



Oregon

Tina Kotek, Governor

HPAC Work Group Recommendation Template

Last Update: June 21, 2023

Work Group

- Availability of land
- Land development permit applications
- Codes and design
- Workforce shortages
- Financing

Recommendation

Trees in Development Situations Recommendation

Developed Lots -

On platted less than 6,000 square feet where an increase in density from the current configuration of the lot is proposed. No city or jurisdiction shall deny a permit for the removal of trees less than 48" in diameter, nor shall they charge a fee-in-lieu for the removal. For trees larger than 48" in diameter, if the city or jurisdiction has a code regulating the preservation of trees, the city or jurisdiction must offer a program that allows for replacement trees to be planted or for a fee in lieu option, with reasonable caps on fees, when the replacement tree option is not feasible.

Larger Development Sites -

Inside an urban growth boundary where land has already been counted as part of a city or jurisdictions buildable land inventory, where multi-family development or single family development on lots less than 6,000 sf per unit on average is proposed, no city or jurisdiction shall deny a permit for the removal of a tree less than 48" in diameter, nor shall they charge a fee-in-lieu for the removal. For trees larger than 48" in diameter, if the city or jurisdiction has a code regulating the preservation of trees, the city or jurisdiction must offer a program that allows for replacement trees to be planted or for a fee in lieu option, with reasonable caps on fees, when the replacement tree option is not feasible. Trees, regardless of size that are located in areas of needed streets, utilities, topography, grading and density, shall not be required to be preserved regardless of size.

The above provisions shall not apply to trees in a riparian corridors or environmental protection areas.

Where tree preservation is chosen as a means to protect the trees on a site, cities must develop a prescriptive tree protection plan as a first option but also allow for protection plans to be developed by a licensed arborist. The arborist plan shall supersede any prescriptive protection plan.

Nothing in this section is intended to limit a jurisdiction's ability to require tree planting, landscaping or irrigation, consistent with their local codes.

This policy in recognition of the emergency need for more housing in the state of Oregon will sunset after 10 years.

Related Work Plan Topics

Remove barriers and make it less complex to build smaller, more affordable homes.
Incentivize, smaller, more affordable lots and promote density inside cities.

Adoption of Recommendation

Recommendation was presented at the Codes & Design workgroup meeting on Tuesday August 8th. Several SME's provided discussion and suggested changes. After agreeing on some of the suggested changes, the work group agreed to move this recommendation forward.

Co-chairs Guidance: Standards for Analysis

1. Clearly describe the housing production issue that the recommended action(s) will address.

Tree codes in Oregon have been developed in recent years that impact availability of land and affordability of construction. While tree preservation is important, a balance must be found between preservation of large trees, and needed housing. By allowing development and tree removal on lots less than 6,000 square feet, this will free up many lots in existing cities for middle housing development. Additionally by providing more flexibility to development situations where dense single family or multifamily is being proposed this will allow more units to be built.

2. Provide an overview of the housing production issue, including quantitative/qualitative context if available.

When tree codes or tree regulations have been put in place in Oregon, they have been done so with the first and foremost priority to tree preservation. Given Oregon's land use system and the imperative need for housing, we must find a balance to creating more housing, especially middle housing. Many cities in Oregon have tree codes or regulations that either a) do not permit removal of trees at all b) only allow tree removal of very small trees, c) charge fee in lieu of fees that are extremely expensive and cost prohibitive to building. Additionally some cities allow for tree protection through a prescriptive pathway and some allow for tree protection through an arborist in certain circumstances. Requiring cities to allow for preservation first through a prescriptive system but then an arborist as an option when prescriptive is not allowed, provides more opportunities for builders to figure ways to preserve trees.

3. To assess the issue and potential action(s), include subject matter experts representing all sides of the issue in work group meetings, including major government, industry, and stakeholder associations.

At the August 8th Codes & Design workgroup meeting, the initial presentation included recommendations for removing trees up to 60" in development situations and allowing lots to be exempted up to 10,000 Square Feet. Upon testimony from the City of Salem, City of Portland and the City of Springfield, it was determined that 60" was too high of a threshold and a very small percentage of trees are 60" or more. Additionally there was a conversation that in many of the developed cities in Oregon, the average platted lot size is closer to 6,000 Sq Ft. Upon hearing this feedback from SME's the workgroup agreed to lower the suggested threshold for trees to 48" and the lot size to 6,000 Sq Ft. The lot size threshold is supported in comments both from the cities of Portland and Salem. While the City of Portland and the City of Salem suggested that the threshold for tress preservation be lowered, our workgroup felt that 48" was a good balance. Additionally the city of Salem suggested preservation of certain trees such as white oaks would be valuable at a lower threshold, and also specific recommendations about trees in utility situations, we ultimately did not include those in this recommendation but included the comments for when the recommendation is put before the legislature.

