

**Group II – Amendments to be Considered as one Group Vote**

<b>B. Urban Forestry Programs and Budget</b>				
#	No.	Short title	Sponsor(s)	Pg.
1	B11	Create an attachment with requests for future work	Strauss	2
2	B2	Assistance for low-income residents	Pedersen Strauss	5
3	B3	Future Council actions to support urban forestry programs and enforcement	Strauss	7
4	B4	Reporting requirements	Pedersen	8
5	B5	Outreach to residents and tree service providers	Morales	12
6	B6	Improving management of trees on City property	Nelson	13
7	B7	Tree fund	Pedersen	14
8	B10	Urban forestry oversight improvements	Strauss	16

<b>I. Non-Substantive Technical Amendments</b>				
#	No.	Short title	Sponsor(s)	Pg.
9	I1	Tree groves clarification	Pedersen Strauss	17
10	I3	Emergency action clarification	Strauss	19
11	I4	Tree service provider activities and qualifications clarification	Strauss	20

<b>D. Tree Removals Outside of Development</b>				
#	No.	Short title	Sponsor(s)	Pg.
12	D1	Add exemption for tree removal due to pathogens	Strauss	22
13	D3	Allow tree removal to avoid conflicts with utility infrastructure and building foundations	Strauss	24
14	D5	Exemption for dead trees	Strauss	26
15	D6	Exemption for invasive and nuisance species	Strauss	27
16	D7	Exemption for developed lots with high-canopy cover	Strauss	30
17	D8	Allow tree removal to improve access for the elderly and people with disabilities	Strauss	32

<b>E. In-Lieu Fees and Tree Replacement Requirements</b>				
#	No.	Short title	Sponsor(s)	Pg.
18	E3	Authority to create Director’s Rule for replacement trees	Herbold Pedersen Strauss	35
19	E9	Prohibit applications for new development on sites with an active Tree Code notice of violation	Pedersen Strauss	37
20	E10	Racial equity considerations and use of in-lieu fee revenues	Morales	38

<b>H. Other Substantive Amendments</b>				
#	No.	Short title	Sponsor(s)	Pg.
21	H1	Removal of invasives during development	Pedersen Strauss	41
22	H2	Add benefit and goals recitals and modify purpose and intent	Strauss	43
23	H4	Process for modifications to Tree Code requirements for excess mitigation or severe economic hardship	Strauss	46

Note: Multiple amendments may amend the same sections or subsections. Following Land Use Committee action on all amendments, Central Staff will reconcile language and renumber and re-letter sections and subsections as needed in the amended bill.

Aly Pennucci  
 Land Use Committee  
 May 4, 2023  
 D1

## Amendment B11 Version 1 to CB 120534 - Tree Protection Updates

**Sponsor:** Councilmembers Pedersen and Strauss

Create an attachment with requests for future work

**Effect:** This would amend Section 10 to Council Bill (CB) 120534. This amendment would move the language in Section 10 as introduced to an attachment to the CB. The purpose of this amendment is to create a single location for all amendments that are noncodified statements or intent or request for future work.

As introduced, Section 10 would establish a reporting requirement on use by permit applicants that choose the payment-in-lieu option for replacement trees. There are several amendments (listed below) to this CB that are intended to support implementation of the tree protection regulations and enhance Seattle's urban forest. Including all requests for reporting or future work into a single attachment will make it easier to track and provide oversight of the progress made on each of the requests.

The following amendments, if approved, will be included in Attachment 1 to CB 120534:

- B2: Assistance for low-income residents
- B3: Future Council actions to support urban forestry programs and enforcement
- B4: Reporting requirements
- B5: Outreach to residents and tree service providers
- B6: Improving management of trees on City property
- B7: Tree fund
- B10: Urban forestry oversight improvement
- C1: Tree review improvements

Add a new Section 10 to CB 120534 and add reference to the attachment as follows:

Section 10. This section establishes the Council's intent for the City to take additional measures to support implementation of the tree protection regulations enacted by this ordinance and enhance Seattle's urban forest. Attachment 1 to this ordinance outlines specific requests to the Executive for future work and additional actions the Council intends to implement related to protecting trees and increasing tree canopy cover on both public and private property. ((The Department of Construction and Inspections shall prepare a report months after the effective date of this ordinance on the use by permit applicants of payment in lieu of tree replacement. This

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Land Use Committee  
May 4, 2023  
D1

~~report shall include the number of permit applicants that used the payments, payment amounts, total payments collected, City costs related to tree planting and establishment, and any recommendations for changes to the payment amounts to be included in a revised Director's Rule. Recommendations for changes to fee amounts shall include consideration of adequacy of payment amount to replace removed trees, cover City planting and establishment costs, and effects of payment amount on permit applicant decisions about usage of the payment option. The report shall be provided to the Mayor and the Chair of the City Council Land Use Committee, or successor committee.))~~

Section 11. This ordinance shall take effect and be in force 60 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

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Attachments:

Attachment 1 – Tree Protection Requests and Additional Actions

Aly Pennucci  
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May 4, 2023  
D1

## PROPOSED ATTACHMENT

### Header for the attachment

Att 1 to CB 120534 - Tree Protection Requests and Additional Actions  
V1

### Body of the Attachment

#### Attachment 1 to CB 120534: Tree Protection Requests and Additional Actions

It is the Council's intent that the following measures be considered to support implementation of the tree protection regulations enacted in the Ordinance introduced as CB 120534 and enhance Seattle's urban forest:

1. The Department of Construction and Inspections (SDCI) shall prepare a report 12 months after the effective date of this ordinance on the use by permit applicants of payment-in-lieu of tree replacement. This report shall include the number of permit applicants that used the payments, payment amounts, total payments collected, City costs related to tree planting and establishment, and any recommendations for changes to the payment amounts to be included in a revised Director's Rule. Recommendations for changes to fee amounts shall include consideration of adequacy of payment amount to replace removed trees, cover City planting and establishment costs, and effects of payment amount on permit applicant decisions about usage of the payment option. The report shall be provided to the Mayor and the Chair of the City Council Land Use Committee, or successor committee.
2. ...

Yolanda Ho/Aly Pennucci  
 Land Use Committee  
 May 4, 2023  
 D1b

## Amendment B2 Version 1 to CB 120534 - Tree Protection Updates

**Sponsor:** Councilmembers Pedersen and Strauss

Assistance for low-income residents

**Effect:** This would state the Council’s intent that the Seattle Department of Construction and Inspections (SDCI) identify options to reduce the financial impact of the costs associated with removal of hazardous trees outside of development for applicants whose household income is at or below 80 percent of area median income (AMI).

Section 25.11.040 of CB 120534 would allow the SDCI director to approve the removal of hazardous trees if the tree is rated by a registered tree service provider as an Extreme or High-risk Hazard. If removal is approved, Tier 1, Tier 2, and Tier 3 trees must be replaced pursuant to Section 25.11.090. The costs to the applicant requesting the hazardous tree removal include: (1) preparation of the risk assessment by a registered tree service provider; (2) SDCI’s review of the application to remove a hazardous tree (current estimate is \$500); and, if removal is approved, the cost for (3) removal of the hazardous tree by a registered tree service provider; and (4) a replacement tree.

Reducing or waiving the fee for SDCI’s review will require increasing General Fund (GF) support, or other City resources that can be used for this purpose, to SDCI to cover the cost that would otherwise be recovered from the application fee. In addition, SDCI would need additional GF resources to have staff, or an outside entity, determine if the applicant meets the income eligibility requirements. This amendment also requests an analysis of the estimated impact on GF resources.

