected and is damaged to the extent that it is or must be removed, the fines would be \$561 + \$37 per tree, plus a standard restoration fee of \$82 per caliper inch, resulting in a total fine (including tree protection fines) of \$2,127. That could be increased to \$3,063 if the 12-inch tree was considered significant or if the violator was a repeat offender, for instance. In this case the proposed fine structure would result in an increase in fines over the current fee structure, but a less drastic increase than would be the case if the proposed fine structure would apply to minor infractions.

Fees associated with trees are contained in the City’s Master Fee Schedule and any change to those fees is under the authority of the City Council. No amendments to the Tree Code would be required to implement this policy. The Committee could recommend the increase in fines to the Council separate from the recommended code amendments. An increase in fines would represent an increase in the regulatory burden established in the Tree Code. This would not increase staff time or administrative overhead, as the process of

determining a violation and issuing the fine would remain unchanged. The formula would maintain a clear and objective method for determining the penalty for a violation of a tree protection plan and unauthorized tree removal. Staff's position on this policy option is neutral.

## Changes to the Regulatory Framework

### Input

The Committee received a presentation from a resident at its October 19 meeting on an alternative approach to tree regulation that would significantly modify the existing framework of the Tree Code.

### Current Policy

Under the current regulatory framework there are ten different types of tree permits for the removal of trees: dead, hazardous, invasive, type I, type II, minor forest management, major forest management, emergency, verification, and topping, which are all discussed in detail earlier in this report. An applicant must submit an application for each permit type separately and pay the fee required for each type. Mitigation is required only for Type II, emergency, and some invasive tree permits (restocking may be required for major forest management permits).

### Policy Alternatives

#### **25. Establish one tree permit type where fees are only charged if the property lacks a minimum percentage of "meaningful trees"**

This policy alternative was presented by a resident and discussed at the October 19 meeting. It was suggested that rather than using the current criteria, some of which are subjective, to approve or deny tree removal permits on an individual basis, a simple and clear and objective system based on financial disincentive could be used. The proposal involves first establishing a desired number of "meaningful trees" per acre, which could vary by zone or neighborhood. Property owners would need to apply for one permit to remove trees from their property regardless of the reason. Staff would not approve or deny permits, but rather determine the cost of the permit. If the desired number of "meaningful trees" per acre was maintained, then the permit would be issued at no cost. The removal of trees below the established tree density per acre would cost the property owner a certain amount per tree removed. The costs of removing trees below the required tree density could be reduced through mitigation. The hypothetical tree density and costs initially proposed for this framework were 25 meaningful trees per acre, and a fee of \$13,000 per

tree removed below that density, with an opportunity for reduction of that fee by half if a “replenishing tree” were planted. The actual tree density and fees that would apply could be revised based on further research and public input. The fees would apply to the removal of any tree, including dead and hazardous trees, but the fee would be reduced to zero if a replenishing tree was planted for the removal of trees that are dead or hazardous.

This policy alternative would reduce the regulatory burden for tree removal when the minimum density of meaningful trees is maintained, but greatly increase the regulatory burden (cost) when it is not. The staff time related to permit review would be reduced significantly, as review would only involve calculating the density of meaningful trees on the property and the associated fee for removal. The fees collected under this alternative could potentially fund the program, which would reduce staff costs related to tree permitting as it exists today. The criteria used are clear and objective as tree removal would always be permitted, just at an increased cost in some situations. Changing the regulatory framework of permit review would involve a repeal and replacement of the current code, which is contrary to the Council charge. It is also very likely that this policy alternative would be politically contentious given the potentially significant costs to property owners for tree removal. This alternative also does not address the potential negative impacts of tree removal related to soil stability, protection of adjacent trees or erosion.

