

May 11, 2018

## MEMORANDUM

**To:** Planning, Land Use and Zoning Committee  
**From:** Yolanda Ho and Eric McConaghy, Council Central Staff  
**Subject:** Draft Updates to Seattle's Tree Regulations

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Councilmember Johnson asked Central Staff to draft updates to the tree regulations (Tree Code) in the Seattle Municipal Code (SMC), with input and collaboration of Executive staff. These updates are intended to be responsive to Councilmember Johnson's policy priorities of improving customer service dealing with tree concerns, increasing tree canopy in Seattle while addressing the inequitable distribution of trees throughout the city, promoting stewardship of existing trees, and using data to guide Seattle's management of the urban forest.

This memorandum (1) provides background information on recent City activity related to tree stewardship; (2) summarizes proposed updates to tree regulations and feedback from Executive staff; (3) highlights key policy choices for Council; and (4) describes the work remaining to refine the updates. Attachment 1 provides a general overview of the proposed amendments and related regulations currently in place, organized by zone and lot condition.

### **Background**

#### Seattle's tree canopy

Seattle's [Urban Forest Stewardship Plan \(USFP\)](#), adopted by Council in 2013<sup>1</sup>, set a goal to reach 30% tree canopy cover by 2037. The [2016 Seattle Tree Canopy Assessment](#) found that the city was at 28% canopy cover. The study evaluated canopy cover by management units (MU), which are based on generalized land use types (e.g. single-family residential, multi-family residential, commercial/mixed-use, etc.). Of the nine MUs studied, single-family residential contributes the most to the city's canopy cover, accounting for 63% of the total. The right-of-way was a distant second, at 22% of the total. Thus, maintaining and increasing canopy cover in single-family residential areas has been identified as a priority for the City.

#### Distributed department responsibility

Nine City departments have a role in managing Seattle's urban forest.

The Seattle Department of Transportation (SDOT) manages trees in the public right-of-way. Seattle Public Utilities (SPU) engages community in urban forest stewardship in both the right-of-way and on private property. Seattle City Light (SCL) maintains trees near power lines. The Department of Finance and Administrative Services (FAS), Seattle Center, Seattle Parks and Recreation (Parks), and Seattle Public Utilities (SPU) manage trees on their property.

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<sup>1</sup> This 30-year plan replaced the City's 2007 Urban Forest Management Plan.

The Office of Sustainability and Environment (OSE) coordinates citywide policy development and updates the Urban Forest Stewardship Plan. OSE staff also support the work of the Seattle Urban Forestry Commission (UFC) in their work to advise the Mayor and Council on policies and regulations governing the protection, management, and conservation of trees and vegetation in the city.

Finally, the Seattle Department of Construction and Inspections (SDCI) and the Office of Planning and Community Development (OPCD) develop policies/plans and enforce regulations for trees on private property.

#### Executive action and policy

In October 2016, the Mayor issued a directive to improve urban forestry-related services to residents and established a new organizational structure, consisting of an Urban Forestry Sub-cabinet, Urban Forestry Core team, and an Urban Forestry Inter-department Team (IDT), to facilitate interdepartmental coordination:

- *Urban Forestry Sub-cabinet*: consists of Directors of all nine departments with urban forestry mandates, tasked with meeting twice a year to set citywide priorities on trees that all departments work to achieve.
- *Urban Forestry Core Team*: formed by staff from key departments (Parks, SPU, SDOT, SDCI, SCL, and OSE) and tasked with crafting the work plan to deliver on the sub-cabinet's identified priorities and rapid response to emerging situations.
- *Urban Forestry IDT*: meets monthly to work on strategies and tactics to support urban forestry goals, share information on day-to-day operations, and elevate issues to the Core Team.