Add a new section to Attachment 1 to CB 120534 (number to be determined) as follows:

**Section X. The Council requests that the Seattle Department of Construction and Inspections (SDCI) identify strategies to reduce the financial burden on applicants requesting approval to remove a hazardous tree outside of development if the applicant’s annual household income is at or below 80 percent of area median income (AMI). The Council requests that SDCI consider the following strategies (1) reducing or waiving SDCI’s review fee for applicants if the applicant’s household income is at or below 80 percent of AMI; and (2) coordinating with Seattle Public Utilities to provide applicants who qualify with free replacement trees through its**

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Land Use Committee  
May 4, 2023  
D1b

Trees for Neighborhoods program, if replacement trees are required. The Council requests that SDCI report to the Chair of the Land Use Committee with practicable strategies by September 26, 2023. In addition to identifying strategies to mitigate the financial impact on income qualified applicants, the Council requests that the report include an annual estimate of the increased General Fund (GF) resources, or other City resources that could be for this purpose, that would be necessary for a reduced- or no- fee review, including the resources necessary to determine if the applicant meets the income eligibility requirements. The Council encourages SDCI to think broadly about strategies to reduce the impact on qualifying applicants and minimize the impact on the GF.

Yolanda Ho  
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 May 4, 2023  
 D2

## Amendment B3 Version 2 to CB 120534 - Tree Protection Updates

**Sponsor:** Councilmember Strauss

Future Council actions to support urban forestry programs and enforcement

**Effect:** This would add a new section to Attachment 1 to CB 120534 expressing the Council's intent to maintain and expand access to the Seattle Department of Transportation's heritage (Tier 1) tree program and provide additional resources to Seattle Public Utilities to expand the Trees for Neighborhoods program, which provides free yard and street trees to residents, and the Seattle Department of Construction and Inspections to support additional code enforcement staff during the 2024 Budget deliberations this fall.

For reference, the 2023 Adopted Budget includes around \$740,000 for the Trees for Neighborhoods program. This is funded by a mix of General Fund (GF), City Light Fund, and Drainage and Wastewater Fund. Additional code enforcement staff would require GF appropriations to SDCl. The estimated cost for a field arborist to support code enforcement is \$159,000 per year.

1. Add a new section to Attachment 1 to CB 120534 (number to be determined) as follows and renumber subsequent sections as needed:

#. The Council intends to ensure that the Seattle Department of Transportation continues to administer the heritage (Tier 1) tree program and expands access for the public to submit new nominations for designation. Additionally, the Council recognizes the need to invest in programs and activities that help enhance and protect Seattle's urban forest and thus intends to add resources during the 2024 Budget deliberations to:

A. Seattle Public Utilities to expand the Trees for Neighborhoods program, which provides free yard and street trees to residents; and

B. The Seattle Department of Construction and Inspections for additional code enforcement staff to ensure that residents, businesses, and others are complying with the provisions of Seattle Municipal Code Chapter 25.11.

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 May 1, 2023  
 D5

## Amendment B4 Version 1 to CB 120534 - Tree Protection Updates

**Sponsor:** Councilmember Pedersen

Reporting requirements

**Effect:** This amendment would expand the reporting requirement included in CB 120534 to provide a more comprehensive evaluation of the impacts of the proposed regulations, both on the City's trees and private development, and other considerations related to urban forest management.

The amendment requests that the Seattle Department of Construction and Inspections (SDCI) work with the Office of Sustainability and Environment's (OSE's) City Urban Forester or other staff as appropriate, and the Urban Forestry Commission on this reporting. The City Urban Forester, is also requested to report independently on how they will be involved in policy decisions regarding trees on private property.

The City Urban Forester, a new position added to OSE in the 2023-2024 budget, has not yet been hired. Per Council Budget Action OSE-005-B-001-2023 it is intended to "work with executive leadership and staff across urban forestry departments to establish and/or affirm citywide and department-specific strategy intended to support a healthy and robust tree canopy and urban forest in Seattle; provide an on-going assessment on the efficacy of policies and programs in meeting these goals; and recommend changes as needed to decision-makers."

Some of the information required to complete these reports is not currently planned to be captured in an easily usable manner by SDCI's permitting system, Accela. SDCI estimates that adding the relevant data points to Accela would cost between \$11,000 and \$13,500. That work may be an eligible expenditure for permitting fees.

Increasing the reporting request will increase the work required of SDCI and other departments including OSE, the Seattle Department of Transportation, and the Seattle Parks and Recreation. Additional resources may be needed, or SDCI's ability to address other priorities may be reduced.

1. Add two new sections to Attachment 1 to CB 120534 (number to be determined) as follows:

**#. Twelve months after the effective date of this ordinance, and no less frequently than every three years thereafter, the Seattle Department of Construction and Inspections, in collaboration with the Office of Sustainability and Environment's City Urban Forester or other staff as appropriate, the Urban Forestry Commission, and other members of the Urban Forestry**



Yolanda Ho/Lish Whitson  
Land Use Committee  
May 1, 2023  
D5

Core Team, and in consultation with outside experts and stakeholders, shall prepare and deliver a report to the Mayor and the Chair of the City Council Land Use Committee, or its successor committee, on changes needed to ensure this ordinance serves its purposes, especially as it pertains to reducing indiscriminate tree loss, addressing canopy inequities, and avoiding undue delays or burdens on development. Specifically, the report shall include:

A. The number of permit applicants that used the voluntary payment in lieu option, payment amounts, total payments collected, City costs related to tree planting and establishment, and any recommendations for changes to the payment amounts to be included in a revised Director's Rule. Recommendations for changes to fee amounts shall include consideration of adequacy of payment amount to replace removed trees, cover City planting and establishment costs, and effects of payment amount on permit applicant decisions about usage of the payment option.

B. The number of permit applicants that elect to use development standard modifications to retain Tier 2 trees per Seattle Municipal Code subsection 25.11.070.B.2. The report shall include the types of modifications used, the number of Tier 2 trees preserved when utilizing the modifications, and the number of Tier 2 trees that were removed as part of development as part of those same project permit applications.

C. The total number of trees removed during development, the total number of trees removed outside of development, and total number of hazardous trees removed, including information regarding tree species and size, and any other information about tree preservation, removal, and replacement that the Department deems relevant to consideration of the impacts of this ordinance.

D. Recommendations for changes to the development standard departures, as appropriate, based on consideration of the adequacy of tree preservation regulations, adequacy of incentives

Yolanda Ho/Lish Whitson  
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May 1, 2023  
D5

provided to builders, and effects of hardscape allowances on tree preservation, replanting, and development processes.

E. The number and location of replacement trees planted onsite, as well as the number and location of replacement trees planted offsite. The report shall include descriptions, statistics, and qualitative reports about required replacement trees planted offsite through direct replacement by developers and through City efforts funded by the One Seattle Tree Fund. The report shall include information on costs, survivability, and community reception and feedback.

F. An assessment of any unintended consequences arising from the implementation of this ordinance, including but not limited to:

1. Inequitable canopy impacts on Environmental Justice communities;
2. Disincentives to tree ownership, stewardship, or proactive management;
3. Impacts to the livelihoods of urban forest professionals; and
4. Cost and time to developers.

G. An evaluation of impacts to the urban forest due to climate change including from pests, pathogens, and insects.

H. Analysis of tree removal on both public and private property, using data available through permit applications and public notices required by subsections 15.43.030 and 25.11.100.C.1.

