

April 5, 2023

MEMORANDUM

To: Land Use Committee
From: Yolanda Ho and Ketil Freeman, Analysts
Subject: Tree protection updates

On April 7, 2023, the Land Use Committee (Committee) will continue discussion of two Council Bills (CBs):

- [CB 120534](#) would expand protections for trees on private property, establish mitigation measures for tree removal, and establish a variety of provisions intended to slow the decrease, and possibly increase, Seattle's tree canopy cover while also balancing the need for development; and
- [CB 120535](#) would add position authority and funding to implement the updated tree protection regulations.

The Committee received briefings from the Seattle Department of Construction and Inspections (SDCI) on the legislation at its meetings on March 22 and March 29.

This memorandum: (1) provides an overview the City's efforts to establish permanent regulations for tree protections on private property and the policy context for these efforts; (2) describes CBs 120534 and 120535; (3) identifies preliminary issues for the Committee's consideration; and (4) presents next steps.

Background

Led by the City Council, Seattle's regulations for tree protection and preservation on private property were initially codified in 2001 and later amended in 2009 with interim tree protection measures. The interim measures reinforced limits on the removal of exceptional trees¹ and set an annual limit on removing non-exceptional trees six inches or greater diameter at standard height (DSH)² from developed lots. Since 2010, the Council has intermittently engaged with the Mayor and Executive departments to develop permanent regulations, but these earlier efforts did not produce any changes to the regulations.

¹ "Exceptional tree" means a tree or group of trees that because of its unique historical, ecological, or aesthetic value constitutes an important community resource, and is deemed as such by the Director according to standards promulgated by the Seattle Department of Construction and Inspections. [Director's Rule 16-2008](#) generally defines a tree as being exceptional at 30 inches DSH, and specifically identifies 27 native and 47 non-native tree species that are exceptional at sizes less than 30 inches DSH.

² The industry standard for measuring trees is diameter at standard height, or breast height (more commonly), and is typically the diameter of the tree at 4.5 feet above grade.

The most recent effort resulted in [Resolution 31902](#) (adopted in September 2019), stating the Council's and the Mayor's shared commitment to explore a variety of strategies to protect trees and increase Seattle's tree canopy cover. These included the following:

1. Retaining protections for exceptional trees and expanding the definition of exceptional trees.
2. Adopting a definition of significant trees as non-exceptional trees at least six inches DSH and creating a permitting process for the removal of these trees.
3. Adding replacement requirements for significant tree removal.
4. Simplifying tree planting and replacement requirements, including consideration of mitigation strategies that allow for infill development while balancing tree planting and replacement goals.
5. Reviewing and potentially modifying tree removal limits in Neighborhood Residential zones.
6. Establishing an in-lieu fee option for tree planting.
7. Tracking tree removal and replacement on both public and private land throughout Seattle.
8. Providing adequate funding to administer and enforce tree regulations.
9. Requiring all tree service providers operating in Seattle to meet minimum certification and training requirements and register with the City.³

Since the first quarter of 2020, SDCI and the Office of Sustainability and Environment (OSE) have provided quarterly progress reports on the legislation and related efforts to the Council's Land Use Committee, as requested by the resolution. The City has a goal of achieving at least 30 percent canopy coverage by 2037.⁴ The [2021 City of Seattle Tree Canopy Assessment](#) found that Seattle had a net loss of approximately 255 acres of tree canopy since 2016, which represents a decline of 1.7 percent. The assessment indicates that Seattle's 2021 canopy cover was approximately 28.1 percent. Further, the analysis revealed that the Neighborhood Residential management unit⁵ comprises 39 percent of Seattle's land area and contains nearly half (47 percent) of the city's total canopy cover.

³ The Council separately addressed this strategy by passing [Ordinance 126554](#) in March 2022 to establish the tree service provider registration requirement. The Council modified these requirements in February 2023 via [Ordinance 126777](#).

⁴ This goal was established in the 2007 Urban Forest Management Plan and is also included in the Seattle 2035 Comprehensive Plan.

