



Date: October 26, 2020
From: Audubon Society of Portland
To: Portland City Council
Re: Title 11 Amendments

Dear Mayor Wheeler and Members of the Portland City Council,

I am writing on behalf of Audubon Society of Portland and our 17,000 members in the Portland Metro Area regarding the proposed amendments to Title 11. Audubon served on the stakeholder advisory committee that developed Title 11 as well as many other City of Portland tree-related public processes. The restoration of our urban tree canopy is essential to meet the community's environmental, climate and equity goals.

Audubon strongly supports the proposed amendments contained in both the Urban Forest Commission (UFC) and Planning and Sustainability Commission (PSC) recommendations. Specifically we support amending Title 11 to require inch-for-inch mitigation when trees greater than 20 inches diameter at breast height (DBH) are removed and elimination of exemptions from Title 11 that are currently in place for General Industrial (IG1), Central Employment (EX), and Central Commercial (CX) zones. Each of these amendments represents an important step forward in protecting our urban tree canopy.

We also believe that it is imperative that the City remove the tree code exemption that is currently in place for heavy industrial lands (IH). On this issue, the UFC and PSC diverged with the UFC recommending immediate removal of the exemption and the PSC recommending that a decision be delayed until the City's Economic Opportunities Analysis (EOA) can be updated. Audubon supports the UFC recommendation. However, if the City believes that it cannot legal apply Title 11 to IH zoned lands until the EOA is updated, then we would recommend much stronger language than is currently included in the draft resolution.

Specifically, if the City delays applying Title 11 to heavy industrial lands, we believe the language in the resolution should be much more prescriptive. Specifically we would recommend the following:

- 1) The City should instruct BPS to develop and EOA alternative that creates adequate capacity to allow full application of Title 11 as well as other environmental code updates on Heavy Industrial Lands
- 2) The City should commit to revisiting application of Title 11 to industrial lands concurrent with completion of the EOA update.

We would recommend the following language be added to the ordinance:

Be it further resolved, City Council recognizes that application of Title 11 on heavy industrial lands is essential to meeting the city's tree canopy, climate, equity and environmental goals. City Council also recognizes that addressing this important issues has already been delayed for more than a decade. Council instructs the Bureau of Planning and Sustainability to complete work on updating the City's Economic Opportunities Analysis with inclusion of an alternative that allows full application Title 11 as well as other environmental code updates on Heavy Industrial (IH) Lands. City Council will revisit application of Title 11 on heavy industrial lands concurrent with completion of the updated EOA.

We are deeply concerned that as currently written, the PSC approach to heavy industrial lands is actually weaker than what City Council committed to in 2011, nearly a decade ago. When Title 11 was brought before Council in 2011, it included application of Title 11 to all lands in Portland including Heavy Industrial Lands. Council made a last minute decision to exempt commercial and industrial lands from Title 11 due to the fact that the City's EOA was out of date and Council believed that application of Title 11 on commercial and industrial lands could potentially be successfully challenged at LUBA under Statewide Land Use Planning Goal 9. The decision to exempt commercial and industrial lands was strongly opposed by the community at large. However, based on advice from legal counsel, City Council incorporated the exemptions with strong assurances to the community that the exemptions would be revisited as soon as the EOA was updated. Despite the fact that the EOA was in fact updated in 2015, with capacity included to accommodate environmental code updates, Council never revisited the Title 11 issue. Five years later, the City finds itself in the same unfortunate position as it was in 2011 with regards to heavy industrial lands: an EOA that has once again gone stale and in potential legal jeopardy if it moves forward applying Title 11 to heavy industrial land prior to an update.

We disagreed with the City's logic regarding the EOA in 2011 and we disagree with the logic underpinning BPS' recommendation now. Title 11 allows for either protection of trees on site or payment into a mitigation fund to be used elsewhere if trees are removed. Therefore, there is no necessity under Title 11 to apply it in a manner that reduces the city's industrial land base. The offsite mitigation option allows for both maintenance of the industrial land base and replacement of lost trees. We believe that the City is in error in terms of viewing tree protection on industrial land as potential violation of Goal 9.

Further, we would note that while the City has cited our limited industrial land base as a basis for not applying Title 11 on heavy industrial lands, it has simultaneously allowed for repeated up-zoning of heavy industrial lands for other uses by industrial land owners. To the degree that the city has a deficit of heavy industrial lands, it is a direct result of up-zoning of industrial land at the behest of industrial land owners who then turn around and use the deficit that they themselves created as a basis to oppose environmental regulations. Industrial land owners profit while the environment and our communities are degraded.

The impacts of the City's failure to apply Title 11 to industrial lands are real and substantial. For example, a significant portion of Brodmoor Golf Course is being converted to industrial use. Hundreds of large form trees will be removed at this site with no mitigation at all because Title 11 does not currently apply. The impacts are compound at this site because, as with much of our heavy industrial landscape, this area is adjacent to neighborhoods that have high diversity and lower income levels, is bordered by high value natural resource sites, and is marked by stormwater challenges and high urban heat island effects. Failure to apply Title 11 at this sites such as Brodmoor means that areas of the City that are the most in need of tree protection instead receive no protection at all.

To the degree that Statewide Land Use Planning Goal 9 ultimately remains a serious impediment to protecting trees or other natural resource values on industrial lands, we believe it is time for the City to explore modification of Goal 9 at the state level. Goal 9 requires that the City maintain a twenty-year supply of industrial land, without reference or concern as to how this mandatory obligation might affect other community goals and aspirations. In a city such as Portland that has no room to expand, Goal 9, as written, has a real potential to erode the City's ability to meet other equally important community needs such as a healthy environment and ecosystem function. In fact, it is clear that Goal 9 is already having exactly this effect. Protecting industrial jobs is important, but it cannot be done in a way that places workers, our neighborhoods or our environment at risk. It may be time to explore whether Goal 9 needs modification to allow for a more holistic approach to integrating jobs with other community priorities.

We appreciate the amendments that were agreed upon by the PSC and UFC but we believe application of Title 11 to heavy industrial lands is also urgent and imperative. Heavy industrial lands have far more existing trees as well as opportunities to plant trees in the future than the other land use types where exemptions are proposed for removal. Heavy Industrial lands are also the landscapes where tree protection is particularly urgent due to proximity to high value natural areas, waterways, and underserved neighborhoods, stormwater impacts, air and water quality impacts, light and noise impacts and high urban heat island effects, Applying Title 11 is essential to protect the health of the environment, workers in the heavy industrial zone, and adjacent neighborhoods.

We respectfully urge Council to adopt all of the amendments supported by the UFC and PSC and to take meaningful action to advance tree protection on heavy industrial lands.

Thank you,

Bob Sallinger
Conservation Director

Micah Meskel
Activist Program Manager