#. The Seattle Department of Construction and Inspections, in collaboration with the Office of Sustainability and Environment's City Urban Forester or other staff as appropriate, and Urban Forestry Commission, and in consultation with outside experts and stakeholders, shall include the following information in its first two reports prepared pursuant to Section 10 of this ordinance:

A. How the City Urban Forester position in the Office of Sustainability and Environment has interfaced with regulations affecting trees on private property; recommendations from the City

Yolanda Ho/Lish Whitson  
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May 1, 2023  
D5

Urban Forester for improvements to interdepartmental urban forest management; and recommendations from the City Urban Forester for other improvements to the City's tree policies and programs to conserve and protect the city's urban forest.

B. Analysis of how this ordinance relates to the strategies in the forthcoming Tree Canopy Equity and Resilience Plan, and recommendations for future amendments to Seattle Municipal Code Chapters 15.43 and 25.11 to better implement those strategies.

Yolanda Ho  
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May 4, 2023  
D1c

## Amendment B5 Version 2 to CB 120534 - Tree Protection Updates

**Sponsor:** Councilmember Morales

Outreach to residents and tree service providers

**Effect:** This would add a request for the Seattle Department of Construction and Inspections, in consultation with the Office of Sustainability and Environment, Department of Neighborhoods, and other departments as needed, to develop a culturally- and linguistically-appropriate plan to inform residents and tree service providers of the updated tree regulations, particularly in regard to tree removal limits outside of development, by August 31, 2023.

1. Add a new section to Attachment 1 to CB 120534 (number to be determined) as follows and renumber subsequent sections as needed:

*#. The Council requests that the Seattle Department of Construction and Inspections, in consultation with the Office of Sustainability and Environment and Department of Neighborhoods, and other departments as needed, develop a plan to conduct culturally- and linguistically-appropriate outreach to inform residents and tree service providers about the updated tree protection regulations, particularly those related to tree removal limits outside of development, by August 31, 2023. The plan should include a proposed timeline, budget, and detailed description of the proposed outreach strategy.*

Eric McConaghy  
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May 4, 2023  
D1

## Amendment B6 Version 1 to CB 120534 - Tree Protection Updates

**Sponsor:** Councilmember Nelson

Improving management of trees on City property

**Effect:** This would request that the Executive identify causes of tree loss on City-owned and City-managed property and propose potential improvements to the City's efforts to increase tree canopy and to maintain existing trees on City-owned and City-managed property. The proposed improvements would be informed by the recommendations of the City of Seattle 2021 Tree Canopy Assessment Final Report released in March 2023.

1. Add a new section to Attachment 1 to CB 120534 (number to be determined) as follows and renumber subsequent sections as needed:

*#. The Council requests that the Executive identify causes of tree loss on City-owned and City-managed property and propose potential improvements to the City's maintenance activities, including via contractors and partnerships, to increase tree canopy cover on City-owned and City-managed property, enhance the health of existing trees on City-owned and City-managed property, and prevent the loss of the same. The proposed improvements should be informed by the recommendations of the City of Seattle 2021 Tree Canopy Assessment Final Report released in March 2023.*

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 Land Use Committee  
 May 4, 2023  
 D1

## Amendment B7 Version 1 to CB 120534 - Tree Protection Updates

**Sponsor:** Councilmember Pedersen

Tree fund

**Effect:** This amendment would add a new section to Attachment 1 to CB 120534 to request that the City Budget Office submit legislation with the 2024 Proposed Budget that would establish a fund to receive in-lieu fees, and other grant or donation revenues received by the City related to protecting and growing the city’s tree canopy. The intent is to provide transparent tracking of the revenues generated from implementation of this legislation and accountable use of the in-lieu fees.

Creating a new fund does introduce some administrative complexities, such as managing and monitoring the cash balances for this new fund, and additional reporting and monitoring. In establishing a new fund, the administrative complexities need to be considered alongside the need to provide greater transparency in how the funds are used.

SDCI estimates the revenue from in-lieu fees to be approximately \$580,000 per year; creating a separate fund for that amount of estimated revenue may not offset the administrative complexities. However, the Mayor noted intent to create a “One Seattle Tree Fund” for fee-in-lieu payments in [Executive Order 2023-03](#); this amendment would signal Council’s concurrence. If, upon further review, the Executive determines that the administrative complexities outweigh the benefits of creating a separate fund, the Council would consider other strategies that would provide transparent tracking of the revenues and accountable use of the in-lieu fees.

1. Add a new section to Attachment 1 to CB 120534 (number to be determined) as follows and renumber subsequent sections as needed:

**#. The Council requests that the City Budget Office (CBO) submit legislation with the 2024 Proposed Budget that would establish a fund to receive in-lieu fee payments from developers and private property owners in accordance with Seattle Municipal Code Section 25.11.110. In addition, any donations, grants, or other revenues the City receives to protect and grow the City’s tree canopy should be deposited into this fund. The legislation should include any spending restrictions for this fund (e.g., revenues from payments in-lieu may be used to plant**

Yolanda Ho / Aly Pennucci  
Land Use Committee  
May 4, 2023  
D1

new trees). If CBO determines that creating a new fund is not the best approach, the Council requests that CBO propose other strategies that would provide transparent tracking of these revenues and expenditures, such as creating a new Capital Improvement Program (CIP) project in the 2024-2029 Proposed CIP and requesting annual reporting of revenues and expenditures with the annual budget.

Yolanda Ho  
Land Use Committee  
May 4, 2023  
D1a

## Amendment B10 Version 2 to CB 120534 - Tree Protection Updates

**Sponsor:** Councilmember Strauss

Urban forestry oversight improvements

**Effect:** This would request that the Executive consider strategies to improve oversight of trees located on private property and ensure that the City is considering impacts to Seattle's urban forests while also balancing the need for housing production by creating an independent Urban Forestry Division with dedicated staff in the Seattle Department of Construction and Inspections; assigning urban forestry oversight to the Office of Sustainability and Environment; and/or other organizational changes, as appropriate.

1. Add a new section to Attachment 1 to CB 120534 (number to be determined) as follows and renumber subsequent sections as needed:

*#. The Council requests that the Executive consider strategies to improve oversight of trees located on private property and ensure that the City is considering impacts to Seattle's urban forest while also balancing the need for housing production, including but not limited to: establishing an Urban Forestry Division with dedicated staff within the Seattle Department of Construction and Inspections; assigning responsibility for urban forestry oversight to the Office of Sustainability and Environment; and/or other organizational changes, as appropriate.*



Yolanda Ho  
 Land Use Committee  
 May 4, 2023  
 D1

**Amendment I1 Version 1 to CB 120534 - Tree Protection Updates**

**Sponsor:** Councilmembers Pedersen & Strauss

Tree groves clarification

**Effect:** This would amend CB 120534 to clarify the definitions of “Tier 2 tree” and “tree grove” under Section 25.11.130 (Definitions). Specifically, it would state that each tree within a tree grove shall be regulated as a Tier 2 tree, which is consistent with current regulations. It would also clarify the definition of Tier 2 trees to align the language with Table A in Section 25.11.050 and replace reference to the “public right-of-way” with “public place,” which is a defined term in the Seattle Municipal Code that includes the public right-of-way.

1. Amend Section 7 of CB 120534, as follows:

Section 7. Chapter 25.11 of the Seattle Municipal Code, last amended by Ordinance

126777, is amended as follows:

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**25.11.130 Definitions**

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“Tier 2 tree” means any tree that is 24 inches in diameter at standard height or greater, ~~includes tree groves and, each tree comprising a tree grove as well as, and~~ specific tree species below 24 inches in diameter at standard height as ~~deemed as such by the Director pursuant to standards promulgated by the Seattle Department of Construction and Inspections provided by~~ Director’s Rule.