4. Provide an overview of the expected outcome of the recommended action(s), including quantitative/qualitative context if available.

By providing more flexibility into tree codes in development situations and preservation options, this will allow construction of housing on lots that either a) would not developable or b) would be developable at a cost that would be prohibitive to housing construction.

5. Estimate of the time frame (*immediate, short, medium, long-term*), feasibility (*low, medium, high*), and cost (*low, medium, high*) for implementation of the recommended action(s).

Time Frame	Feasibility	Cost
<input type="checkbox"/> Long-term	X High	<input type="checkbox"/> High
<input type="checkbox"/> Medium-term	<input type="checkbox"/> Medium	<input type="checkbox"/> Medium
<input type="checkbox"/> Short-term	<input type="checkbox"/> Low	X Low
X Immediate		

State changes to trees in development situations will have immediate impact on the availability and feasibility of land for needed housing. The cost to the state and jurisdictions to implement these changes is minimal. In addition for cities that currently do not offer a fee in lieu of program for replacing trees, this can provide funding for planting replacements.

6. Provide a general overview of implementation, the who and how for the recommended action(s).

These changes would only impact cities that currently regulate trees in development situations. The changes would require cities to change, for the duration of this legislation, their code requirements for trees. The implementation should not be costly or burdensome on the cities.

7. Outline the data and information needed for reporting to track the impact and implementation of the recommended action(s).

Understanding that this will result in some loss of trees, it is important to potentially track the impact on the tree canopies in the cities. It will be important for cities to regulate replanting of replacement trees both by the developer and the city (when fees for replacement are collected). It would be valuable information during this 10 year period to also track how many trees less than 48" were removed, how many were replaced and how many units were built that might not otherwise have been. This will be important information to consider if this rule potentially is made permanent at a later date.

8. Identify any major externalities, unknowns, tradeoffs, or potential unintended consequences.

As members of the HPAC, our charge has been to figure out where there are roadblocks to housing production and affordability. Tree codes and tree regulations while well intentioned, their first and generally only priority is the preservation of trees. Given that Oregon has a tight land use system with the intention of preserving farm and forest land outside of our urban growth boundaries, it is important that we try and strike a balance between needed housing and needed tree canopy. While this proposal will result in the loss of trees, the intention is to preserve larger trees (larger than 48") or provide options to mitigating their replacement if needed. The impact to the loss of trees can be mitigated by requiring replacement trees to be planted when possible.

Please include any relevant reports, data analyses, presentations, or other documents that would be informative and useful for the full HPAC as the recommendation is discussed and considered.

- *Attached comments from City of Salem*
- *Attached Comment from City of Portland BDS*
- *Attached sample infill site plan for a middle housing 3 plex showing required tree protection zone and demonstrating that it would be impossible to build this project and save the 40" tree on the middle of the site.*



August 17, 2023

Housing Production Advisory Council, Codes & Design Workgroup
c/o Alana J. Cox, Administrator
Building Codes Division
Oregon Department of Consumer & Business Services

Dear HPAC Codes and Design workgroup members:

The City of Portland appreciates the work you are doing to identify a series of recommendations to streamline and facilitate housing production across Oregon. We are also actively engaged in developing short- and long-term strategies to address the housing crisis and increase production.

As Directors of the bureaus that lead the City's urban forestry, planning, and sustainability work, we would like to share feedback specific to the proposal under consideration that would change tree regulations that apply during housing development, both here in Portland and statewide. We feel that it is important to highlight issues to offer additional perspective and engage more meaningfully than time allowed during your most recent meeting.

The City's tree regulations are an important part of meeting multiple policy objectives, cited in Portland's 2035 Comprehensive Plan, the Climate Emergency Work Plan, and Urban Forestry Management Plan. Notably, each of those plans recognizes the importance and need for housing and urban development inside the urban growth boundary. But rather than seeing these as diametrically opposed goals, the regulations aim to strike a balance between enhancing the urban forest while enabling development, through a clear and objective set of regulations.

