

SUMMARY and FISCAL NOTE*

| Department: | Dept. Contact/Phone: | CBO Contact/Phone: |
|----------------------------------------------------|-----------------------------|---------------------------|
| Seattle Department of Construction and Inspections | Chanda Emery | Christie Parker |

** Note that the Summary and Fiscal Note describes the version of the bill or resolution as introduced; final legislation including amendments may not be fully described.*

1. BILL SUMMARY

Legislation Title: AN ORDINANCE relating to tree protection; balancing the need for housing production and increasing tree protections; and amending Sections 23.44.020, 23.47A.016, 23.48.055, 23.76.004, 23.76.006, and Chapter 25.11 of the Seattle Municipal Code.

Summary and Background of the Legislation: This legislation updates Title 23 (Land Use Code) and Chapter 25.11 (Tree Protection Code). The legislation is applicable citywide, largely in the Neighborhood Residential, Lowrise, Midrise, commercial and Seattle Mixed zones.

The update to the Tree Code includes the following changes:

- Expands the types and sizes of trees that are regulated and includes three new categories. The updated categories are as follows:
 - Tier 1, which consists of all heritage trees;
 - Tier 2, which encompasses the current exceptional category but with a reduced size threshold;
 - Tier 3, which includes all trees 12 inches or greater in diameter that do not fall under Tier 2; and
 - Tier 4, which includes all trees 6 inches or greater in diameter that do not fall under Tier 2 or Tier 3.
- Applies replacement requirements to include both Tier 2 and Tier 3 trees
- Uses 85% development coverage to measure zoned development capacity in place of floor area ratio (FAR) in the zones allowing multifamily use
- Simplifies provisions, including allowing development standards to be modified to aid in tree preservation as an administrative process without requiring Design Review, while maintaining Design Review as an option in multifamily and commercial zones
- Establishes a payment option for tree replacement using one for one replacement for smaller trees and trunk area calculation for larger trees (payment in-lieu)
- Supports administration of the updated code with tracking of tree preservation, removal, and replacement
- Requires installation of street trees for certain new residential development
- Requires replacement of Tier 1, 2 and 3 trees when removed as hazardous

For additional detail, please see Summary Attachment 1 – Expanded Summary of Code Changes.

2. CAPITAL IMPROVEMENT PROGRAM

Does this legislation create, fund, or amend a CIP Project? Yes No

| Project Name: | Project I.D.: | Project Location: | Start Date: | End Date: | Total Project Cost Through 2026: |
|---------------------------------------------|---------------|-------------------|-------------|-----------|----------------------------------|
| Urban Forestry Capital Establishment (SDOT) | MC-TR-C050 | Citywide | 2024 | Ongoing | \$1,270,000 |
| Urban Forestry-Tree Replacement (PRK) | MC-PR-41011 | Citywide | 2024 | Ongoing | \$570,000 |

- This legislation does not affect the 2023 Adopted CIP but it does provide future CIP funding. Revenue from this legislation is not anticipated to be received until 2024.
- CIP funding is provided from the payment in lieu program established in this legislation. Payment in lieu fees pay for tree planting as well as 5 years of tree establishment costs (watering, trimming, etc.).
- Financial figures throughout this document are shown in inflated dollars using an annual inflation factor of 3%.
- These figures, and others related to funds from the payment in lieu program, assume that payment in lieu will be used in 1% of the cases where mitigation is required for tree removal. They also assume that usage of the program will ramp up at a steady rate from 2023 to 2025: in other words, 33% of its long-term capacity in 2023, 66% in 2024 and 100% in 2025.

3. SUMMARY OF FINANCIAL IMPLICATIONS

Does this legislation amend the Adopted Budget? Yes No

| Appropriation change (\$): | General Fund \$ | | Other \$ | |
|--------------------------------|-------------------------|------|------------------------|-----------|
| | 2023 | 2024 | 2023 | 2024 |
| | \$0 | \$0 | \$0 | \$0 |
| Estimated revenue change (\$): | Revenue to General Fund | | Revenue to Other Funds | |
| | 2023 | 2024 | 2023 | 2024 |
| | \$0 | \$0 | \$0 | \$191,000 |
| Positions affected: | No. of Positions | | Total FTE Change | |
| | 2023 | 2024 | 2023 | 2024 |
| | 0 | 0 | .0 | 0 |

Does the legislation have other financial impacts to The City of Seattle that are not reflected in the above, including direct or indirect, short-term or long-term costs?