\*\*\*

“Tree grove” means a group of eight or more trees, ~~over~~ 12 inches in diameter at standard height ~~or greater~~ that has a continuous canopy. It excludes red alders, black cottonwoods, bitter cherries, Lombardy poplars, invasive trees, and any tree, the entire trunk of which is in ~~a public~~

Yolanda Ho  
Land Use Committee  
May 4, 2023  
D1

~~right-of-way the public place.~~ Trees planted as a hedge or clearly maintained as such are not tree groves. A tree grove may be located across property lines on abutting and/or adjacent lots. A tree grove shall be regulated as a Tier 2 tree, and each tree comprising that grove shall also be regulated as a Tier 2 tree.

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Yolanda Ho  
Land Use Committee  
May 4, 2023  
D1

**Amendment I3 Version 1 to CB 120534 - Tree Protection Updates**

**Sponsor:** Councilmember Strauss  
Emergency action clarification

**Effect:** This would amend CB 120534 to clarify the definition of “emergency action” under Section 25.11.130 (Definitions) to clarify that risk assessment should be determined according to standards established by the International Society of Arboriculture, consistent with the proposed definition of “hazardous tree.”

1. Amend Section 7 of CB 120534, as follows:

Section 7. Chapter 25.11 of the Seattle Municipal Code, last amended by Ordinance

126777, is amended as follows:

\*\*\*

**25.11.130 Definitions**

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“Emergency action” means any action taken to a Tier 1, Tier 2, or Tier 3 tree that has an extreme risk of imminent failure risk rating ~~using~~ according to tree risk assessment evaluation standards established by the International Society of Arboriculture (ISA) Tree Risk Assessment Qualification (TRAQ) method, including but not limited to such actions as trimming or removal that is necessary to remedy an immediate threat to people, structures, or health and safety.

\*\*\*

Yolanda Ho  
 Land Use Committee  
 May 4, 2023  
 D2

**Amendment I4 Version 2 to CB 120534 - Tree Protection Updates**

**Sponsor:** Councilmember Strauss

Tree service provider activities and qualifications clarification

**Effect:** This would (1) clarify that registered tree service providers conducting tree risk assessments are required to have either an employee or a person on retainer who is currently credentialed with an ISA Tree Risk Assessment Qualification and (2) align provisions related to tree service provider requirements with proposed tree tier nomenclature.

1. Amend Section 7 of CB 120534, as follows:

Section 7. Chapter 25.11 of the Seattle Municipal Code, last amended by Ordinance 126777, is amended as follows:

**25.11.040 Hazardous tree removal**

A. For any tree regulated pursuant to this Section 25.11.040, approval from the Seattle Department of Construction and Inspections is required in advance of hazardous tree removal unless it is an emergency action pursuant to Section 25.11.030.

B. Trees subject to the provisions of this Chapter 25.11 may be removed as hazardous, if those trees are rated by a registered tree service provider that has an employee or a person on retainer who is currently credentialed with an ISA Tree Risk Assessment Qualification as an Extreme or High Risk hazard, according to the following:

\*\*\*

**25.11.100 Tree service provider registration**

C. Tree service provider activities

1. Unless it is an emergency action pursuant to Section ~~((25.11.020))~~ 25.11.030, a registered tree service provider shall comply with the following public notice requirements prior

Yolanda Ho  
Land Use Committee  
May 4, 2023  
D2

to conducting commercial tree work that involves reportable work or removal of any ~~tree 6 inches or greater ((DBH)) DSH~~ Tier1, Tier 2, Tier 3, or Tier 4 tree:

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**25.11.130 Definitions**

“Commercial tree work” means any of the following actions conducted within ~~((the City of))~~ Seattle in exchange for financial compensation: reportable work; and the removal of any tree 6 inches or greater ((DBH)) DSH; and the assessment of the health or hazard risk of trees larger than 6 inches ((DBH)) DSH or assessment of the health or hazard risk of any Tier 1, Tier 2, Tier 3, or Tier 4 tree. Normal pruning and maintenance that does not meet the definition of reportable work is not commercial tree work.

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Yolanda Ho  
Land Use Committee  
May 4, 2023  
D1

## Amendment D1 Version 1 to CB 120534 - Tree Protection Updates

**Sponsor:** Councilmember Strauss

Add exemption for tree removal due to pathogens

**Effect:** This would add pathogens to the proposed exemption for trees that are infested with insects and/or pests. This would allow for removal of trees that do not meet a high risk hazard due to the presence of pathogens, which can include fungi, bacteria, viruses, parasitic plants, nematodes and other microorganisms. It would also require replacement of any Tier 1, Tier 2, or Tier 3 tree removed for this reason to be replaced.

1. Amend Section 7 of CB 120534, as follows:

Section 7. Chapter 25.11 of the Seattle Municipal Code, last amended by Ordinance

126777, is amended as follows:

### **25.11.020 Exemptions**

The following trees and tree activities are exempt from the provisions of this Chapter 25.11:

\*\*\*

G. Tree removal or commercial tree work as approved by the Director prior to removal in accordance with a recommendation from a certified arborist for an insect ~~and/or~~ pest, and/or pathogen infestation that does not meet a high risk hazard, except that tree service providers conducting commercial tree work on these trees must comply with the tree service provider registry requirements of Section 25.11.100 and the replacement requirements of Section 25.11.090; and

\*\*\*

### **25.11.090 Tree replacement, maintenance, and site restoration**

Yolanda Ho  
Land Use Committee  
May 4, 2023  
D1

A. ~~((Each exceptional tree and tree over 2 feet in diameter that is))~~ In all zones, Tier 1, Tier 2, and Tier 3 trees removed in association with development or because they are hazardous or are infested by insects ~~or~~, pests, or pathogens ~~((in all zones))~~ shall be replaced by one or more new trees, the size and species of which shall be determined by the Director; the tree replacement required shall be designed to result, upon maturity, in a canopy cover that is ~~((at least equal))~~ roughly proportional to the canopy cover prior to tree removal. ~~((Preference shall be given to on-site replacement. When on-site replacement cannot be achieved, or is not appropriate as determined by the Director, preference for off-site replacement shall be on public property.))~~ When off-site replacement is proposed, preference for the location shall be on public property.

Yolanda Ho  
Land Use Committee  
May 4, 2023  
D1b

## Amendment D3 Version 1 to CB 120534 - Tree Protection Updates

**Sponsor:** Councilmember Strauss

Allow tree removal to avoid conflicts with utility infrastructure and building foundations

**Effect:** This would allow for removal of Tier 3 and additional Tier 4 trees outside of development in case of conflicts with infrastructure or building foundations. For reference, CB 120534 would only allow removal of up to two Tier 4 trees in a three-year period in Neighborhood Residential, Lowrise, Midrise, commercial, and Seattle Mixed zones. It would also require replacement for any Tier 3 tree removed for these reasons.

1. Amend Section 7 of CB 120534, as follows:

Section 7. Chapter 25.11 of the Seattle Municipal Code, last amended by Ordinance

126777, is amended as follows:

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### **25.11.050 General provisions for regulated tree categories**

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B. When no development is proposed, no more than two Tier 4 trees may be removed in any three-year period on developed lots in Neighborhood Residential, Lowrise, Midrise, commercial, and Seattle Mixed zones, and no more than three Tier 3 and Tier 4 trees may be removed on developed lots in any one-year period in all other zones.

C. Relocated and required replacement trees included in an approved plan set may not be removed, unless removal is approved by a future permit.