With this context in mind, **we urge the Committee to table proposals that limit cities' ability to regulate tree preservation.** We have three reasons for making this request:

- 1) **We are in a housing emergency and a climate emergency.** Preserving trees is a critical tool to meet our climate goals. It takes decades for new tree plantings to replace the benefits and services provided – improving air quality, lowering summer temperatures, reducing flooding – from a well-established tree. Communities in East Portland are more exposed to these hazards than other parts of Portland, and as noted by the Environmental Protection Agency, community members with low incomes and communities of color are disproportionately exposed and more vulnerable to heat islands. In particular, East Portland experiences summer temperatures up to 15 degrees hotter than neighborhoods west of the Willamette with significantly greater tree canopy. Trees on privately-owned lands constitute the majority of Portland’s tree canopy, contributing to the overall thermal comfort of the city. Now is not the time to postpone or deprioritize climate action in Portland by removing protections for essential trees.
- 2) **The Committee should focus on more effective strategies to increase housing production.** The Committee is exploring other strategies to increase housing production that will result in a greater number of housing units. We applaud and are engaged in those efforts. The majority of Portland's tree canopy on private property is in low density residential areas where we expect to see 20 percent of our housing growth. Conversely, 80 percent of our growth is planned for high density centers and corridors, which account for about 15% of the city's land area and are largely exempt from tree preservation requirements currently. These low canopy areas also afford opportunities to expand the tree canopy through street trees and stormwater retrofits as part of development. In other words, losing a well-established tree to yield 3 units is a different calculation than losing a well-established tree to produce 80 units.
- 3) **A well-coordinated, calibrated and strategic multi-pronged approach is needed.** Stimulating the market to produce more units, and the right types of units requires more than an ad hoc series of deregulatory moves. That is why Oregon is requiring cities to not only analyze their housing needs, but to develop a Housing Production Strategy. Portland is well underway with this effort, and we are confident that it will provide the direction we need.

Before advancing a recommendation for an aggressively permissive statewide urban forestry policy that replaces all locally designed options, we strongly recommend considering other options that better ensure reasonable and equitable outcomes be explored. The proposal suggested at the August 8th meeting seemed to be based on reactions to a single property and anecdotes, with statewide exemptions that would essentially render the City’s tree regulations moot. As currently drafted, the proposal

does not appear to consider the increased societal costs of diminished air quality, more frequent urban flooding, greater vulnerability to heat events for vulnerable populations, and higher peak energy demand from increased and unmitigated tree removal. If advanced and implemented as-is, these changes would shift and multiply those costs from a small percentage of development projects onto the broader community.

In any case, any options advanced should receive significantly more vetting and discussion and be informed by data, as we balance our need to provide more housing while preserving the millions of dollars in annual environmental, public health, and economic services Portland's urban canopy provides.

We appreciate the opportunity to be involved and look forward to more discussion and dialogue as we work together to tackle our shared housing crisis.

Sincerely,

A handwritten signature in black ink that reads "Adena Long". The signature is fluid and cursive, with the first name being more prominent.

Adena Long
Director | Portland Parks & Recreation

A handwritten signature in black ink that reads "Donnie Oliveira". The signature is bold and stylized, with the first name being the most prominent part.

Donnie Oliveira
Director | Planning and Sustainability

Tree Code Recommendation

Developed Lots -

On platted lots less than 6,000 square feet where an increase in density from the current configuration of the lot is proposed. No city or jurisdiction shall deny a permit for the removal of an Oregon White Oak less than 20" in diameter or any other tree less than 30" in diameter nor shall they charge a fee-in-lieu for the removal. For trees larger than 30" in diameter, the city or jurisdiction must offer a program that allows for replacement trees to be planted or for a fee in lieu option when the replacement tree option is not feasible. The above provision shall not apply to trees in a riparian corridor or environmental protection area.

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(A)Streets. The removal is necessary due to:

- (i)The location and alignment of existing streets extended to the boundary of the subject property;
- (ii)The planned alignment of a street identified in the Salem Transportation System Plan (TSP);
- (iii)A street required to meet connectivity standards, to serve property where a flag lot accessway is not possible, or where a cul-de-sac would exceed maximum allowed length;
- (iv)Any relocation of the proposed street resulting in lots that do not meet lot standards;
- (v)A required boundary street improvement.

(B)Utilities. The removal is necessary due to existing or proposed utilities that cannot be relocated to an alternative location.

(C)Site topography. The removal is necessary due to the topography of site which will require severe grading in the critical root zone of the tree in order to comply with maximum street or intersection grades, fire department access requirements, or Fair Housing Act or ADA accessibility standards.

