

August 16, 2018

MEMORANDUM

To: Planning, Land Use and Zoning Committee
From: Eric McConaghy, Legislative Analyst
Subject: Summary of proposed tree regulation bill and identified issues

On September 5, 2018 the Planning, Land Use, and Zoning Committee (Committee) will hold a public hearing on a legislative proposal to update the tree regulations of the Seattle Municipal Code (SMC). The update is informed by the following priorities for improving Seattle's regulation of tree removal: (1) improving customer service for the public and applicants; (2) increasing tree canopy in Seattle, while addressing the inequitable distribution of trees throughout the city; (3) promoting stewardship of existing trees; and (4) using data to guide Seattle's management of the urban forest.

On August 1, 2018, the Committee was briefed on an earlier version of the bill. Following the August 1 meeting, Central Staff revised proposed bill in consultation with the Seattle Department of Construction and Inspections (SDCI) and the Office of Sustainability and Environment (OSE).

The Seattle Urban Forestry Commission (UFC) has made comments and recommendations on new tree regulations in one letter to the Mayor and Councilmember Johnson (dated April 11, 2018); two letters to Committee members (dated May 9, 2018 and June 6, 2018); and on the enforcement of the existing tree replacement and site restoration code provisions in one letter to the Mayor, City Council, and the City Attorney (dated July 11, 2018). All of these letters can be accessed through the UFC's [webpage of issued documents](#).¹

Central Staff offers this version of the proposed bill (version 7 to elicit public comment on the proposal to help inform further refinements.

This memorandum (1) summarizes the draft bill, (2) identifies issue for consideration, and (3) outlines the next steps in the legislative process for the bill.

Bill Summary

The draft bill consolidates tree protection regulations in Seattle Municipal Code (SMC) Chapter 25.11. That chapter, which currently contains tree protection development standards, would be repealed and replaced by proposed regulations in the bill. The proposed bill would update Seattle's regulation of tree removal, whether associated with, or independent from, development.

Generally, the proposal would:

- Define "significant tree";
- Require a permit for removal of significant trees, either major or minor;
- Sets fee for a tree permit;
- Clarify the definition of hazard trees;
- Allow flexibility in development standards to preserve trees;

¹ <http://www.seattle.gov/urbanforestrycommission/ufcissueddocuments>. Last accessed August 15, 2018.

- Establish requirements for the replacement of trees;
- Allow for in-lieu payment when tree replacement is required;
- Specify tree retention requirements; and
- Update enforcement provisions for tree regulations.

Practically, the bill (1) amends SMC 22.900C.010 to add fees to the land use fee table for the proposed new tree removal permits; (2) amends SMC 23.44.008 by removing regulatory language dealing with trees as part of single-family development proposals made redundant by provisions of the new SMC Chapter 25.11; (3) repeals the current Chapter 25.11 Tree Protection; and (4) replaces Chapter 25.11 with the proposed, new Chapter.

The New Chapter 25.11 Tree Regulations

The proposed regulations of the new Chapter 25.11 rely upon the definition of “significant tree,” meaning any tree six inches or greater in diameter at standard height (DSH).¹ If a person wishes to remove a significant tree from a property, then the proposed regulations require that person to obtain approval. The proposal would require a permit for approval of tree removal in two types, major or minor, generally depending upon the initial and resulting amount of tree canopy cover on the lot and if the tree removal is associated with development activity or not.

The minor permit is intended for limited tree removal and is meant to be relatively easy to apply for and administer at a low fee. The major permit is intended for large tree removal, or the removal of several trees. The major permit would be more complex in application and would require a commensurately higher staff review and fee. The choice of a tiered approach addresses the concern for preservation of large trees and groves of trees while aiming to increase permit applications for removal of trees, as opposed to removal without a permit. The data gathered on the permit applications would be used to inform the administration of tree removal applications and the City’s stewardship of the citywide tree canopy.