Yes. A companion bill provides the appropriations and positions necessary to implement this legislation. This associated cost and position information is also included here for

informational purposes. In addition, there are long-term financial implications as indicated below.

While the number of permit applications anticipated by SDCI would not be changed by adoption of this legislation, the number of applications that would include newly regulated trees would increase. This results in a need for additional SDCI staff to be funded by permit fees for permit reviews and site inspections. Additional funding by the General Fund for code compliance and enforcement work may be necessary in the future. In addition, starting five years after implementation of the legislation, SDOT and SPR will incur long-term maintenance costs for the trees planted under those capital programs.

New positions are also needed to support the tree tracking as part of the review and inspection process for permits reviewed under the updated tree code. SDCI has supported tree tracking for two years through temporary hires. One regular position will allow this work to continue to support the permit process. SDCI estimates the additional City employee time needed for ongoing implementation and enforcement of this legislation as follows:

| POSITION | QUANTITY/TYPE | ANNUAL COST | FUND SOURCE |
|----------------------------------------------------------------|----------------------|--------------------|--------------------|
| Land Use Environmental Analyst (permit reviewer) | 1.0 FTE | \$161,000 | Fees |
| Inspection Services Site Inspector | 1.0 FTE | \$148,000 | Fees |
| Land Use Management Systems Analyst Supervisor (tree tracking) | 1.0 FTE | \$167,000 | Fees |
| Total | 3.0 FTE | \$476,000 | Fees |

Since this legislation is being considered mid-year, the 2023 fiscal impact for staffing costs is based on 6 months plus fleet costs.

In addition, starting five years after implementation of the legislation, SDOT and SPR will incur long-term maintenance costs for the trees planted under those capital programs as follows:

| Projected City-Funded Maintenance Costs by Year For Trees Planted Using Payment In Lieu | | | | | | |
|----------------------------------------------------------------------------------------------------|-------------|-------------|-------------|-------------|------------|-------------|
| | 2028 | 2029 | 2030 | 2031 | ... | 2042 |
| SDOT | \$18,000 | \$67,000 | \$141,000 | \$213,000 | ... | \$948,000 |
| SPR | \$26,000 | \$82,000 | \$150,000 | \$198,000 | ... | \$817,000 |

- Financial figures throughout this document are shown in inflated dollars using an annual inflation factor of 3%.
- These figures, and others related to funds from the payment in lieu program, assume that payment in lieu will be used in 1% of the cases where mitigation is required for tree removal. They also assume that usage of the program will ramp up at a steady rate from 2023 to 2025: in other words, 33% of its long-term capacity in 2023, 66% in 2024 and 100% in 2025.

- The establishment period, which consists of the first five years of each tree’s growth, is treated as part of the capital investment and will be funded by the capital projects identified above. Thus, City-funded maintenance costs do not begin to accrue until the fifth year (2028).

Are there financial costs or other impacts of *not* implementing the legislation?

Yes. Not implementing the legislation could result in the loss of tree canopy coverage or impact the achievement of future canopy cover goals over time in the Neighborhood Residential, Lowrise, Midrise, commercial, and Seattle Mixed zones. The citywide 2037 Urban Forest Management Plan (UFMP) canopy cover goal (set in 2007) is 30%, and the 2021 canopy cover assessment measured Seattle’s current canopy at 28% citywide. Additionally, not implementing the legislation could contribute to delay in the permit process for development projects that have tree reviews, which could slow housing production.

This legislation is an opportunity for the City to address inequitable canopy cover in neighborhoods where BIPOC residents and business owners live and work. The 2021 Canopy Cover Assessment provides an analysis that shows areas where people of color and people with low incomes live in Seattle are also the areas that have fewer environmental benefits and greater environmental burdens due to low canopy cover. Some of these communities are closer to the most heavily trafficked roadways and have poor air quality.

3.a. Appropriations

_____ This legislation adds, changes, or deletes appropriations.

Appropriations Notes: Although appropriations are not included in this bill, a companion bill will include the appropriations necessary to implement this legislation. The companion bill increases 2023 appropriations for the Construction and Inspections Fund (48100) by \$273,000 in in 2023 as follows:

- Budget Control Level BO-CI-U2200 – Land Use Services – \$164,000
- Budget Control Level BO-CI-U23A0 – Inspections – \$109,000

These changes assume position costs for 6 months in 2023 as well as a one-time fleet add in 2023 for a new site inspector position.

3.b. Revenues/Reimbursements

 X This legislation adds, changes, or deletes revenues or reimbursements.