D. In addition to the tree removal allowances in subsection 25.11.050.B, the Director may authorize removal and replacement of a Tier 3 tree, or removal of a Tier 4 tree, from developed lots in Neighborhood Residential, Lowrise, Midrise, commercial, and Seattle Mixed zones when



Yolanda Ho  
 Land Use Committee  
 May 4, 2023  
 D1b

removal is needed because the tree is causing obvious physical damage to building foundations or utility infrastructure, where continued or additional damage cannot be avoided through actions other than removal

\*\*\*

**25.11.090 Tree replacement, maintenance, and site restoration**

A. ~~((Each exceptional tree and tree over 2 feet in diameter that is))~~ In all zones, Tier 1, Tier 2, and Tier 3 trees removed in association with development or because they are hazardous ~~or are,~~ infested by insects or pests ((in all zones)), or in accordance with the removal criteria in subsection 25.11.050.D, shall be replaced by one or more new trees, the size and species of which shall be determined by the Director; the tree replacement required shall be designed to result, upon maturity, in a canopy cover that is ~~((at least equal))~~ roughly proportional to the canopy cover prior to tree removal. ~~((Preference shall be given to on-site replacement. When on-site replacement cannot be achieved, or is not appropriate as determined by the Director, preference for off-site replacement shall be on public property.))~~ When off-site replacement is proposed, preference for the location shall be on public property.

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Yolanda Ho  
Land Use Committee  
May 4, 2023  
D1

**Amendment D5 Version 1 to CB 120534 - Tree Protection Updates**

**Sponsor:** Councilmember Strauss

Exemption for dead trees

**Effect:** This would exempt removal of dead trees from some of the requirements for hazardous tree removal. Removal of a dead tree would still require approval prior to removal by the Seattle Department of Construction and Inspections and the department will charge a fee, but no risk assessment or replacement would be required.

1. Amend Section 7 of CB 120534, as follows:

Section 7. Chapter 25.11 of the Seattle Municipal Code, last amended by Ordinance

126777, is amended as follows:

\* \* \*

**25.11.040 Hazardous tree removal**

\* \* \*

C. Tier 1, Tier 2, and Tier 3 trees must be replaced pursuant to Section 25.11.090 when approved for removal as hazardous.

D. Removal of dead trees is exempt from the risk assessment requirements of subsection 25.11.040.B and replacement requirements of subsection 25.11.040.C.

\* \* \*

Yolanda Ho  
Land Use Committee  
May 4, 2023  
D1a

**Amendment D6 Version 1 to CB 120534 - Tree Protection Updates**

**Sponsor:** Councilmember Strauss

Exemption for invasive and nuisance species

**Effect:** This would exempt removal of invasive or nuisance trees (i.e., those listed on the King County Noxious Weed Board’s Class A, Class B, Class C Noxious Weed, or Weeds of Concern Lists) from tree removal limits, but would require that if the tree is a Tier 1, Tier 2, or Tier 3 tree, it would need to be replaced. While the Noxious Weed Lists include only a few small tree species, the Weeds of Concern List includes trees that can grow to be quite large, including English holly, horse-chestnut, and Norway maple. There are at least a few designated heritage (Tier 1) trees that are species listed on the Weeds of Concern List, and this amendment would not allow those to be removed.

1. Amend Section 7 of CB 120534, as follows:

Section 7. Chapter 25.11 of the Seattle Municipal Code, last amended by Ordinance

126777, is amended as follows:

\* \* \*

**25.11.020 Exemptions**

The following trees and tree activities are exempt from the provisions of this Chapter 25.11:

\* \* \*

G. Tree removal or commercial tree work as approved by the Director prior to removal in accordance with a recommendation from a certified arborist for an insect and/or pest infestation that does not meet a high risk hazard, except that tree service providers conducting commercial tree work on these trees must comply with the tree service provider registry requirements of Section 25.11.100 and the replacement requirements of Section 25.11.090; and

Note: Multiple amendments may amend the same sections or subsections. Following Land Use Committee action on all amendments, Central Staff will reconcile language and renumber and re-letter sections and subsections as needed in the amended bill.

Yolanda Ho  
Land Use Committee  
May 4, 2023  
D1a

H. Tree removal or commercial tree work to comply with the Americans with Disabilities Act; except that tree service providers conducting commercial tree work on these trees must comply with the tree service provider registry requirements of Section 25.11.100; and

I. Removal of invasive or nuisance trees, excluding those that are Tier 1 trees, except that tree service providers conducting commercial tree work on these trees must comply with the tree service provider registry requirements of Section 25.11.100 and the replacement requirements of Section 25.11.090.

\* \* \*

**25.11.090 Tree replacement, maintenance, and site restoration**

A. ~~((Each exceptional tree and tree over 2 feet in diameter that is))~~ In all zones, Tier 1, Tier 2, and Tier 3 trees removed in association with development or because they are hazardous or invasive or are a nuisance tree, or are infested by insects or pests ((in all zones)) shall be replaced by one or more new trees, the size and species of which shall be determined by the Director; the tree replacement required shall be designed to result, upon maturity, in a canopy cover that is ((at least equal)) roughly proportional to the canopy cover prior to tree removal. ((Preference shall be given to on-site replacement. When on-site replacement cannot be achieved, or is not appropriate as determined by the Director, preference for off-site replacement shall be on public property.)) When off-site replacement is proposed, preference for the location shall be on public property.

\* \* \*

**25.11.130 Definitions**

\* \* \*

Yolanda Ho  
Land Use Committee  
May 4, 2023  
D1a

“Invasive tree” or “nuisance tree” means any tree species that is documented on the King County Noxious Weed Board’s Class A, Class B, ~~or~~ Class C Noxious Weed, or Weeds of Concern Lists.

\* \* \*

Yolanda Ho  
Land Use Committee  
May 4, 2023  
D1a

**Amendment D7 Version 1 to CB 120534 - Tree Protection Updates**

**Sponsor:** Councilmember Strauss

Exemption for developed lots with high-canopy cover

**Effect:** This would exempt removal of Tier 3 and Tier 4 trees to thin trees that were initially overplanted on developed lots, provided that those lots have at least 40 percent canopy cover or higher, when taking the planned removal into account. Removal of such trees would be required to be done by a registered tree service provider.

CB 120534 would only allow removal of up to two Tier 4 trees in a three-year period in Neighborhood Residential, Lowrise, Midrise, commercial, and Seattle Mixed zones. This exemption would allow residents to remove trees above this limit and not require replacement for trees that are removed, recognizing that such lots are unlikely to have sufficient space to accommodate new trees.

1. Amend Section 7 of CB 120534, as follows:

Section 7. Chapter 25.11 of the Seattle Municipal Code, last amended by Ordinance

126777, is amended as follows:

\* \* \*

**25.11.020 Exemptions**

The following trees and tree activities are exempt from the provisions of this Chapter 25.11:

\* \* \*

G. Tree removal or commercial tree work as approved by the Director prior to removal in accordance with a recommendation from a certified arborist for an insect and/or pest infestation that does not meet a high risk hazard, except that tree service providers conducting commercial tree work on these trees must comply with the tree service provider registry requirements of Section 25.11.100 and the replacement requirements of Section 25.11.090; ~~and~~

Yolanda Ho  
Land Use Committee  
May 4, 2023  
D1a

H. Tree removal or commercial tree work to comply with the Americans with Disabilities Act; except that tree service providers conducting commercial tree work on these trees must comply with the tree service provider registry requirements of Section 25.11.100; and

I. Removal of Tier 3 and Tier 4 trees to thin trees that were initially overplanted, as approved by the Director prior to removal, on developed lots that, when taking the planned tree removal into account, would have 40 percent canopy cover or higher; except that tree service providers conducting commercial tree work on these trees must comply with the tree service provider registry requirements of Section 25.11.100.