⁵ The tree canopy analysis divides Seattle into nine different management units (MUs) based on physical characteristics, management responsibility, and geographic location. The MUs are Commercial/Mixed Use, Developed Parks, Downtown, Major Institutions, Manufacturing/Industrial, Multifamily, Neighborhood Residential, Parks Natural Areas, and Right of Way.

In February 2022, SDCI published a [State Environmental Policy Act \(SEPA\) draft](#) of the tree protection updates legislation along with a Determination of Non-significance (DNS). The DNS was appealed, and the Hearing Examiner upheld the City's determination, allowing SDCI to move forward with developing the legislation that is currently before the Committee. On March 7, 2023, the Mayor issued [Executive Order \(EO\) 2023-03](#), which sets out actions and priorities for expanding Seattle's tree canopy cover, including increasing replacement requirements for trees removed from City property.⁶

CBs 120534 and 120535

CB 120534 would amend the Seattle Municipal Code (SMC) Title 23 (Land Use Code) and Chapter 25.11 (Tree Protections) to improve protections for trees on private property, increase mitigation for tree removal, and implement other strategies to enhance Seattle's urban forest. The proposed changes primarily impact Neighborhood Residential (NR), Lowrise (LR), commercial, Midrise (MR), and Seattle Mixed (SM) zones. The following is a general description of the changes included in the proposed legislation. For more detailed information, see the [SDCI Director's Report](#).

Changes to Title 23 (Land Use Code)

CB 120534 would expand the current street tree requirement in SMC 23.44.020 to new development in all NR zones, excluding accessory dwelling units and additions. Currently, this requirement only applies to new development in the Residential Small Lot zone, which only accounts for about four percent of the area zoned for NR. This provision could help increase tree canopy cover in the right-of-way (ROW) throughout the NR zone.

It would also change how permit applicants receive modifications to development regulations in LR, MR, and commercial zones in exchange for preserving existing trees on site. This would be done via administrative staff review rather than the current requirement for streamlined design review. While both are Type I decisions, meaning that SDCI's decision cannot be appealed to the Hearing Examiner, streamlined design review has additional public outreach and procedural requirements (SMC 23.41.018). This change would allow the modifications currently available only through streamlined design review to be available through administrative staff review.

⁶ EO 2023-03 supersedes [Executive Order 03-05](#) issued in 2005 by Mayor Nickels, which required the planting of two replacement trees for every one tree removed on City property

Changes to Chapter 25.11 (Tree Protections)

CB 120534 would amend the purpose and intent of the chapter to:

- Add that the City’s policies to protect the urban forest should be balanced with other priorities, such as housing production; and
- Include reference to the goals and actions included in Seattle’s Urban Forest Management Plan, specifically those related to racial equity and environmental justice.

It would add exemptions for the following from the requirements of Chapter 25.11:

- Yesler Terrace Planned Action Ordinance site (MPC-YT zone);
- Permanent supportive housing projects; and
- Tree removal to address insect and/or pest infestation or to comply with the Americans with Disabilities Act.

Other key changes to regulations are summarized in Table 1.

Table 1. Comparison between current regulations and CB 120534

Topic	Current Regulations	CB 120534
1. Naming conventions	Exceptional trees, which include heritage trees , defined by Director’s Rule (generally 30 inches DSH or greater)	<ul style="list-style-type: none"> • Tier 1 = designated heritage trees • Tier 2 = trees at least 24 inches DSH, tree groves, and specific tree species identified via Director’s Rule that are Tier 2 at less than 24 inches DSH. Replaces exceptional trees. • Tier 3 = trees at least 12 inches DSH and less than 24 inches DSH • Tier 4 = trees at least 6 inches DSH and less than 12 inches DSH
2. Removal limits (outside of development)	NR, LR, MR, and commercial zones – limit of three non-exceptional trees 6 inches DSH or greater in a one-year period	<ul style="list-style-type: none"> • NR, LR, MR, commercial, and SM zones – limit of two Tier 4 trees in a three-year period • Other zones – limit of three Tier 3 or Tier 4 trees in a one-year period
3. Hazardous trees	<ul style="list-style-type: none"> • Permit requirements provided via Tip 331B • No replacement required for removal of hazardous trees 	<ul style="list-style-type: none"> • Codifies procedures and requirements for hazardous tree removal permits, including emergency removals • Requires replacement for Tier 1, Tier 2, and Tier 3 trees removed because they are hazardous
4. Replacement requirements	Requires replacement of exceptional trees and trees over 2 feet DSH removed for development. Number of replacement trees and species to be determined by SDCI.	Requires replacement of Tier 2 and Tier 3 trees removed for development (this increases the number of trees subject to replacement requirement). Number of replacement trees and species to be determined by SDCI.