Anticipated Revenue/Reimbursement Resulting from This Legislation:

| Fund Name and Number | Dept | Revenue Source | 2023 Revenue | 2024 Estimated Revenue |
|----------------------------------|------|----------------------------------------------|--------------|------------------------|
| 13000 – Transportation Fund | SDOT | Payments in lieu for tree removal mitigation | \$0 | \$132,000 |
| 10200 – Park and Recreation Fund | SPR | Payments in lieu for tree removal mitigation | \$0 | \$59,000 |
| | | TOTAL | \$0 | \$191,000 |

Revenue/Reimbursement Notes: The revenue shown here is for the payment in lieu program. It therefore does not offset the SDCI staffing costs represented in the sections above. The revenue accrues to different funds: specifically, it funds the capital improvement programs identified in Section 2.

3.c. Positions

 This legislation adds, changes, or deletes positions.

Position Notes: Although appropriations are not included in this bill, a companion bill will include the positions necessary to implement this legislation. The companion bill includes the following three ongoing positions:

- FTE Environmental Analyst, SDCI (Land Use)
- FTE Site Inspector, SDCI (Inspection Services)
- Management Systems Analyst Supervisor (Land Use)

This is an initial estimate of FTE needs based on Subject Matter Expert (SME) input. The department will evaluate the project over time and determine if additional positions are required in the future.

4. OTHER IMPLICATIONS

a. Does this legislation affect any departments besides the originating department?

The City department with direct responsibility for implementation and enforcement of this legislation is the Seattle Department of Construction and Inspections (SDCI). Other departments have a supporting role, including Seattle Parks and Recreation (SPR) and the Seattle Department of Transportation (SDOT). These departments receive payments from the

payment in-lieu provisions and will use these payments to plant replacement trees. SDOT and SPR have been consulted and support this legislation.

b. Is a public hearing required for this legislation?

Yes.

c. Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?

Yes. Notices will be published in *The Daily Journal of Commerce* and in the City's Land Use Information Bulletin. The SEPA Draft legislation, the City's Determination, pursuant to environmental review under the State Environmental Policy Act (SEPA), was published on February 17, 2022.

d. Does this legislation affect a piece of property?

Yes. The legislation affects properties in zones applicable to SMC 25.11 which includes properties citywide, largely zoned Neighborhood Residential, Lowrise, Midrise, commercial and Seattle Mixed zones. The legislation also requires certain new development to plant street trees within the street right-of-way (ROW). If there is no room to plant trees in the street ROW, then a builder or property owner could elect the payment in-lieu option.

e. Please describe any perceived implication for the principles of the Race and Social Justice Initiative. Does this legislation impact vulnerable or historically disadvantaged communities? What is the Language Access plan for any communications to the public?

This legislation helps plant trees in low canopy areas and/or low-income communities, many of which are BIPOC neighborhoods with public health disparities, including higher rates of asthma due to lower air quality than in higher tree canopy areas. This could be accomplished by either planting trees onsite when mitigation is required for tree removal and/or through the voluntary alternative to make a payment in-lieu of replanting on-site; in this case, the City will use the payment in lieu fees to plant trees elsewhere emphasizing neighborhoods with lower canopy cover. It is estimated that payments in-lieu alone will fund the planting of more than 3,000 trees over the next 20 years. As previously mentioned, data indicates that vulnerable and historically disadvantaged communities are most impacted by lower tree canopies in Seattle.

f. Climate Change Implications

1. Emissions: Is this legislation likely to increase or decrease carbon emissions in a material way?

This legislation will likely result in a small reduction of greenhouse gas emissions by reducing the energy needed to cool buildings during summer heat waves when preserved

and replanted trees provide shading. In addition, the legislation will likely foster other related tree benefits including carbon storage and sequestration.

2. **Resiliency: Will the action(s) proposed by this legislation increase or decrease Seattle’s resiliency (or ability to adapt) to climate change in a material way? If so, explain. If it is likely to decrease resiliency in a material way, describe what will or could be done to mitigate the effects.**

This legislation increases Seattle’s resiliency and its ability to adapt to climate change by increasing tree protections (i.e., regulating more trees) together with the option to elect to make a payment in-lieu of replanting on-site. Documented resiliency benefits of the urban forest include shading and mitigation of stormwater impacts.

- g. **If this legislation includes a new initiative or a major programmatic expansion: What are the specific long-term and measurable goal(s) of the program? How will this legislation help achieve the program’s desired goal(s).**

Not applicable.