\* \* \*

Lish Whitson  
 Land Use Committee  
 May 4, 2023  
 D1

**Amendment D8 Version 1 to CB 120534 - Tree Protection Updates**

**Sponsor:** Councilmember Strauss

Allow tree removal to improve access for the elderly and people with disabilities

**Effect:** This amendment would exempt tree removal or tree work that is necessary to improve access to the elderly or disabled from the provisions of Chapter 25.11. Section 25.11.020 as proposed would exempt activities necessary to comply with the Americans with Disabilities Act (ADA) from the provisions of the Chapter. Under the amendment, this exemption would be expanded to include all changes necessary to improve access for the elderly and people with disabilities, whether those changes are required under the ADA, or are voluntary improvements. This language is consistent with language found in the Land Use Code (Chapter 23 of the Seattle Municipal Code) regarding permitted changes to structures that would otherwise not be allowed. Common improvements that may necessitate the removal of a tree to improve access include the addition of a ramp, or the regrading of a pathway to a site.

1. Amend Section 7 of CB 120534, as follows:

Section 7. Chapter 25.11 of the Seattle Municipal Code, last amended by Ordinance 126777, is amended as follows:

\* \* \*

**25.11.020 Exemptions**

The following trees and tree activities are exempt from the provisions of this Chapter 25.11:

A. Normal pruning and maintenance;

B. Emergency (~~((activities necessary to remedy an immediate threat to public health, safety, or welfare))~~) actions pursuant to Section 25.11.030, except that tree service providers conducting commercial tree work on these trees must comply with Section 25.11.100;

C. Tree removal undertaken as part of tree and vegetation management and revegetation of public parkland and open spaces by responsible public agencies or departments;



Lish Whitson  
 Land Use Committee  
 May 4, 2023  
 D1

~~D. ((Tree removal approved as part of an Environmentally Critical Area tree and vegetation plan as provided in Section 25.09.070, except that commercial tree work must comply with the requirements of Section 25.11.095;))~~ Trees located within an Environmentally Critical Area, except that tree service providers conducting commercial tree work on these trees must comply with the tree service provider registry requirements of Section 25.11.100;

~~((F. Tree removal shown as part of an issued building or grading permit as provided in Sections 25.11.060, 25.11.070, and 25.11.080, except that commercial tree work must comply with the requirements of Section 25.11.095;~~

~~G.))~~ ~~((Removal of street trees as))~~ F. Trees regulated by Title 15; ~~((and~~

~~H. Additions to existing structures, shown as part of an issued building or grading permit as provided in Sections 25.11.060, 25.11.070 and 25.11.080.))~~

E. Tree removal, off-site replanting outside the boundaries of the MPC-YT zone, and payment in lieu of replanting undertaken as part of redevelopment that meets the planned action ordinance within the MPC-YT zone for Yesler Terrace pursuant to Section 23.75.160, except that tree service providers conducting commercial tree work on these trees must comply with the tree service provider registry requirements of Section 25.11.100;

F. Replanting and payment in lieu of replanting undertaken as part of development by permanent supportive housing providers meeting the definition in Section 23.84A.032;

G. Tree removal or commercial tree work as approved by the Director prior to removal in accordance with a recommendation from a certified arborist for an insect and/or pest infestation that does not meet a high risk hazard, except that tree service providers conducting commercial tree work on these trees must comply with the tree service provider registry requirements of Section 25.11.100 and the replacement requirements of Section 25.11.090; and

Lish Whitson  
Land Use Committee  
May 4, 2023  
D1

H. Tree removal or commercial tree work to comply with the Americans with Disabilities Act, or as necessary to improve access for the elderly or people with disabilities; except that tree service providers conducting commercial tree work on these trees must comply with the tree service provider registry requirements of Section 25.11.100.

\* \* \*

Aly Pennucci  
 Land Use Committee  
 May 4, 2023  
 D1a

**Amendment E3 Version 1 to CB 120534 - Tree Protection Updates**

**Sponsors:** Councilmembers Pedersen and Strauss

**Author:** Councilmember Herbold

Authority to create Director’s Rule for replacement trees

**Effect:** This amendment would authorize the Director of the Seattle Department of Construction and Inspections to promulgate a Director’s Rule to add more specificity to the requirements for maintenance practices intended to maintain the long-term health and ensure survival of replacement trees. This would include requirements for regular monitoring and establish requirements about the type of acceptable replacement trees, limiting that to trees that are native and/or culturally significant, and resilient to climate change.

Amend Section 7 of CB 120534 as follows:

Section 7. Chapter 25.11 of the Seattle Municipal Code, last amended by Ordinance 126777, is amended as follows:

\* \* \*

**25.11.090 Tree replacement, maintenance, and site restoration**

A. ~~((Each exceptional tree and tree over 2 feet in diameter that is))~~ In all zones, Tier 1, Tier 2, and Tier 3 trees removed in association with development or because they are hazardous or are infested by insects or pests ((in all zones)) shall be replaced by one or more new trees, the size and species of which shall be determined by the Director; the tree replacement required shall be designed to result, upon maturity, in a canopy cover that is ((at least equal)) roughly proportional to the canopy cover prior to tree removal. ((Preference shall be given to on-site replacement. When on-site replacement cannot be achieved, or is not appropriate as determined by the Director, preference for off-site replacement shall be on public property.)) When off-site replacement is proposed, preference for the location shall be on public property.

Aly Pennucci  
 Land Use Committee  
 May 4, 2023  
 D1a

~~((B. No tree replacement is required if the tree is (1) hazardous, dead, diseased, injured, or in a declining condition with no reasonable assurance of regaining vigor as determined by a registered tree service provider; or (2) proposed to be relocated to another suitable planting site as approved by the Director.))~~

B. For each relocated or required replacement tree, maintenance and monitoring is required for a five-year period. The period begins when the replacement tree is planted.

Maintenance and monitoring shall include the following:

1. Sufficient maintenance actions to ensure survival of the replacement tree:

a. When more than one replacement tree is required, 80 percent survival of new trees planted at the end of five years;

b. When one replacement tree is required, 100 percent survival of the new tree planted at the end of five years;

2. Replacement and replanting of failed trees; and

3. Photographic documentation of planting success retained for the five-year period. Submission of documentation to the Seattle Department of Construction and Inspections is not required unless requested by the Department.

C. In addition to the maintenance actions for replacement trees described in subsection 25.11.090.B.1, the Director shall promulgate rules to maintain the long-term health and ensure survival of replacement trees. This shall include rules that specify:

1. The watering of replacement trees necessary to ensure survival; and

2. Tree species that will fulfill the replacement requirement. Qualifying tree species shall be limited to trees that are native and/or culturally significant, and resilient to climate change.

Ketil Freeman  
 Land Use Committee  
 May 4, 2023  
 D1

**Amendment E9 Version 1 to CB 120534 - Tree Protection Updates**

**Sponsor:** Councilmembers Pedersen and Strauss

Prohibit applications for new development on sites with an active Tree Code notice of violation

**Effect:** This would amend Section 7 to CB 120534 to prohibit the Seattle Department of Construction and Inspections (SDCI) Director from accepting applications for new development on a site for which a Notice of Violation (NOV) has been issued.

This amendment is intended to create a disincentive for sellers of property to illegally remove trees to facilitate future development by a purchaser.

