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**CITY OF PORTLAND  
IN THE CITY COUNCIL**

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**AMENDMENT TO PORTLAND CITY CODE  
CHAPTER 29 VEGETATION  
RE: HERITAGE TREE PROTECTION ORDINANCE AND TREE TRUST**

**WHEREAS**, the City of Portland wishes to protect Heritage Trees from damage or removal; and

**WHEREAS**, the City of Portland recognizes that Heritage Trees provide extensive ecosystem services such as filtering stormwater, sequestering carbon, and mitigating urban heat; and

**WHEREAS**, the City of Portland also recognizes that Heritage Trees enhance the neighborhoods in which they are located by adding beauty, softening the urban environment, and offering shade from summer sunlight; and

**WHEREAS**, the City of Portland has long been recognized as "the Forest City" because of its commitment to its Heritage Trees; and

**WHEREAS**, development threatens Heritage Trees with harm or removal; and

**WHEREAS**, many citizens desire that Heritage Trees be protected from unnecessary cutting; and

**WHEREAS**, a growing number of communities and municipalities including the City of Portland embrace the need to protect Heritage Trees; and

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND, MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:**

1. *That the Portland City Code is hereby amended by adding Sections 29-1 to 29-14, which said Sections read as follows:*

Art. I. ~~In General~~Heritage Tree Protection Ordinance, §§ 29-1--29-15

Div. 1. In General, §§ 29-1--29-13

Div. 2. Tree Trust, §§ 29-14--29-15

Art. II. Trees, §§ 29-16--29-24

## ARTICLE 1. ~~IN GENERAL~~ HERITAGE TREE PROTECTION ORDINANCE

### DIVISION 1. IN GENERAL

#### Sec. 29-1. ~~Reserved~~Title.

This article shall be known as the Heritage Tree Protection Ordinance (hereinafter, the "Ordinance").

#### Sec. 29-2. ~~Reserved~~Intent and purpose.

The preservation of the tree canopy and the planting of replacement trees is intended to enhance the quality of life and the environment of the city; to reduce energy consumption; to protect air quality; to provide protection from glare and heat; to baffle noise; to reduce topsoil erosion and stormwater runoff; to preserve and enhance habitat for wildlife; to protect and increase property values; to combat climate change through carbon sequestration; to provide natural privacy for neighbors; to enhance the overall appearance of the City; and to acknowledge the intrinsic value of the mature trees within our community.

The purpose of this Ordinance is to discourage the removal or extensive pruning of Heritage Trees located in historic districts of the City of Portland on private property and to replace the valuable ecological services such trees provide should they be removed.

#### Sec. 29-3. ~~Reserved~~Definitions.

Caliper: A measurement of the tree trunk diameter used when purchasing tree plantings measured at 12 inches above the ground.

City Tree: A tree located on property owned by the City of Portland, including Public Shade Trees, trees in City parks, trees on the grounds of City buildings, and trees in the public right of way.

DBH (Diameter at Breast Height): The diameter of a tree trunk measured in inches at a height of four and a half (4.5) feet above the ground. For multiple trunk trees, DBH is the aggregate diameter of the trunks.

Heritage Tree: A Heritage Tree is a tree located on privately owned property and located in a designated historic district that meets at least one of the following criteria:

1. Any tree that is on the Register of Big Trees promulgated by the Maine Department of Agriculture, Conservation & Forestry (the "Big Tree List"); and
2. Certain trees 24 inches in diameter or greater (diameter at breast height or DBH): Oak species including White Oak, Red Oak, Pin Oak, Swamp White Oak, and Burr Oak; Sugar Maple and Red Maple; Shagbark Hickory; Ginkgo; Tulip Poplar; Cucumber Magnolia; Elm; Birch species; Hemlock; Pine; Spruce; Horse Chestnut; Walnut; Catalpa; Black Cherry; Linden; Sweetgum; European Beech; Honey Locust; and Sycamore; and
3. Ornamental trees 12 inches in diameter or greater (DBH) including Dogwood, Magnolia, Dawn Redwood, Japanese Maple, Hawthorn, Apple, Chameacyparis, Cherry, Hornbeam, Amelanchier, Sassafras, and Mulberry; and
4. Stands of native trees that are rare or threatened including Shagbark Hickory, Pitch Pine, American Mountain Ash, Red Spruce, and Atlantic White Cedar.

Qualified Tree Professional: A Qualified Tree Professional is an individual with relevant education and training in arboriculture or urban forestry who has at least one of the following credentials:

- International Society of Arboriculture (ISA) Certified Arborist
- Tree Risk Assessor Qualification (TRAW)
- American Society of Consulting Arborists (ASCA) registered Consulting Arborist
- Society of American Foresters (SAF) Certified Forester for Forest Management Plans

Removal: The intentional cutting down of any tree, including all other acts which cause actual or effective removal through damaging, poisoning, or other direct or indirect actions that result in the death of the tree. This includes, but is not limited to, excessive pruning and tree topping.

Replacement Caliper: The replacement caliper for Heritage trees shall be at least equal to the DBH of the tree removed.

Tree Topping: Topping is defined as the severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree.

Tree Trust: Fund established by the City to plant trees and to maintain street trees and trees in City-owned open space, rights of way, or parks.

**Sec. 29-4. ApplicabilityReserved.**

The terms and provisions of this ordinance shall apply to all trees within the City of Portland that are located on private property that meet the definition of a Heritage Tree.

**Sec. 29-5. Permit Required for Removal of healthy Heritage Trees on Private PropertyReserved.**

No person, directly or indirectly, shall remove any Heritage Tree on any private property within a Historic District without first obtaining a tree removal permit as provided in this article, unless specifically exempted by this ordinance.