Topic	Current Regulations	CB 120534
5. Replacement requirements: in-lieu fee option	Not available	<ul style="list-style-type: none"> • Creates an in-lieu fee to be set by Director’s Rule: <ul style="list-style-type: none"> ○ Tier 1 and Tier 2 trees: \$17.87 per square inch of trunk for each tree removed ○ Tier 3 trees: \$2,833 per tree removed • Revenue to be used by the Seattle Department of Transportation (SDOT) and Seattle Parks and Recreation (SPR) to plant new trees on public land and in the ROW
6. Trees during development in LR, MR, commercial, and SM zones	Uses Floor Area Ratio (FAR), which solely accounts for the area occupied by the building(s), to identify existing trees that can be retained and those that may be removed	Uses 85 percent lot coverage, which includes buildings, walkways, driveways, etc., to identify existing trees that can be retained and those that may be removed

Other Provisions

The proposed legislation includes an uncodified section requiring SDCI to provide a report about the use of the payment in lieu 12 months after the effective date of the ordinance to the Mayor and City Council. The report would include the number of permit applicants who opt to pay the fee, payment amounts, and the total amount of payments collected. It would also present City costs for planting and establishing trees and provide recommendations for changes to the fee amount, as appropriate.

Finally, CB 120535 would add \$273,000 from the Construction and Inspections Fund and 3.0 FTE to SDCI’s 2023 Adopted Budget to increase its capacity to implement the regulations as follows:

- 1.0 FTE Land Use Environmental Analyst for permit review;
- 1.0 FTE Site Inspector to monitor compliance with permit requirements; and
- 1.0 FTE Management Systems Analyst to track tree data.

Preliminary Issue Identification

CBs 120534 and 120535 directly address the strategies included in Resolution 31902 or generally meet their intent (see Attachment 1 for more details), with one exception that is included below with other Central Staff-identified issues for the Committee’s consideration.

Table 2. Preliminary issues identified by Central Staff

Issue	Considerations and Options
<p>1. Tree Removal Permit Outside of Development</p>	<p>CB 120534 does not include a permit for tree removal outside of development as requested by Resolution 31902. This strategy was intended to track how residents manage trees on private property to support policy development. However, due to the requirement that SDCI’s fees fully recover costs associated with permit review, a new permit for tree removal would be prohibitively expensive.⁷ Instead of creating a permit, SDCI proposes to collect data through the tree service provider public notice requirement and by mapping trees on sites undergoing development.</p> <p>The Committee could consider a permit requirement for the removal of Tier 3 and Tier 4 trees outside of development. Requiring a permit without adding ongoing General Fund (GF) appropriations to help defray the permit fee costs would probably result in low compliance with both the permit and tree replacement requirements (where applicable). Low-income residents, in particular, would be financially burdened by the permit and could disproportionately be subjected to enforcement action.</p>
<p>2. Tree Removal Limits Outside of Development</p>	<p>CB 120534 would reduce the number and size of trees that can be removed outside of development on developed lots in NR zones from three non-exceptional trees six inches DSH or greater (i.e., Tier 3 or Tier 4 in the new naming system) in a one-year period to two Tier 4 trees in a three-year period. To remove a Tier 4 tree beyond this limit, it must be hazardous. Tier 1, Tier 2, and Tier 3 trees may only be removed if they are hazardous, and removal of such trees would require replacement.</p> <p>Collectively, these measures are intended to protect more trees outside of development and require mitigation when larger trees are removed, but may result in unintended consequences. The additional restrictions could prevent residents from removing healthy trees that need to be removed because of conflicts with infrastructure and buildings or to support the long-term health of other trees (i.e., trees planted too close together). Residents may also remove unregulated trees (those less than 6 inches DSH) to avoid violating tree removal limits in the future and/or choose not to plant new trees on their property because of these proposed restrictions.</p> <p>The Committee could amend CB 120534 to allow trees to be removed because of conflicts with buildings and infrastructure or other reasons; and/or increase the number and size of trees that may be removed to provide residents with more flexibility in managing trees on their property.</p>