1. Amend Section 7 of CB 120534, as follows:

**25.11.120 Enforcement and penalties**

A. Authority

1. The Director (~~((shall have))~~) has authority to enforce the provisions of this Chapter 25.11, (~~((to))~~) issue permits, impose conditions and establish penalties for violations of applicable law or rules by (~~((registered tree service providers,))~~) the responsible party, establish administrative procedures and guidelines, conduct inspections, and prepare the forms and publish Director’s Rules that may be necessary to carry out the purposes of this Chapter 25.11.

2. The Director shall remove a registered tree service provider from the public registry for a period of one year after that registered tree service provider has been issued two notices of violation. Following the one-year removal period, the tree service provider may submit an application to be added to the public registry.

3. The Director shall not accept an application for development on a site for which a notice of violation has been issued until that notice of violation is resolved.

\*\*\*

Yolanda Ho  
 Land Use Committee  
 May 4, 2023  
 D1c

## Amendment E10 Version 1 to CB 120534 - Tree Protection Updates

**Sponsor:** Councilmember Morales

Racial equity considerations and use of in-lieu fee revenues

**Effect:** This would amend CB 120534 to add recitals related to the key findings of the 2021 Tree Canopy Assessment, including the ongoing issue of inequitable tree canopy cover distribution throughout Seattle. It would specify that revenues generated from the in-lieu fee for replacement trees be directed to planting new trees in census tracts with tree canopy cover of 25 percent or less, prioritizing planting new trees in the public place (i.e., right-of-way) in such census tracts. This language would align with the Executive's proposed use of the in-lieu fee revenue.

1. Add recitals to CB 120534, as follows:

WHEREAS, The City of Seattle (City) established a goal of achieving at least 30 percent tree canopy cover by 2037; and

WHEREAS, the City's 2021 Tree Canopy Assessment determined that Seattle has experienced a net loss of 255 acres of tree canopy since 2016, representing a relative decrease of 1.7 percent; and

WHEREAS, tree canopy is inequitably distributed, with neighborhoods most impacted by racial and economic injustice starting with lower canopy and losing more canopy than the citywide average between 2016 and 2021; and

WHEREAS, these neighborhoods also tend to suffer from lower air quality and associated health impacts, and trees help to absorb air pollutants and increase air quality; and

WHEREAS, higher tree canopy cover helps to lower ambient temperatures and reduce heat island effects during the summer months, which are predicted to become increasingly hotter as the climate warms; and

Yolanda Ho  
Land Use Committee  
May 4, 2023  
D1c

WHEREAS, while all areas in Seattle suffered some amount of tree canopy cover loss, the Parks Natural Areas and Neighborhood Residential management units exhibited the greatest net losses, accounting for 78 percent of total canopy cover lost between 2016 and 2021; and

WHEREAS, the trends revealed by the 2021 Tree Canopy Assessment indicate that Seattle is further away from achieving its goal of 30 percent canopy cover; and

WHEREAS, to reverse this decline in canopy cover and realize the City's goal of an equitably distributed urban forest in Seattle, the City needs to consider innovative, equity-focused strategies that promote housing development while also prioritizing tree planting, preservation, and maintenance and community engagement; and

WHEREAS, the Office of Sustainability and Environment's 2023 Adopted Budget includes \$150,000 for a tree canopy equity and resilience assessment and plan that will identify the best strategies and locations for planting, growing, and maintaining trees on private and public land and in the right-of-way, with a focus on low-canopy neighborhoods in environmental justice priority areas; and

WHEREAS, this legislation is intended to advance the City's efforts to increase housing production; reduce climate pollutants per the goals of the Green New Deal for Seattle; increase community climate resiliency, particularly for vulnerable populations; and address inequitable tree canopy cover so that all communities can enjoy the environmental and aesthetic benefits of greater tree canopy cover in their neighborhoods;  
NOW, THEREFORE,

Yolanda Ho  
Land Use Committee  
May 4, 2023  
D1c

2. Amend Section 7 of CB 120534, as follows:

**25.11.110 Off-site planting and voluntary payment in lieu**

If tree removal is approved by the Director, the applicant may elect to make a voluntary payment in lieu of tree replacement on-site as specified in this Section 25.11.110.

A. A combination of planting trees on site, planting trees off-site and/or payment in lieu is allowed, provided that the combination is consistent with the provisions of this Chapter 25.11 and the results shall be equivalent to or greater than the minimum requirements for on-site tree plantings.

B. All payments shall be paid to the Seattle Department of Construction and Inspections before the issuance of a permit authorizing removal of trees pursuant to this Chapter 25.11.

C. Payments shall be calculated pursuant to a rule promulgated by the Director.

D. Revenue generated from payment in lieu of planting shall be used to plant and maintain new trees in census tracts with tree canopy cover of 25 percent or less, according to the 2021 Seattle Tree Canopy Assessment (or successor tree canopy assessment). Within these census tracts, the City shall prioritize planting new trees in the public place.



Ketil Freeman  
 Land Use Committee  
 May 4, 2023  
 D1

**Amendment H1 Version 1 to CB 120534 - Tree Protection Updates**

**Sponsor:** Councilmember Pedersen

Removal of invasives during development

**Effect:** This would amend Section 7 to CB 120534 to require removal of invasive vegetation as part of site restoration and preclude planting of new invasive species when replacement is required as part of development.

1. Amend Section 7 of CB 120534, as follows:

Section 7. Chapter 25.11 of the Seattle Municipal Code, last amended by Ordinance 126777, is amended as follows:

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**25.11.090 Tree replacement, maintenance, and site restoration**

A. ~~((Each exceptional tree and tree over 2 feet in diameter that is))~~ In all zones, Tier 1, Tier 2, and Tier 3 trees removed in association with development or because they are hazardous or are infested by insects or pests ((in all zones)) shall be replaced by one or more new trees, the size and species of which shall be determined by the Director; the tree replacement required shall be designed to result, upon maturity, in a canopy cover that is ((at least equal)) **at least roughly proportional** to the canopy cover prior to tree removal. **Site restoration where there is on-site tree replacement in association with development shall include the removal of all invasive vegetation and shall prohibit replacement with invasive species.** ~~((Preference shall be given to on-site replacement. When on-site replacement cannot be achieved, or is not appropriate as determined by the Director, preference for off-site replacement shall be on public property.))~~ When off-site replacement is proposed, preference for the location shall be on public property.

Ketil Freeman  
Land Use Committee  
May 4, 2023  
D1

~~((B. No tree replacement is required if the tree is (1) hazardous, dead, diseased, injured, or in a declining condition with no reasonable assurance of regaining vigor as determined by a registered tree service provider; or (2) proposed to be relocated to another suitable planting site as approved by the Director.))~~

\*\*\*

Eric McConaghy  
 Land Use Committee  
 May 4, 2023  
 D1

**Amendment H2 Version 1 to CB 120534 - Tree Protection Updates**

**Sponsor:** Councilmember Strauss

Add benefit and goals recitals and modify purpose and intent

**Effect:** This would amend CB 120354 to add recitals about (1) the benefits of trees and the urban forest and (2) the goals of the legislation. It would also modify the Purpose and Intent section to include reference to increasing Seattle’s climate resilience and reducing urban heat islands. The amendment would not impact the implementation or enforcement of the proposed regulations.