Summary Attachments:

Summary Attachment 1 – Expanded Summary of Code Changes

Expanded Summary of Code Changes

Below is an expanded summary list of what requirements will be changing and how these requirements are changing with this legislation. These items are generally listed in the same order as presented in the draft legislation.

- 1. Plant trees in street right-of-way (ROW) for new single-family development in Neighborhood Residential, commercial, and Seattle Mixed zones:** This legislation would require that trees must be planted in the street right-of-way for new construction of principal single-family dwelling units, except for accessory dwelling units and building additions, in Neighborhood Residential zones subject to Chapter 23.44 of the Land Use Code, and in commercial zones and Seattle Mixed zones subject to Chapters 23.47A and 23.48 of the Land Use Code.
- 2. Adds that the application of the tree provisions pursuant to Chapter 25.11 is regulated as a Type I decision:** This would simplify provisions, including allowing development standards to be modified to aid in tree preservation as an administrative process without requiring Design Review, while maintaining Design Review as an option in multifamily and commercial zones. This means that new development projects would use an administrative Type I review (non-appealable, which is the same decision type as compliance with zoning). This change allows for the applicant and the City to work closer together and earlier in the development review process when a “tree review” is required.
- 3. Updates the purpose and intent of Chapter 25.11:** This section was updated to include a new phrase which reads “while balancing other citywide priorities such as housing production.” This change signals that the intent of Chapter 25.11 is to support future growth and density with a balanced approach as per [Resolution 31902](#).
- 4. Clarifies actions that are exempt from Chapter 25.11:** This change means that items listed in the exemption section of this legislation are exempt from these regulations and/or it is regulated within another section of the Land Use Code. Some of these exemptions include: when a tree needs to be removed because it is infested with insects and/or pests that have caused the tree’s health to be no longer beneficial to itself and the environment; tree removal that is necessary to be in compliance with the Americans with Disabilities Act (ADA) such as the installation of a curb ramp or a walkway for wheelchair access to a building from the sidewalk; tree removals and other tree-related activities as part of redevelopment that are applicable to planned action ordinances such as within the MPC-YT zone for Yesler Terrace. Additionally, permanent supportive housing development project proposals would be exempt from Chapter 25.11 because these types of projects are already regulated by the Land Use Code.
- 5. Adds a new section addressing emergency actions that may be undertaken without obtaining a permit in advance:** This section was added to give increased certainty in the

tree code for what is required to be submitted to SDCI for an emergency action. An example of an emergency action could be a fallen tree from a severe windstorm that has the potential to cause injury (i.e., hazardous tree). This legislation clarifies the list of emergency activities and allows for the tree to be removed or pruned to remedy an immediate threat to public health, safety, or welfare.

6. **Adds a new section addressing provisions related to hazardous tree removal:** This legislation updates the references in the regulations to be in line with established industry standards for tree risk assessment evaluation. The other change is a new section that requires hazardous trees 12 inches in diameter and greater to be replaced if those trees are removed.
7. **New “tiers” naming:** Chapter 25.11 is updated to use a new “tiers” naming nomenclature. This change removes and replaces the “exceptional” tree category in the existing tree regulations. There are four tree tiers in this legislation: Tier 1 Tree, Tier 2 Tree, Tier 3 Tree, and Tier 4 Tree. With these new tiers, this legislation does the following:
 - a. Regulates heritage trees as Tier 1 Trees;
 - b. Expands the formerly “exceptional” tree category (now called Tier 2 Trees) to include more trees with a lowered threshold from 30” to 24” and now also includes tree groves. In addition, some “exceptional” trees that are currently regulated by species and size in existing Director’s Rule 16-2008 will retain their “exceptional” tree status as the name is changed from “exceptional” to Tier 2 Trees;
 - c. Regulates trees that are 12” to 24” diameter. This change now requires these Tier 3 Trees to either be replaced if removed or the property owner may elect to make a payment in-lieu of replacement onsite;
 - d. Regulates trees that are 6” to 12” diameter; and this legislation requires these Tier 4 trees to be delineated and shown on project proposals and site plans to assist SDCI in using GIS tracking to report on tree-related data including how many trees were removed, replaced and preserved during development. It should be noted that GIS tree tracking work activities apply not only to Tier 4 trees but all tree tiers (Tiers 1-4).
8. **Revisions to “tree protection area”:** This legislation includes a new description about factors relating to the tree protection area that is substantially similar to the existing provisions. It maintains the basic tree protection area (area within the drip line of a tree, which may be irregular in shape to reflect variation in branch outer limits) and factors that will be considered when modifying the basic tree protection area to determine the extent of the tree protection area.