## Other Recommendations

### Input

Input received from public comments as well as Committee discussions raised a number of issues related to the overall basis and intent of the Tree Code. The Committee discussed strategies for improving the effectiveness of tree regulations and for helping guide future decisions. Most Committee members were interested in pursuing results-oriented strategies targeted at specific areas of concern to improve the effectiveness of the Tree Code, while relaxing regulations that did not have a significant impact on outcomes. Pursuit of these strategies proved difficult due to a lack of data on trees in the City or a public involvement process to identify community values. Many Committee members felt that the current Tree Code is not designed to achieve a specific set of goals based on scientific data and community values, and in order to properly conduct a review of the Tree Code and recommend amendments, sufficient time and resources are needed to conduct studies, perform research, and engage the public.

Information, or the lack thereof, was another common concern. There was a clear desire for more information to be provided to help residents and property owners make informed decisions about tree planting, maintenance, and removal.

The Committee also discussed heritage trees and decided that although the Heritage Tree program does not need to be amended, better incentives could be provided to encourage more heritage tree designations.

Finally, the Committee had discussions at several meetings about the problems of tree removal associated with development. Many members expressed concerns that the amount of development that is allowed on lots was not conducive to tree preservation and that new development was altering the character of neighborhoods by removing significant trees to accommodate large homes. This was particularly a concern in neighborhoods with a lot of development pressure, such as the First Addition-Forest Hills neighborhood. Several members felt that in order to effectively preserve trees, the zone regulations need to be altered to allow less lot coverage and/or impervious areas, and should include incentives to preserve existing trees on the site.

The following recommendations were discussed by the Committee:

### **Information**

#### **26. Collect baseline data on trees in the City of Lake Oswego and implement the recommendations of the Urban and Community Forestry Plan**

A major challenge faced by the Committee in reviewing the Tree Code is a lack of data that can be used to assess the performance and outcomes of the current Tree Code. Recognizing that the lack of data limits the ability to adequately address many of the issues related to the Tree Code and to provide a meaningful recommendation, the Committee voted 19-7 in a survey following the October 19 meeting to support a recommendation that the City begin collecting baseline data on trees to inform future decision making processes.

The 2007 Urban and Community Forestry (UCF) Plan includes a Stewardship and Education Goal to develop an annual State of the Urban Forest Report. The 2009 State of the Urban Forest Report provides some baseline data about the forest, from which plans, goals, and action measures can be based. Regular data collection and monitoring can allow managers to measure progress and prioritize management actions. No other State of the Urban Forest Reports have been prepared since 2009. This may be largely due to the fact that the City no longer has an AmeriCorps staff person to lead such a project. College interns could be utilized for these projects to limit costs.

The 2007 UCF Plan forest health goals includes a number of activities that could be recommended: conducting a field inventory of City-maintained tree resources (street and park trees); creating a multi-dimensional database to promote effective and systematic maintenance; identifying streets whose trees are reaching the end of their lifespan, do not suit the planting environment, or are damaging infrastructure; coordinating with the Park

Department's current efforts to inventory natural areas and maintain trails; conduct a hazardous tree survey to identify hazardous, dead, or otherwise undesirable street trees along public trails and in public rights-of-way and scheduling removal and replacement; developing a tree replacement program for targeted right-of-ways; creating an internal City tree planting and replacement plan for targeted areas; planning to remove and replace all trees on streets where most are in ill health; and, redesigning planter strips and streetscapes where they are too small for trees to succeed.

The 2007 UCF Plan forest size goals also include activities that could be pursued: setting and implementing goals for increasing tree canopy in open space; surveying Lake Oswego's tree canopy to create accurate baseline data and allow tracking over time; working with neighborhoods through the neighborhood plan process to develop planting plans for open space; developing park plans that identify appropriate areas for tree planting; use planting plans as a basis for collaborative tree planting and management activities for residents, community partners, and the City; identifying opportunities to increase canopy cover on public property; using plans for individual parks to identify planting opportunities; creating new or larger planting strips when streets are built or repaved; identifying areas that can accommodate mitigation trees for cutting that occurs in other areas of the city; and, adopting standards for approval in the Development Code and administrative policies, procedures and specifications to foster increased canopy growth and tree health in general.