The proposed bill also clarifies that emergency tree removal is exempt from the tree removal regulations while the removal of a hazardous tree would require a minor tree removal permit. The determination of what constitutes emergency removal and what determines the hazardous condition of a tree is based in the International Society of Arborists Tree Risk Assessment Qualification (TRAQ) method. The TRAQ method provides the means to assess the risk posed by a tree, extreme for emergency removals and high for hazard trees.

The new regulations rely upon requirements for tree canopy cover as a percentage of lot area, including any right-of-way abutting the lot. The requirements are derived from the aspirational goals for tree canopy cover established per tree canopy management unit (TCMU). TCMUs are composed of one or more zoning types, in the Urban Forest Stewardship Plan². These requirements are shown below.

¹ “DSH” means diameter of a tree at the standard height of 54 inches above ground. On uneven surfaces the DSH is measured from the high side of the level of the ground.

² Adopted by Resolution 31477, in 2013. <http://clerk.seattle.gov/~scripts/nph-brs.exe?s1=urban+forest&s3=&s2=&s4=&Sect4=AND&l=200&Sect2=THESON&Sect3=PLURON&Sect5=RESNY&Sect6=HITOFF&d=RESF&p=1&u=%2F~public%2Fresny.htm&r=1&f=G> Last accessed August 15, 2018

<i>Table A for Section 25.11.080: Canopy Coverage Requirements</i>	
Tree Canopy Management Unit	Minimum Tree Canopy Cover as Percentage of Lot Area
Single-family Residential: Residential Small Lot and Residential, Single Family zones	33%
Multi-family Residential: Multi-family and Residential-Commercial zones	20%
Commercial/Mixed Use: Commercial and Seattle Mixed zones	15%
Downtown: Downtown zones	12%
Industrial: Industrial zones	10%
Institutional: Major Institution Overlay Districts	20%

A minor significant tree removal permit may be approved if:

1. The resulting tree canopy cover of the lot after tree removal will be equal to or greater than the tree canopy cover requirements;
2. The significant tree removal is for a hazardous tree; or
3. For lots within which the proposed significant tree removal is not associated with development activity and the existing tree canopy cover is less than the tree canopy cover requirements before the proposed tree removal, SDCI’s arborist approves tree replacement plan that, at a minimum:
 - a. meets the applicable tree canopy cover requirement through on-site planting for property within the Single-Family Residential TCMU or through on-site planting, off-site planting, or through the fee-in-lieu payment for the tree canopy management units other than Single-Family Residential TCMU; or
 - b. specifies tree planting onsite that will result in twice the existing tree canopy cover area provided by the trees proposed for removal.

A major significant tree removal permit may be approved if:

The proposed significant tree removal is associated with development activity and the tree canopy cover of the lot after the proposed tree removal would be less than the tree canopy cover requirements, and if SDCI’s arborist approves a tree replacement plan that at a minimum meets the applicable tree canopy cover requirement through:

1. on-site planting for property within the Single-Family Residential TCMU; or
2. on-site planting, off-site planting, or through the fee-in-lieu payment for the tree canopy management units other than Single-Family Residential TCMU.

To reiterate, the removal of any significant tree would require approval. This is a change from no requirement for approval to remove trees in the current Chapter 25.11.

The new legislation generally lowers the threshold for mitigation of tree removal from exceptional trees to significant trees. Property owners who would remove a significant tree as part of development would be required to plant enough trees to meet the canopy coverage threshold for the TCMU.

Outside of development, the approval for removal of one or more significant trees from a lot with less tree canopy than required per TCMU would require planting enough trees to meet the canopy coverage threshold or planting to double the canopy lost with removal of the trees. As part of development or not, the approval for removal of one or more significant trees from a lot resulting in canopy greater than or equal to the standard would not require tree planting.

When planting would be required, it would be allowed onsite for single-family residential TCMUs and onsite or offsite for lots in all other TCMUs. Payment in lieu of planting would also be an option for lots in all other TCMUs other than single-family residential. The payments made in-lieu of planting would be to the SDCI Tree Replacement Fund to be used for planting trees in Seattle.