One of the Core Team 2017 work plan items was for SDCI and OSE to evaluate tree regulations and their effectiveness in protecting the Seattle's urban forest. The research revealed that current regulations and enforcement practices were not supporting tree protection. Unrelated to development, exceptional trees and groves have been removed, with most removals occurring in Environmentally Critical Areas, particularly landslide-prone areas. New development has contributed to the loss of trees, despite tree planting requirements in single-family zones ([Seattle Municipal Code \(SMC\) 23.44.008.I](#)).

Conifers and large trees are being removed while new trees tend to be smaller and/or deciduous. Additionally, individuals appeared to be using the broad definition of hazard trees to circumvent regulations, allowing them to remove trees and avoid replacement requirements ([SMC 25.11.090](#)).

The analysis and recommendations informed [Executive Order 2017-11](#), which identified actions for SDCI and OPCD to implement to "advance protection of Seattle's urban trees and canopy

coverage.” These actions seek to improve internal procedures and enforcement, enhance tree protection, expand compliance options, and update landscaping requirements as part of Mandatory Housing Affordability (MHA). In response to the Executive Order, SDCI and OPCD have completed the following to date:

- Updated [SDCI Tip 331B](#) Hazard Trees to address hazard trees in Environmentally Critical Areas (ECAs) and ECA buffers
- Released draft updates to the Land Use Code that increase tree planting requirements in RSL zones (component of MHA implementation legislation – [Council Bill 119184](#)); and
- Released draft [Director’s Rule \(DR\) 21-2017](#) detailing SDCI’s tree valuation methodology for assessing penalties.

Additional coordination and customer service efforts in recent years include:

- Launch of [Trees for Seattle \(T4S\) brand](#), replacing Seattle reLeaf;
- Consolidation of resources on T4S website - <http://www.seattle.gov/trees/>; and
- Establishment of one-stop shop – email [treesforseattle@seattle.gov](mailto:treesforseattle@seattle.gov) (triaged by OSE) and phone (206) 684-8733 (triaged by SDOT)

#### Previous efforts to update the Tree Code

The City’s initial tree regulations were originally codified in 2001 and then amended in 2009 with interim tree protection measures. In 2010, the Department of Planning and Development (now SDCI) drafted an update to the tree regulations and based on the feedback received, released an updated public draft in 2012, but the proposed changes did not move forward.

#### **Tree Code Updates**

To advance the conversation about updating the Tree Code, we drafted a bill that included elements of the 2012 draft tree legislation, portions of the citywide MHA proposal, recommendations provided by the UFC in an April 11, 2018 [letter](#) to the Mayor and Council as well as some new ideas. We shared the draft with the Executive and OSE and SDCI have provided feedback. The draft, so far, does not include changes to regulations affecting Highrise, downtown, Seattle Mixed, or Industrial zones.

This approach assumes that aspects of the updated Tree Code will require further interpretation through Director’s Rules, as is current practice. SMC 3.06 provides rule-making authority to the SDCI Director. Currently, there are three Director’s Rules that have bearing on tree regulation in Seattle:

- [DR 16-2008](#) Designation of Exceptional Trees
- [DR 30-2015](#) Standards for Landscaping, including Green Factor
- [DR 10-2006](#) Clarifying when Administrative Design Review is required in order to save Exceptional Trees in Lowrise, Midrise, and Commercial zones

New rules may need to be created and existing rules may be updated or eliminated to implement the proposed Tree Code amendments. In order to ensure that the rules address racial and social equity, Council could require SDCI to provide advance review of any updates to existing Director’s Rules or new rules related to tree regulations.

For this memorandum, we have organized the draft Tree Code thematically in Table 1, below. Within each theme, we outline the updates, describe Executive feedback to-date, and point out potential policy choices for Council.