1. Add recitals to CB 120534, as follows:

WHEREAS, trees and urban forest provide necessary and substantial economic, social, health and environmental benefits needed for a thriving, livable and resilient city. These benefits include improved mental and physical public health, stormwater retention, wildlife habitat preservation for birds and other species, pollution reduction, climate change mitigation and adaptation, erosion control, urban heat island reduction, wind protection, and aesthetic beauty; and

WHEREAS, the goals of this legislation are to protect and enhance the public health, safety, environment, and general welfare of the people of the City by improving protections and processes for Seattle’s trees and urban forest located on both public and private land;

NOW, THEREFORE,

2. Amend Section 7 of CB 120534, as follows:

Section 7. Chapter 25.11 of the Seattle Municipal Code, last amended by Ordinance 126777, is amended as follows:

**25.11.010 Purpose and intent ((-))**

Eric McConaghy  
 Land Use Committee  
 May 4, 2023  
 D1

~~((It is the))~~ The purpose and intent of this ~~((chapter))~~ Chapter 25.11 is to:

A. Implement the goals and policies of Seattle's Comprehensive Plan, especially those in the Environment Element dealing with protection of the urban forest while balancing other citywide priorities such as housing production;

B. ~~((To preserve))~~ Preserve and enhance the City's physical and aesthetic character by preventing untimely and indiscriminate removal or destruction of trees;

C. ~~((To protect))~~ Protect trees on undeveloped sites that are not undergoing development by not allowing tree removal except in hazardous situations, to prevent premature loss of trees so their retention may be considered during the development review and approval process;

D. ~~((To reward))~~ Facilitate tree protection efforts by granting flexibility for certain development standards, and ~~((to))~~ promote site planning and horticultural practices that are consistent with the reasonable use of property;

E. ~~((To especially protect exceptional))~~ Protect Tier 2 trees and other trees that because of their unique historical, ecological, or aesthetic value constitute an important community resource~~((; to))~~ , and require flexibility in design to protect ~~((exceptional))~~ these trees;

F. ~~((To provide))~~ Provide the option of modifying development standards to protect ~~((trees over two (2) feet in diameter in the same manner that modification of development standards is required for exceptional))~~ Tier 2 trees;

G. ~~((To encourage))~~ Encourage retention of trees ~~((over six (6) inches in diameter))~~ through the design review and other processes for larger projects, through education concerning the value of retaining existing trees, and by not permitting their removal on undeveloped land prior to development permit review~~((; and~~

Eric McConaghy  
Land Use Committee  
May 4, 2023  
D1

H. Support the goals and policies of the City of Seattle Urban Forest Management Plan, specifically those related to existing Citywide policies that commit the City to realize its vision of racial equity and environmental justice; and

I. Increase Seattle's climate resilience and reduce urban heat islands in the City.

Ketil Freman  
 Land Use Committee  
 May 4, 2023  
 D1

### Amendment H4 Version 1 to CB 120534 –

**Sponsor:** Councilmember Strauss

Process for modifications to Tree Code requirements for excess mitigation or severe economic hardship

**Effect:** This would amend Section 7 to CB 120534 to add a new section setting out a process for applicants to request relief from tree protection requirements if: (1) an applicant can demonstrate that mitigation required under Chapter 25.11 exceeds what is necessary to mitigate tree removals or, (2) for Tier 1 tree removals, an applicant can demonstrate that retention of a Tier 1 tree would cause a severe economic hardship.

Applicants would first be required to demonstrate that they had exhausted other administrative remedies, such as taking advantage of the ability to modify development standards. The burden of proof for demonstrating economic hardship would be on the applicant. Decisions made under the new section would be appealable to the City Hearing Examiner.

Amend Section 7 of CB 120534, as follows:

Section 7. Chapter 25.11 of the Seattle Municipal Code, last amended by Ordinance 126777, is amended as follows:

#### **25.11.115 Modification of tree removal, replacement, and voluntary in-lieu payment requirements**

##### **A. General**

**1. An applicant may request a modification, according to subsections 25.11.115.B and 25.11.115.C, of the amount of mitigation calculated according to Section 25.11.110 or the limitation on Tier 1 tree removals according to Section 25.11.050, respectively.**

Ketil Freman  
Land Use Committee  
May 4, 2023  
D1

2. An applicant requesting a modification under subsection 25.11.115.B regarding the amount of mitigation calculated according to Section 25.11.110 shall have requested a modification to standards according to Section 25.11.070, if applicable.

3. The decision on any modification shall specify a mitigation amount.

B. Modification based on mitigation greater than impact. The Director shall, as a special exception according to Chapter 23.76, modify the amount of mitigation calculated according to Section 25.11.110 if the applicant demonstrates that the required amount of mitigation exceeds the amount that would be needed to mitigate the actual cost of tree canopy loss from a proposed development.

C. Modification based on severe economic impact

1. The purpose of this subsection 25.11.115.C is to allow the Director, as a special exception according to Chapter 23.76, to modify regulations that limit the removal of Tier 1 trees according to Section 25.11.050, if the applicant can demonstrate facts supporting a determination of severe economic impact at such a level that a property owner's constitutional rights may be at risk.

2. For the purposes of this subsection 25.11.115.C, the Director is not making a determination of the constitutional rights of a property owner, but instead is reviewing the credibility and strength of facts demonstrating severe economic impact.

3. The Director may waive or modify regulations that limit the removal of Tier 1 trees, if the applicant shows that application of the requirements according to this Chapter 25.11 would:

a. Create severe economic impact by depriving a property owner of all economically beneficial use of the property; or

Ketil Freman  
Land Use Committee  
May 4, 2023  
D1

b. Create severe economic impact, not reaching deprivation of all economically beneficial use, but as applied on a case-by-case basis after weighing the economic impact of the regulations on the property owner, the extent to which the regulations have interfered with distinct investment-backed expectations, and the character of the City's tree regulations.

4. In determining whether there is a severe economic impact under Section 25.11.115.C.3.b, the Director may weigh the following factors:

a. The severity of the economic impact caused by the application of the requirements according to this Chapter 25.11;

b. The degree to which the Tier 1 tree removal limitations under Section 25.11.050 were or could have been anticipated at the time the property owner purchased the property or at the time the property owner voluntarily agreed to enter into the Heritage Tree Program;

c. The extent to which alternative uses of the property or configurations of the proposed development would alleviate the need for the requested waiver or modification;

d. The extent to which any economic impact was due to decisions by the applicant and/or property owner; and

e. Other factors relevant to whether the burden should be borne by the property owner.

5. The waiver or modification may be approved only to the extent necessary to grant relief from the severe economic impact.

6. A request to the Director for a waiver or modification according to this subsection 25.11.115.C shall include, at a minimum, all of the following:



Ketil Freman  
Land Use Committee  
May 4, 2023  
D1

a. A description of the requested waiver or modification, including any proposed voluntary in lieu payment amount;

b. Documentation showing that any relief available according to subsection 25.11.070 would not eliminate the need for the requested waiver or modification;

c. The identity of the property owner and the date of the owner's acquisition of the property and the date the property owner voluntarily entered into the Heritage Tree Program;

d. Documentation showing the use of the property at the time of the request or, if the property is vacant at that time, the use of the property prior to commencement of vacancy;

e. Documentation explaining and supporting the claim of economic impact; and

f. Documentation showing that a different development configuration that satisfied the requirements according to this Chapter 25.11 would not alleviate the need for the requested waiver or modification.

7. The applicant shall provide any additional information as may be required by the Director to make a determination on the request. The applicant shall have the burden of proving by a preponderance of the evidence that a waiver or modification authorized according to this subsection 25.11.115.C is justified.

8. The fact of a decrease in property value, standing alone and without consideration of the full range of relevant factors including those according to subsection 25.11.115.C.4, shall not be a sufficient basis for the Director to grant a waiver or modification authorized according to this subsection 25.11.115.C.

Ketil Freman  
Land Use Committee  
May 4, 2023  
D1

9. In any appeal to the Hearing Examiner, the parties will have an additional opportunity to make a record on the factual issues, consistent with due process.