(D) Dwelling unit density. The removal is necessary in order to meet a minimum dwelling unit density of 5.5 dwelling units per acre. In consideration of this factor:

- (i) Not more than 15 percent of the proposed dwelling units within the development shall be required to be designated for middle housing in order to meet density requirements and demonstrate there are no reasonable design alternatives enabling preservation of a tree(s); and
- (ii) The following may be excluded from the total site area for purposes of calculating density:
 - (aa) Riparian corridors, provided the riparian corridor is not graded or developed;
 - (bb) Areas of the site with slopes exceeding 25 percent, provided such areas are not graded or developed; and
 - (cc) Open space that will preserve significant natural features, provided the perpetual maintenance and operation of the open space is provided by a home owners' association.

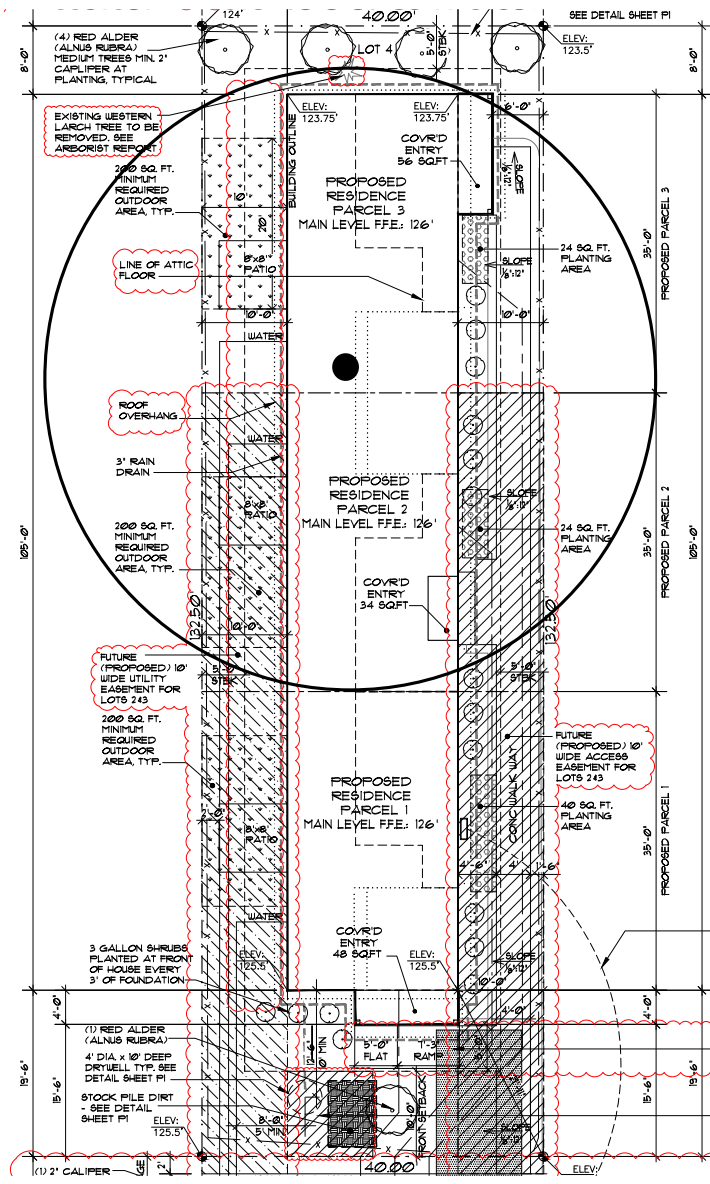
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Portland site example -
 1- 40" Tree
 Centered on a 5,300 Sq Ft Lot
 40' Radius Root Protection Zone
 Required
 Fee to remove - \$18,000
 3 Unit Middle Housing Proposed



STREET TREE ACTIVITY IS NOT APPROVED AS PART OF THIS PERMIT. ADDITIONAL PERMITS ARE REQUIRED PRIOR TO PRUNING, REMOVING OR PLANTING STREET TREES. CALL 923-8133 FOR MORE INFORMATION.

STREET TREE PROTECTION REQUIRED PRESCRIPTIVE PATH - BASIC

ADDITIONAL PERMITS ARE REQUIRED FROM URBAN FORESTRY PRIOR TO CUTTING OR PRUNING ANY BRANCHES GREATER THAN 1/2 INCH IN DIAMETER OR ROOTS GREATER THAN 1/2 INCH IN DIAMETER. ONLINE APPLICATIONS AT <https://devhub.portlandoregon.gov>

5'-0" WIDE CONC. ACCESSIBILITY RAMP W/ 5'-0" WALK WAY. CONC. RAMP SLOPE 1:4, MAX. SLOPE 1:8

10'-0" x 10'-0" DRYWALL ACCESS & MAINTENANCE EASEMENT FOR LOTS 2 & 3.