Table 1. Summary of Tree Code Updates, Executive comments, and policy choices

<b>Create new permit for tree removal outside of development</b>	
Proposed	Create a permit requirement for tree removal. Threshold is 12 inches at Diameter Breast Height (DBH) or greater or exceptional trees (defined in <a href="#">DR 16-2008</a> ) not associated with development in Single-family, Residential Small Lot, Lowrise, Midrise and Commercial zones.
Executive Comment	Threshold diameter could be lowered to six or eight inches DBH, allowing for the elimination of the exceptional tree category, which Executive staff have identified as administratively complex and burdensome for property owners, who must hire a certified arborist to help identify exceptional trees.
Policy choices	<ol style="list-style-type: none"> <li>1. Require permit for tree removal outside of development in specified zones</li> <li>2. Set permit threshold diameter at either:               <ol style="list-style-type: none"> <li>a. 12 inches DBH or greater</li> <li>b. Lower threshold diameter and/or eliminate all provisions for exceptional trees</li> </ol> </li> <li>3. Retain or change the limit on numbers of trees that can be removed annually from developed lots (currently no more than three six-inch DBH or greater trees may be removed per year)</li> </ol>
<b>Explore mitigation for tree removal outside of development</b>	
Proposed	Require replacement for removing trees or allow for payment-in-lieu, based on caliper inches of existing tree.
Executive Comment	Explore connecting mitigation requirements to the UFSP’s tree canopy cover goals for specific zones and restrict the fee-in-lieu option to Lowrise, Midrise, and Commercial zones to maintain canopy cover in Single-Family and RSL zones.
Policy choices	<ol style="list-style-type: none"> <li>1. Request evaluation of caliper inches system of replacement to understand trade-offs</li> <li>2. Create zone-specific mitigation requirements</li> <li>3. Allow fee-in-lieu option when permit is required</li> <li>4. Prohibit removal of trees planted to meet mitigation requirements</li> </ol>

<b>Extend tree planting requirements related to development in Single-family and RSL zones</b>	
Proposed	Replace existing tree requirements in Single-family zones with a tree point system for development in Single-family and Residential Small Lot (RSL) zones. Applicants would be required to plant or retain trees sufficient to meet the tree score equal to 1 tree point for every 750 square feet of lot area, as is currently proposed in MHA legislation.
Executive Comment	In addition to new construction, consider linking planting requirements to certain additions to existing structures. Similar to above, limit the in-lieu option and create zone-specific requirements.
Policy choices	<ol style="list-style-type: none"> <li>1. Request evaluation of tree point system of replacement to understand trade-offs</li> <li>2. Create zone-specific mitigation requirements</li> <li>3. Allow fee-in-lieu option when permit is required</li> <li>4. Prohibit removal of trees planted to meet mitigation requirements</li> </ol>
<b>Increase flexibility in development standards to preserve trees</b>	
Proposed	No changes proposed in draft bill.
Executive Comment	Support allowing design flexibility for tree preservation outside of Streamlined Design Review (SDR) for projects that would otherwise not require Design Review. The current requirement is a disincentive to preserve trees during development.
Policy choices	Explore not requiring opt-in to SDR to receive a departure from standards; instead, allow for modifications or waivers of standards in regular development review.
<b>Hazard trees</b>	
Proposed	Similar to current regulations, hazard trees are exempt from permit and mitigation requirements.
Executive Comment	Current regulations are incentivizing the identification of large trees as hazardous, allowing them to be removed without triggering replacement requirements. Consider requiring replacement for hazard trees. Potentially, create a new Director's Rule.
Policy choices	<ol style="list-style-type: none"> <li>1. Require permit for hazard trees</li> <li>2. Require mitigation for hazard tree removal</li> <li>3. Regulate hazard trees in code or delegate to SDCI</li> </ol>
<b>Enhance Green Factor requirements</b>	
Proposed	Apply tree point system to institutions in Single-family zones, which are currently subject to Green Factor requirements. Trees planted to satisfy the point requirement count towards the Green Factor score.
Executive Comment	Consider using only one approach, rather than blending two different systems. They recommend increasing the Green Factor score.
Policy choices	Increase required Green Factor score for institutions in Single-family zones, which is currently set at 0.3 or greater.