⁷ SDOT has a free permit for tree work in the ROW, including removal, and only charges permit applicants for inspections (if needed). The City of Portland charges \$100 for a permit to remove up to three trees 12 inches DSH or greater outside of development and requires that for every tree removed, a new tree must be planted. Portland waives the permit fee for low-income residents.

Issue	Considerations and Options
<p>3. Cost to Low-income Residents for Hazardous Tree Removal Requirements</p>	<p>The requirement that a Tier 3 or Tier 4 tree be assessed as hazardous before it can be removed (beyond the allowed removal limits) would result in residents having to pay for (1) the permit fee and (2) a registered tree service provider to submit a risk assessment report and remove the tree.</p> <p>Additionally, if it is a Tier 3 tree, it would need to be replaced by one or more trees. These costs would create a financial burden on low-income residents and could disincentivize the removal of hazardous trees.</p> <p>The Committee could consider requesting that the Urban Forestry Core Team develop a strategy to reduce the financial impacts of these requirements on low-income residents. This could potentially include providing replacement trees through Seattle Public Utilities’ Trees for Neighborhoods program, which gives free street and yard trees to Seattle residents.⁸</p>
<p>4. Tree Retention Requirements During Development</p>	<p>CB 120534 largely maintains current requirements related to retaining existing trees during development, with the exception of requiring replacement of Tier 3 trees and increased protections for Tier 1 trees. Tier 1 trees cannot be removed for development and may only be removed if they are hazardous. SDCI’s analysis reveals that the proposed regulations are expected to result in minimal changes to decisions about which trees can be retained or removed during development.</p> <p>The Committee could consider providing SDCI with greater authority to require retention of existing trees in NR zones (where much of Seattle’s tree canopy cover is located) in certain situations, such as when a proposed development uses less than the maximum lot coverage area or in other instances.</p>
<p>5. Capacity Test – Types of Development and Zone</p>	<p>CB 120534 would allow removal of Tier 2 trees in LR, MR, commercial, and SM zones if the allowable development area of 85 percent of the lot cannot be achieved without tree removal. Allowed removals are limited to what is necessary to achieve an 85 percent development area.</p> <p>This standard seems to be specific to townhouse development and does not reflect the development area associated with denser development that can occur in some more intense multifamily, commercial, and SM zones. This may inadvertently reduce development capacity for mixed-use or denser residential development. For example, typical mixed-use developments in commercial and SM zones cover the entire lot and have little to no ground level open space.</p> <p>The Committee could consider clarifying that the development area capacity test is specific to certain types of residential uses. Alternatively, the Committee could consider tailoring the capacity test to the development characteristics of the zone.</p>

⁸ Trees for Neighborhoods is routinely oversubscribed and uses a lottery system to provide residents with free trees, with a focus on residents in low-canopy neighborhoods. It currently prioritizes trees for residents whose trees are removed by Seattle City Light due to infrastructure conflicts.