It also adds the following:

- a. Description about determining the tree protection area, which “shall be determined based on species tolerance; expected impacts of construction activities; tree size, age, and health; and soil conditions not to exceed the area of the feeder root zone.”
- b. Indicates that the tree protection area “shall not be reduced more than 35 percent (compared to 33 percent under existing code) unless an alternative tree protection area or construction method will provide equal or greater tree protection and result

in long-term retention and viability of the tree as determined by a certified arborist” with existing encroachments not counting toward the reduction.

- c. New encroachments into the tree protection area, if allowed by the SDCI Director and with arborist findings, could not be closer than one-half of the tree protection radius; and existing encroachments closer than one-half radius could remain or be replaced if no appreciable damage to the tree would result.
 - d. For properties undergoing development, a tree protection area also would be required for trees relocated off the site and trees newly planted on-site as mitigation.
 - e. Removes the graphic illustration of the tree protection area, Exhibit 25.11.050B.
 - f. Provides new tree protection area using ANSI 300 standards. The tree protection area requirements are provided in the SDCI Tree and Vegetation Protection Detail.
9. **Tree removal limits:** This legislation adjusts tree removal limits when no development is proposed for an allowance of two Tier 4 trees in any 36-month period in the LR, MR, C and SM zones, and maintains the allowance for three Tier 3 and 4 trees in any 12-month period in all other zones.
10. **Outdated tree covenants can be discontinued:** This legislation clarifies wording to allow tree protection area covenants to be discontinued if the tree no longer exists (i.e., covenant applies “...for the remainder of the life of the tree”). Deletes references to “permanent” covenants.
11. **Zoning capacity calculation in dense zones:** Replaces floor area ratio (FAR) development capacity standard in the LR, MR, C and SM zones to use a hardscape area allowance of 85% coverage (in addition to a factor that includes leftover pieces of the property that are too small to accommodate usable development) to calculate zoned capacity for the application of the tree code.

Maintains and clarifies incentives for the retention of Tier 2 trees through a menu of adjustments to development standards. For development not subject to design review:

- a. Setbacks and separation requirements may be reduced by a maximum of 50 percent
- b. Amenity areas may be reduced by a maximum of 10 percent
- c. Landscaping and screening may be reduced by a maximum of 25 percent
- d. Structure width, structure depth, and façade length limits may be increased by a maximum of 10 percent

For development subject to design review, there are departures permitted in Section 23.41.012.

Reduction in parking quantity required by Section 23.54.015 is allowed if the reduction would result in avoidance of the tree protection area and the modification of standards for safe access.

In Lowrise zones, allows an increase in base height from 40 feet to 50 feet, for an additional building floor if needed to recover floor area lost within a tree protection area.

12. **Major Institutions clarification:** The update clarifies that if provisions of a City Council approved Major Institution Master Plan are inconsistent with the City’s tree protection code guidance, the Master Plan’s provisions will supersede.
13. **Tree replacement, maintenance and site restoration:** This legislation requires Tier 2 trees and Tier 3 trees that are removed in association with development, plus hazardous trees, to be replaced by one or more new trees; the size and species of the replacement trees is determined by the Director. Clarifies that replacement is to result in roughly proportional canopy cover prior to tree removal. It also adds a five-year maintenance and monitoring requirement by the property owner for newly planted replacement trees on private property, similar to a requirement used in existing codes for environmentally critical areas and shorelines. Prohibits removal of replacement trees of any size unless removal is approved by a future permit.
14. **Off-site planting and voluntary payment in lieu:** This legislation includes establishment of payment in lieu amounts and rates; such amounts are calculated to account for the cost for City departments to plant and establish trees for five years. Departmental planting costs include watering and minor pruning necessary to establish the trees for a reasonable likelihood of longer-term survival consistent with the City’s practices on capital funding.
15. **Enforcement and penalties:** The update adds language that if the violation is found to have been conducted purposefully to improve views, increase market value, or expand development potential, or was the result of negligence by a contractor or operator of its construction machinery, the amount of the penalty would be tripled as punitive damages.
16. **Definitions:** This legislation establishes a list of new definitions (e.g., tree grove, responsible party) and removes other definitions (e.g., caliper, exceptional tree, diameter at breast height) that are no longer applicable or are now inapposite given the updates to Chapter 25.11 and other sections of the Land Use Code.