<b>Simplify enforcement</b>	
Proposed	No changes proposed in draft bill.
Executive Comment	The current penalty for illegal tree cutting (“equal to appraised value of tree”) has been difficult to enforce. Consider a flat penalty or penalty associated with stump diameter.
Policy choices	Change current penalty assessment methodology to a flat penalty or based on stump diameter.

### **Next Steps**

After receiving Council direction on these policy areas, we can continue to work with Executive staff, incorporating UFC advice and public input, to refine the draft tree code update and identify areas where more detailed analysis may be necessary. It is likely that State Environmental Policy Act (SEPA) review will be necessary. We could also estimate how this new code could be implemented and what resources will be necessary for it to be effective.

### **Attachment:**

1. Current and Proposed Tree Regulations

cc: Kirstan Arestad, Central Staff Director  
 Ketil Freeman, Supervising Analyst

**Attachment 1 - Current and Proposed Tree Regulations**

		<b>Zoning</b>				
		<b>SF &amp; RSL</b>	<b>LR</b>	<b>MR</b>	<b>Commercial</b>	<b>Industrial</b>
<b>Lot Condition</b>	<b>Undeveloped</b>	<ul style="list-style-type: none"> <li>No changes proposed</li> <li>Cannot remove any exceptional trees or trees 6" DBH or greater in diameter</li> </ul>	<ul style="list-style-type: none"> <li>No changes proposed</li> <li>Cannot remove any exceptional trees or trees 6" DBH or greater in diameter</li> </ul>	<ul style="list-style-type: none"> <li>No changes proposed</li> <li>Cannot remove any exceptional trees or trees 6" DBH or greater in diameter</li> </ul>	<ul style="list-style-type: none"> <li>No changes proposed</li> <li>Cannot remove any exceptional trees or trees 6" DBH or greater in diameter</li> </ul>	<ul style="list-style-type: none"> <li>No changes proposed</li> </ul>
	<b>Developed</b>	<ul style="list-style-type: none"> <li>Added new tree permit for removal of exceptional trees or trees 12" DBH or greater</li> <li>Mitigation required; either replacement or fee-in-lieu option</li> </ul>	<ul style="list-style-type: none"> <li>Added new tree permit for removal of exceptional trees or trees 12" DBH or greater</li> <li>Mitigation required; either replacement or fee-in-lieu option</li> </ul>	<ul style="list-style-type: none"> <li>Added new tree permit for removal of exceptional trees or trees 12" DBH or greater</li> <li>Mitigation required; either replacement or fee-in-lieu option</li> </ul>	<ul style="list-style-type: none"> <li>Added new tree permit for removal of exceptional trees or trees 12" DBH or greater</li> <li>Mitigation required; either replacement or fee-in-lieu option</li> </ul>	<ul style="list-style-type: none"> <li>No changes proposed</li> </ul>
	<b>Developing</b>	<ul style="list-style-type: none"> <li>Replaced current mitigation with tree point system (1 pt for every 750 sf of lot size)</li> <li>Performance or in-lieu fee option</li> <li>Added tree requirements for institutions in SF zones</li> <li>Street trees required (existing)</li> </ul>	<ul style="list-style-type: none"> <li>No changes proposed</li> <li>Required Green Factor score <math>\geq 0.6</math></li> <li>Street trees required</li> </ul>	<ul style="list-style-type: none"> <li>No changes proposed</li> <li>Required Green Factor score <math>\geq 0.5</math></li> <li>Street trees required</li> </ul>	<ul style="list-style-type: none"> <li>No changes proposed</li> <li>Required Green Factor score <math>\geq 0.3</math></li> <li>Street trees required</li> </ul>	<ul style="list-style-type: none"> <li>No changes proposed</li> <li>Required Green Factor score <math>\geq 0.3</math> for IC</li> <li>Street trees required for IB and IC zones</li> </ul>

Notes

1. "DBH" means diameter at breast height.
2. Shaded boxes indicate lot conditions and zones where no changes are proposed.
3. For all zones and lot conditions, trees identified as hazardous are exempt from regulations, including mitigation requirements.