Issue	Considerations and Options
<p>6. Capacity Test – Environmentally Critical Areas</p>	<p>CB 120534 is unclear about how the proposed new regulations would interact with regulations for Environmentally Critical Areas (ECAs). Trees located in ECAs are specifically exempted from the regulations in the bill because they are separately regulated by the Critical Areas Ordinance, SMC Chapter 25.09. However, it is unclear whether designated critical areas would be eligible for the capacity test calculation. For sites that are encumbered by ECAs, inclusion of the ECA in the capacity test could result in a calculation of development area that results in more tree removals.</p> <p>For example, if there is a 10,000 square foot lot, 5,000 square feet of which is in a wetland, it is unclear whether the 85 percent capacity test would apply to the entire site or the developable portion of the site that is not in an ECA. If it is the former, then a developer could argue that they should be able to get as close to 8,500 square feet as possible on the non-wetland portion of the site, which means they could clear all non-Tier 1 trees on the non-wetland portion of the site even though the wetland portion is undevelopable.</p> <p>The Committee could clarify that portions of a lot in a designated critical area or critical area buffer should be excluded from the capacity test calculation.</p>
<p>7. Modifications to Landscaping Development Standards</p>	<p>CB 120534 would allow modifications to development standards, such as setback, amenity areas, height (in some LR zones), parking, and landscaping as an incentive to preserve existing trees. Landscaping modifications can include a 25 percent reduction in landscaping and screening requirements.</p> <p>In most zones other than NR zones, landscaping requirements are accomplished through the Seattle Green Factor. The Green Factor provides a flexible menu for achieving a required score, which varies by zone. The system incentivizes preservation of existing trees larger than six inches DSH and planting new trees with larger canopy spreads. Because Green Factor favors tree retention, it is unclear whether modifications to Green Factor requirements would continue to provide an incentive for tree preservation.</p> <p>The Committee could clarify how modifications to landscaping standards would operate with Green Factor. Alternatively, the Committee could remove the option for landscaping modifications in zones where Green Factor applies.</p>

Issue	Considerations and Options
<p>8. Delegation of Authority</p>	<p>CB 120534 would authorize SDCI to establish a new in-lieu fee for replacement trees by Director’s Rule and would maintain SDCI’s current authority to determine penalty amounts and the designation of Tier 2 trees via Director’s Rules. Allowing a department to promulgate rules to support administration of the code is a common practice and provides the department with flexibility to decide how it will implement regulations. When Council delegates authority for rulemaking to a department, Council forgoes the opportunity, absent a future superseding change by ordinance, for policymaking on the subjects delegated.</p> <p>If the Committee is uncomfortable delegating these issues to SDCI for rulemaking, the Committee could amend CB 120534 to codify the in-lieu fee amounts, Tier 2 tree designations, and penalties. Alternatively, if the Committee is comfortable with SDCI promulgating regulations by rule but wants to prescribe certain features of future rules, the Committee could provide that direction in the bill.</p>
<p>9. Implementation</p>	<p>SDCI estimates that CB 120534 would increase the number of privately-owned trees the City regulates from 17,700 to 70,400 trees. CB 120535 would add 3.0 FTE funded by permit fee revenue to SDCI to implement the updated tree regulations. Not included in this proposal are additional code enforcement staff to respond to the anticipated increase in complaints and ensure compliance with the regulations outside of development. These staff positions are supported by GF; given the lack of available funding, new positions cannot be added without reducing GF support for other programs and activities. The estimated cost for a field arborist to support code enforcement is \$159,000.</p> <p>Additionally, SDOT’s urban forestry permit review workload is anticipated to increase as a result of the expanded street tree requirement in NR zones. No additional capacity has been proposed to be provided to SDOT for this work. SPR and SDOT would receive revenue from the in-lieu fees, but this funding solely covers the costs of trees and labor for planting and watering the trees during the five-year establishment period. These funds cannot be used for program administration or planning and designing spaces for trees, which would be needed for new trees in the ROW and possibly SPR sites as well.</p> <p>The Council could consider providing additional funding and position authority to support code enforcement, street tree permit review, program administration, and planning and design for trees funded by in-lieu fee revenue during the Mid-Year Supplemental Budget process this summer or 2024 Budget deliberations in the fall.</p>