Finally, the 2007 UCF Plan integration goals suggest linking community forestry with the stormwater management plan and using tree inventory data to quantify stormwater benefits. It also suggests investigating applications of green infrastructure in new stormwater management projects.

This recommendation would involve a major commitment from the City to devote time and effort to data collection, analysis, and research. This recommendation would not impact the regulatory burden or criteria used to approve or deny permits, but would involve increased staffing and costs. Costs could be reduced by identifying and implementing select goals of the UCF plan that are most beneficial for making policy decisions. If the Committee elects to make this recommendation to the Council, staff recommends that the Committee identify specific goals in the UCF plan that it believes are priorities or especially important in setting policy.

## **27. Improve and increase education/information on trees**

Actively disseminating information to residents, property owners and homeowner associations can help improve the Lake Oswego Urban Forest through non-regulatory means. The Committee discussed providing informational materials to homeowner

associations for distribution to new property owners, and the concept achieved a two-thirds majority vote of 19-7 in a survey following the October 19 meeting. In the same survey the Committee approved the concept of distributing information on planting larger stature trees by a vote of 21-5.

There are a number of events and sources of information that could be better utilized to implement this recommendation:

- Annual Urban & Community Forestry insert in April HelloLO
- Arbor Week events
- Annual Urban & Community Forestry Workshop Series
- NRAB outreach booths at the Farmers Market
- Occasional info pieces in HelloLO or other press releases
- Backyard Habitat Program in partnership with Tryon Creek State Natural Area
- Tree code workshop hosted by the City for arborists and tree service companies to attend in order to become Qualified Tree Care Providers.
- City Tree publications (e.g., “Right Tree Right Place”, tree removal brochures, etc.)
- City website

Using information to ensure Lake Oswego residents and property owners understand the Tree Code as well as the basics of tree planting and maintenance does not directly impact the regulatory burden of the Code. However, ensuring access to the information could help improve interactions related to tree removal permits and potentially reduce the demand for certain permits, such as dead, hazard, and emergency permits by improving tree maintenance and care. These effects could help reduce the burden perceived by residents and property owners. Similarly, while the activities do not affect the criteria used to approve or deny permits, they could help residents and property owners better understand the criteria. This would result in an increased perception of clear and objective standards in the Tree Code. These activities would require staff time, but could be completed with existing staff levels. This recommendation does not involve making any changes to the Tree Code itself.

### **Heritage Trees**

#### **28. Look into services that could be provided at no cost to assist in the maintenance and care of heritage trees**

This recommendation was discussed at the October 19 meeting, and was supported by a Committee vote of 22-5. The concept involves creating a program where the City partners with local qualified tree service companies who will commit to providing routine

assessments and pruning as needed at no cost for Heritage Trees. Groups of Heritage trees could be eligible for evaluation once every five years on a rotating schedule. On-call services for these trees might also be possible under unforeseen circumstances; for example, a tree loses its top, warranting immediate evaluation and possible treatment. Multiple companies could participate so that more trees could be seen each year and perhaps on a more frequent basis. Staff would need to set up and coordinate the program, which could be accommodated by existing staff, but administrative costs should be minimal. This recommendation would be a worthwhile incentive for Heritage Tree designation. Local tree services companies have expressed interest in participating.

This recommendation will help reduce the regulatory burden experienced by property owners and residents with heritage trees by providing relief from the costs of maintaining those trees. There would be a slight cost in terms of staff time and administrative overhead associated with managing the program. The program would not impact the criteria used to designate heritage trees. The program could be implemented without making any changes to the Tree Code itself. Given the benefits to property owners with heritage trees and the relatively low cost to the City, staff supports this recommendation.

