



December 5, 2019

Dear Mayor Wheeler and Portland City Council,

Thank you for the opportunity to testify today. Portland Audubon has been engaged with the development of Portland's tree code for decades and we served on the advisory committee that helped develop the Title 11 Tree Code. Protecting and expanding our urban tree canopy is critical to creating a healthy, sustainable and equitable urban landscape. The myriad benefits of our urban tree canopy include sequestering carbon, cleaning our air, reducing storm water runoff, creating wildlife habitat, reducing urban heat island impacts and improving human health and well-being. However, Portland is currently not doing enough to protect its existing trees or to reach its canopy targets. Today, you have an opportunity to not only lock in important existing protections, but also to make a solid commitment to address existing deficiencies in the tree code.

Sunset Clause on Big Tree Amendments

Audubon supports the proposal to extend the sunset clause on the "big tree amendments" for five years. The big tree amendments were adopted to ensure that reasonable mitigation occurs when big trees are cut down. These are Portland's most valuable trees and it is important that removal be avoided to the degree possible and that real mitigation occurs when removal cannot be avoided. Ideally we would see the sunset clause removed entirely and the big tree amendments simply become a permanent part of the tree code. However, we are able to support a five year extension on the sunset clause, based on our understanding that the City plans to come back during that time period and do holistic review of the tree code. We hope that when that review happens, the big tree amendments will not only be retained, but also strengthened in terms of increased emphasis on preventing these trees from being cut altogether.

Exemptions for Commercial and Industrial Lands

We are disappointed that Council today may not address the exemption for tree preservation and tree density standards on commercial and industrial Lands as was recommended by both the Planning and Sustainability Commission and the Urban Forestry Commission. These exemptions were inserted at that last minute when Title 11 was adopted in 2011, on the basis that Portland did not have an up-to-date Economic Opportunities Analysis (EOA) and that inclusion of these protections would be ripe for appeal to LUBA. Council assured the community in 2011 that it would return and revisit these exemptions once the EOA was updated. Although the updated EOA was finalized in 2016 and included capacity to update environmental regulations, City Council has failed to make good on that commitment. Nearly a decade has passed in which trees have gone completely and unnecessarily unprotected on commercial and industrial lands.

This directly undermines the City's ability to reach its overall canopy goals. It is also a matter of ecology and equity---many industrial sites are located in sensitive natural resource areas and adjacent to underserved neighborhoods. The impacts of failing to apply Title 11 are real. Currently there is a proposal to remove a 40 foot wide, 2,400 foot long buffer of trees on the Wapato Jail site at the edge Smith and Bybee Lakes and the City appears to have no mechanism to either stop this action or to require than landowner to mitigate for its impacts.

We have always viewed the City's decision to exempt commercial and industrial lands as misguided. The argument that Title 11 protections constrain buildable lands does not make sense since Title 11 allows for removal and mitigation of trees offsite in situations where tree cutting cannot be avoided. There is simply no necessary loss of buildable acreage associated with application of title 11 on commercial and industrial lands. Mitigation should be viewed as part of the cost of site preparation rather than a land constraint and the City should be willing to defend this position. We would also note that industry arguments that an alleged lack of industrial land precludes application of the tree code (as well as other environmental regulations) has only grown more specious with time---many of the same industrial interests that have used an alleged industrial land deficits as a pretext to oppose environmental protections have then turned around and supported conversion of industrial lands to other uses, most notably at T-2 where a baseball stadium is currently under consideration, when it serves their economic interests.

We urge City Council to complete this piece of unfinished business from the original adoption of Title 11 in 2011 and remove the exemptions from the tree code for commercial and industrial lands. Commercial and Industrial properties have gotten a free ride for nearly a decade when it comes to protecting the urban tree canopy. We urge Council to apply Title 11 to these properties. If that action cannot be accomplished today, then we ask that Council require that it come back for a decision in the first quarter of 2020. The City should not accommodate a paradigm in which industry gets to argue that there is not enough industrial land to meet its most basic environmental obligations but then turn around an upzone industrial land when there is profit to be made.

Comprehensive Update of Title 11

Finally, we ask that Council commit to funding a single FTE as part of the 2021 budget to support a comprehensive update of Title 11 beginning in 2020/ 21. The Title 11 Tree Code will have been place for full decade and it is time to conduct a comprehensive update. During its first decade of implementation a significant number of areas have been identified in which the code could be improved or strengthened. These improvements have been identified by the City Auditor, Urban Forestry Commission and ad hoc community advisory committees.¹ We would note here, that while it is urgent

¹ 1) A draft "short-list" of priority tree code amendments presented by Parks Urban Forestry at an Urban Forestry Commission meeting in <https://www.portlandoregon.gov/parks/article/705197>

2) Analysis of tree project outcomes after the first year of implementation (2015. <https://www.portlandoregon.gov/parks/article/571564>,

3) Report of the ad-hoc Tree Code Implementation Oversight Committee including their recommendations for improvements. Executive summary is on page 1.

1<https://www.portlandoregon.gov/bds/article/569924>

that the City move forward with a comprehensive review of the Tree Code in 2020/ 21, the removal of the exemptions for commercial and industrial lands should not wait for this review---the exemptions are unfinished business from 2011 that should be moved forward on a much faster track.

Conclusion

Portland Audubon appreciates that opportunity to testify today. We urge the City to 1) Extend the sunset clause on the big tree amendments for five years or remove it altogether, 2) remove the exemptions from the tree code for commercial and industrial land either today or additional process time is required, by end of the first quarter of 2020, and 3) commit to funding a comprehensive update of Title 11 in the 2021 budget cycle.

Thank you for your consideration of these comments.

Respectfully,

A handwritten signature in black ink that reads "Bob Sallinger". The signature is written in a cursive, slightly slanted style.

Bob Sallinger
Conservation Director
Audubon Society of Portland

4) Most recent study of compliance with tree planting requirements. Upshot: due to inadequate Parks Urban Forestry staff, each year almost 2,000 trees required to be planted as conditions of permits are not. This is more trees than are voluntarily planted by BES at City expense each year. <https://www.portlandoregon.gov/parks/article/692921>,

5) City Auditor's report noting tree code concerns
<https://www.portlandoregon.gov/auditservices/article/654512>