Issue	Considerations and Options
10. Other Budget-Related Issues	<p>EO 2023-03 contemplates creation of a fund to receive in-lieu fee revenue for tree planting. Legislation creating that fund was not transmitted with the other bills. Creating an account in which to deposit in-lieu payments does not require legislative action. However, legislation is required to establish a new fund and any associated policies for the fund’s use. The Mayor may transmit legislation creating a fund with the 2024 Proposed Budget.</p> <p>Additionally, the EO requires a three to one or two to one minimum tree replacement, depending on the reason for removal, for trees on City property within the City limits. Because the previously applicable EO 03-05 from the Nickels administration required two for one replacement, there should only be a marginal cost increase to the City. That increase will now become part of the base budgets for affected departments and will come with an associated opportunity cost. The Council may need to consider adding additional funding to meet the requirements of EO 2023-03.</p>

Next Steps

The Committee will consider amendments to CBs 120534 and 120535 at its next meeting on April 21 and hold the required public hearing for CB 120534 on April 24 at 10:30 AM. If Committee members are interested in proposing amendments, please contact Central Staff no later than end of day on April 11.

Attachments:

- 1. Comparison of Council Bills 120534 and 120535 with Resolution 31902

cc: Esther Handy, Director
Aly Pennucci, Deputy Director

Attachment 1. Comparison of Resolution 31902 with Council Bills (CBs) 120534 and 120535

Resolution 31902 Strategy	CBs 120534 (Tree Protection Updates) and 120535 (Appropriations and Positions)
1. Retaining protections for exceptional trees and expanding the definition of exceptional trees	<ul style="list-style-type: none"> • Tier 2 category replaces “exceptional tree” term • Lowers prior exceptional tree size threshold from 30 inches to 24 inches DSH • Director’s Rule identifies specific species that are Tier 2 below 24 inches DSH
2. Adopting a definition of significant trees as non-exceptional trees at least six inches DSH, and creating a permitting process for the removal of these trees	<ul style="list-style-type: none"> • Tier 3 and Tier 4 are the equivalent of “significant trees” • Tier 3 may be removed during development or through a hazardous tree removal permit • Tier 4 may be removed during development, but otherwise no removal permit is required • No permit required for removal outside of development
3. Adding replacement requirements for significant tree removal	<ul style="list-style-type: none"> • Requires replacement for removal of Tier 3 trees during development or if hazardous • No replacement required for Tier 4 trees
4. Simplifying tree planting and replacement requirements, including consideration of mitigation strategies that allow for infill development while balancing tree planting and replacement goals	<ul style="list-style-type: none"> • Tier system creates more clarity for the application of regulations • Change from using FAR to 85% lot coverage in LR, MR, commercial, and SM zones to identify earlier in the development process which trees will be preserved or removed • Change from streamlined design review to administrative staff review for development on LR, MR, commercial, and SM zones that seek modifications to development standards to preserve existing trees
5. Reviewing and potentially modifying tree removal limits in neighborhood residential zones	<ul style="list-style-type: none"> • Reduces number of trees that can be removed outside of development in NR, LR, MR, and commercial zones from three to two, increases this from a one- to three-year period, includes SM zones, and limits this to Tier 4 trees • Adds a removal limit for all other zones to three Tier 3 and Tier 4 trees in a one-year period
6. Establishing an in-lieu fee option for tree planting	Creates payment in lieu program (amounts to be determined by Director’s Rule)
7. Tracking tree removal and replacement on both public and private land throughout Seattle	Proposed 1.0 FTE Management Systems Analyst would be a new permanent position dedicated to this purpose
8. Providing adequate funding to administer and enforce tree regulations	<ul style="list-style-type: none"> • Funding (permit fee revenue) and positions authorized by CB 120535 • May need additional resources in the future to support code enforcement
9. Requiring all tree service providers operating in Seattle to meet minimum certification and training requirements and register with the City	Established via Ordinance 126554 in March 2022 (recently modified by Ordinance 126777)

Tree tiers:

- Tier 1 = heritage trees
- Tier 2 = formerly exceptional trees; 24” DSH or greater or as specified by Director’s Rule (DR)
- Tier 3 = 12” DSH and less than 24” DSH, not otherwise identified by DR as Tier 2
- Tier 4 = 6” DSH and less than 12” DSH