### **New Development**

#### **29. Modify Community Development Code regulations to improve tree preservation.**

This policy alternative was supported by a Committee vote of 21 to 5 in a survey following the October 19 meeting. The 2007 UCF Plan includes goals for adopting standards for approval in the Development Code and administrative policies to foster increased canopy growth. It also suggested limiting lot coverage for new development to reduce impervious surfaces and provide more room for trees. Finally, incentives and alternatives for homebuilders and homeowners to meet the expectations of the Development Code could be provided. Many members of the Committee thought that changes to the Community Development Code would have a much greater impact on the protection and preservation of trees than changes to the Tree Code.

This recommendation would involve amendments to the Community Development Code, which is beyond the charge of the Committee established by the Council; however, the Committee could include a supplementary recommendation to the Council asking that they direct staff to conduct a review of the Development Code regulations and recommend amendments that would better preserve trees during development.

## Next Steps

The Ad Hoc Tree Committee will review these policy alternatives at its meeting on January 25, 2016, with an additional optional meeting on February 1, in order to determine the changes they would like to pursue. Based on the recommendations of the Committee, staff will draft amendments to the Tree Code in accordance with the policy options selected. The Committee will review the draft amendments and provide feedback to staff. In March 2016 a public review draft of the Tree Code amendments will be released. The Committee will then review the public feedback and make revisions to the amendments as needed. The recommended amendments will be presented to the City Council, and a public hearing to adopt the amendments is scheduled to occur in June 2016.

# Policy Options Matrix:

NAME: \_\_\_\_\_

	Reduce Regulatory Burden While Meeting the Intent of the Code	Reduce Staff Time and Administrative Overhead	Ensure Clear and Objective Criteria of Review	Use Amend and Revise Approach	Staff Support	Committee Member Support
<b>Administrative</b>						
1. Improved Online Process						
a. Online permit application and payment	+	+/=	=	=	=	
b. Website as source of information	+	+	+	=	+	
2. Adjust Type II Permit Notification, Comment and Appeal						
a. Reduce notification and appeal process	+	+/=	=	+	+	
b. Eliminate second sign posting	=	+	=	+	+	
c. Limit comments based on location	+	=	=	+	-	
d. Email notification to neighborhood associations	=	=	=	=	+	

**Key:**

+ : Meets Council Charge, Staff Supports

= : No Change from Current Policy, Staff is Neutral

- : Contradictory to Council Charge, Staff does not Support



<b>Type II Permits</b>	Reduce Regulatory Burden While Meeting the Intent of the Code	Reduce Staff Time and Administrative Overhead	Ensure Clear and Objective Criteria of Review	Use Amend and Revise Approach	Staff Support	Committee Member Support
10. New criteria of review	<b>+/=</b>	<b>=</b>	<b>+</b>	<b>+</b>	<b>+</b>	
Reasons to approve						
a. Damage to existing structure	<b>=</b>	<b>=</b>	<b>+</b>	<b>+</b>	<b>+</b>	
b. Damage to private infrastructure	<b>+</b>	<b>=</b>	<b>+</b>	<b>+</b>	<b>+</b>	
c. Potential to damage a foundation	<b>=</b>	<b>=</b>	<b>+</b>	<b>+</b>	<b>+</b>	
d. Tree is in poor health	<b>=</b>	<b>=</b>	<b>+</b>	<b>+</b>	<b>+</b>	
e. Thinning to improve health of other trees	<b>+</b>	<b>=</b>	<b>+</b>	<b>+</b>	<b>+</b>	
Reasons to deny						
f. Soil stability and water runoff issues	<b>=</b>	<b>=</b>	<b>+</b>	<b>+</b>	<b>+</b>	
g. Creates a blow down hazard	<b>=</b>	<b>=</b>	<b>+</b>	<b>+</b>	<b>+</b>	
h. Significant tree	<b>=</b>	<b>=</b>	<b>+</b>	<b>+</b>	<b>+</b>	
i. Sole purpose for removal is view	<b>=</b>	<b>=</b>	<b>+</b>	<b>+</b>	<b>=</b>	

Key:

**+** : Meets Council Charge, Staff Supports

**=** : No Change from Current Policy, Staff is Neutral

**-** : Contradictory to Council Charge, Staff does not Support

<b>Mitigation</b>	Reduce Regulatory Burden While Meeting the Intent of the Code	Reduce Staff Time and Administrative Overhead	Ensure Clear and Objective Criteria of Review	Use Amend and Revise Approach	Staff Support	Committee Member Support
11. Regulate tree removal for development more strictly						
a. Require the preservation of “significant trees” unless no reasonable alternative exists to allow permitted development	-	+/=	+	+	+	
b. Require more mitigation when significant trees are removed	-	=	+	+	+	
c. Allow reductions in mitigation requirements when “significant trees” are preserved	+	=	+	+	+	
12. Allow exceptions to mitigation requirements						
a. Based on a minimum canopy cover	+	-	+	+	-	
b. Based on a minimum number of trees	+/=	-	+	+	-	
c. Based on a minimum basal area	+/=	-	+	+	=	
13. Allow exceptions based on permit purpose						
a. Thinning	+	+	+	+	+	
b. Solar access	+	-/=	-	+	+	

Key: + : Meets Council Charge, Staff Supports      = : No Change from Current Policy, Staff is Neutral  
 - : Contradictory to Council Charge, Staff does not Support

<b>Mitigation Cont.</b>	Reduce Regulatory Burden While Meeting the Intent of the Code	Reduce Staff Time and Administrative Overhead	Ensure Clear and Objective Criteria of Review	Use Amend and Revise Approach	Staff Support	Committee Member Support
14. Reduce size of mitigation trees						
a. To 1.5"	+	=	+	+	+	
b. Seedlings	+	-	-	+	-	
15. Generate list of desired mitigation trees	-/=	=	+	+	-	
16. Require native tree removal to be mitigated with native trees	-	=	+	+	+	
17. Incentivize the planting of Doug Firs	+	=	=	+	+	
18. Require mitigation for all tree permits	-	=	+	+	=	
19. Mitigation based on individual site conditions	+	-	-	+	=	

**Key:**

+ : Meets Council Charge, Staff Supports

= : No Change from Current Policy, Staff is Neutral

- : Contradictory to Council Charge, Staff does not Support

<b>Tree Protection</b>	Reduce Regulatory Burden While Meeting the Intent of the Code	Reduce Staff Time and Administrative Overhead	Ensure Clear and Objective Criteria of Review	Use Amend and Revise Approach	Staff Support	Committee Member Support
20. Require tree protection plans for development in the public right of way that is not ministerial, minor, or major development	-	-/=	=	+	+	
21. Establish conditioning authority	-	-	+	+	+	
22. Require a deposit for trees to be protected	-	-	=	+	-	
23. Require the applicant's arborist to submit status reports on tree protection during construction	-/=	-/=	-	+	+	
24. Increase fines for tree protection violations	-	=	+	=	=	
<b>Regulatory Structure</b>						
25. One permit, only charge fees if property lacks a certain percentage of meaningful trees	-/+	+	+	-	-	

Key:

+ : Meets Council Charge, Staff Supports

= : No Change from Current Policy, Staff is Neutral

- : Contradictory to Council Charge, Staff does not Support

<b>Other Recommendations</b>	<b>Reduce Regulatory Burden While Meeting the Intent of the Code</b>	<b>Reduce Staff Time and Administrative Overhead</b>	<b>Ensure Clear and Objective Criteria of Review</b>	<b>Use Amend and Revise Approach</b>	<b>Staff Support</b>	<b>Committee Member Support</b>
26. Collect baseline data on trees in Lake Oswego	=	-	=	=	+/=	
27. Improve and increase education/information on trees	+/=	-	+/=	=	+	
28. Look into no-cost assistance for heritage tree maintenance and care	+	-/=	=	=	+	
29. Update the Community Development Code	=	-	=	-	=	

Key:

+ : Meets Council Charge, Staff Supports

= : No Change from Current Policy, Staff is Neutral

- : Contradictory to Council Charge, Staff does not Support