The existing tree code allows the removal up to three trees, six inches or greater in diameter at breast height (equivalent to DSH) in any one-year period on lots in Lowrise, Midrise, and Commercial zones or on lots 5,000 square feet or greater in a Single-family or Residential Small Lot zones, except when the tree removal is part of an approved development project (SMC 25.11.040.B). The proposed code does not set a limit for tree removal by the number of trees per time period for any zone.

The current code does allow flexibility in development standards related to different zones in exchange for protecting and maintaining exceptional trees or trees two feet in diameter or larger. The proposal would similarly allow flexibility in development standards to encourage retaining trees on development sites.

The proposal establishes a method to determine the current tree canopy cover of a lot and a method to determine the tree canopy cover of a lot as result of the removal of significant trees. Knowing the current and resulting tree canopy cover, expressed as percentage of the lot area, including the area of any right-of-way adjacent to the lot, allows an applicant for tree removal approval to select the appropriate type of tree permit and to calculate any necessary mitigation for tree removal.

The proposed bill includes other important provisions necessary to administer the regulations, including:

- Application requirements;
- Timing for compliance;
- Acknowledgement of the tree regulations any person involved in, tree removal, development activity, or land clearing operations;
- Specifications for trees eligible for use in required planting;
- Requirements for onsite and off-site planting;
- Protection of trees, vegetation and soils during construction;
- Regulation of trees in Major Institution Overlay Districts; and
- Enforcement and penalties.

Issues for Ongoing Consideration

In developing the proposal, the Committee has heard about a number of issues that could be addressed in the proposal or through other legislative means, such as budget legislation. Some of those issues are identified and discussed below.

Ease of use: This version of the bill includes a tree canopy estimation method that relies on measurement of the trees onsite and in abutting rights-of-way. The method empowers the applicant rather than City staff to determine the tree canopy cover onsite before and after proposed significant tree removal.

Councilmember Johnson has expressed his concern that the new tree removal permit system be relatively easy for applicants to use. The Committee may wish to explore simplifications or clarifications to the method in this version of the bill or other approaches not based in onsite tree canopy estimation, such as using the City's tree canopy assessment data or counts of trees onsite.

Exceptional trees: Central Staff has heard from advocates that the designation and protection of exceptional trees, as currently provided in SMC, should be included in the new tree regulations. The Committee may wish to explore options to blend the protection of exceptional trees with the new regulatory approach oriented around significant trees.

Valuation of removed trees: The proposed code would allow applicants, depending on their site conditions, zoning and amount of tree removal, to make an in-lieu payment to the SDCI Tree Replacement Fund according to a ratio of dollars to DSH for each removed tree commensurate with the tree canopy area of the removed tree and satisfying the requirements of Chapter 25.11 for tree replacement as established by Director's Rule. Council may wish to establish the ratio in the SMC instead of by Director's Rule. Regardless, the Committee will likely wish to explore the range of value for in-lieu payments.

Equity: Council may wish to understand the race and social justice implications of the proposed new tree removal permit approach and how any payments in-lieu made to the SDCI Tree Replacement Fund could be spent to enhance tree canopy in Seattle.

Next steps

A public hearing on the proposed tree bill is tentatively scheduled for September 5, 2018 during the regular PLUZ meeting. It is anticipated that the Committee will discuss the legislation and potential amendments to the bill during their meeting on September 19, 2018.

The legislation is subject to review under the State Environmental Policy Act (SEPA). Staff has initiated SEPA review, which will continue concurrently with the legislative process. It is anticipated that interested persons will offer comment as part of the State Environmental Policy Act (SEPA) review process of the proposal and during the public hearing, in addition to the recommendations from the UFC. SDCI is expected to publish a SEPA threshold determination regarding the proposal in late August 2018.

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