**Sec. 29-6. Tree Removal Permit Application FormReserved.**

(a) The Parks, Recreation, and Facilities Department shall establish and maintain a tree removal permit application to allow property owners to request City review of a proposed removal of Heritage Tree for compliance with the Heritage Tree Ordinance. The Heritage Tree Removal Permit application form shall include at a minimum the following: a site plan, drawing, or screen shot showing the approximate location of Heritage Trees, their size (DBH) and their species, along with the location of structures, driveways, access ways, and easements.

(b) If replacement trees are to be planted, the plan shall indicate the planned location, species, and size of any

replacement trees to be planted. In order to qualify as replacements, trees must conform to species and planting standards as defined by the City Arborist. Trees planted in the adjacent right-of-way or otherwise located on public property shall not be considered suitable for consideration as replacement trees.

**Sec. 29-7. Conditions for Granting a Heritage Tree Removal PermitReserved.**

(a) Removal of Significant Trees: If any Heritage Trees are to be removed, the plan must show planting of new trees equal to the total Replacement Caliper of those trees. Replacement trees shall be planted on the property where the Heritage Tree is removed unless another location is identified and the City Arborist determines in his or her sole discretion that off-site replacement will satisfy the purposes of this Ordinance.

(b) Payment instead of Replacement: Payment to the Tree Trust may be made in lieu of planting some or all of the replacement trees, according to a cost schedule established by the City Arborist. Such fees shall be based on the actual costs associated with purchasing, planting, and maintaining the replacement trees of comparable size and value. Payment must be made prior to issuance of the permit.

(c) Request for Waiver: The application for a Heritage Tree Removal Permit shall allow the applicant to request a waiver of the requirement for replanting or payment.

(d) Hearing of Request for Waiver: The City Arborist, or his or her designee, shall hear requests for such waivers within 10 days of the date the application was received. Examples of reasons supporting a waiver include but are not limited to: financial hardship associated with the care and upkeep of the trees; unreasonably high requirements for replacement or repayment, ongoing or reasonably foreseen damage or risk from the trees, and desire to create a benefit to the public. The City Arborist shall consider such recommendation in considering whether or not to grant the waiver.

**Sec. 29-8. Standards for Replacement TreesReserved.**

(a) Replacement trees must be of the same or similar species and size as described in the application for the Heritage Tree Removal Permit, and must be planted according to standards

established by the City Arborist.

(b) In the event that trees of the size and species that were described in the application for the Tree Permit cannot be obtained at the time of planting, multiple smaller replacement trees may be planted with the authorization of the City Arborist.

(c) The City Arborist shall determine the number of trees required to be planted to mitigate the loss of the Heritage Tree using the replacement caliper as it relates to the DBH of the tree that is to be removed.

**Sec. 29-9. Exceptions to the Heritage Tree Removal Permit RequirementReserved.**

(a) Emergencies: If any tree shall be determined by the City Arborist to be in a hazardous condition so as to immediately endanger the public health, safety, or welfare or cause an immediate disruption of public services and require immediate removal without delay, verbal authorization may be given by the City Arborist to remove such tree, and the tree may be removed without obtaining a written permit as otherwise required by this ordinance. The City Arborist shall record in writing each such verbal authorization and maintain them in accordance with applicable law.

(b) Waiver: The requirements of this article may be waived by the City Arborist during the period of an emergency such as a hurricane, tornado, windstorm, flood, or similar threat to life and property.

**Sec. 29-10. Heritage Tree Removal Permit Application Procedure and AppealsReserved.**

Applicants requesting a Heritage Tree Removal Permit must submit a completed permit application to the City Arborist on a form provided by the City.

(a) The City Arborist or designee shall review the application within 21 calendar days and either approve, approve with conditions or modifications, or deny the application, or request additional information. The City Arborist will also note any requirements for replacement trees as indicated in Section 29-8 above or calculate the cost of replacement trees, depending on the preference of the applicant. The City Arborist's decisions shall be in writing along with the process for calculating the

number of replacement trees required or the amount of the financial contribution required to the Tree Trust.

(b) An applicant for a Heritage Tree Removal Permit may appeal the decision of the City Arborist to the Director of Parks, Recreation, and Facilities, whose decision will be final.

(c) Time Limit. If granted a permit, the applicant shall complete the removal and necessary tree replacement within one (1) year from the date the permit is issued or prior to transfer of property ownership, whichever comes first.

(d) If any trees required by the permit issued by the City Arborist remain unplanted after the one (1) year period, the applicant shall instead make a contribution to the Tree Trust as outlined in Section 29-8 above.

(e) If a replacement tree dies within 18 months from the date of planting, it must be replaced. The person planting the tree shall provide documentation as to the date of the planting and file the same with the City Arborist within 15 days of the planting of said replacement tree.

**Sec. 29-11. Enforcement Reserved.**

(a) If a Heritage Tree is removed without a Heritage Tree Removal Permit as required herein, the property owner must apply for a Tree Permit within 30 days of the removal. Each business day thereafter, until an application is filed, shall constitute a separate violation of this ordinance and shall be subject to the penalties outlined in Section 1-15 of the Portland City Code.

(b) Stop work order: Upon notice that trees are being removed without a Heritage Tree Removal Permit, such work shall be immediately stopped by the Director of Parks, Recreation, and Facilities or designee. The stop work order shall be in writing and shall be mailed to the owner of record of the property and posted at the front of the property in a conspicuous location, and if possible, given to the owner of the lot involved, or to the owner's agent, or to the person doing the work, and shall state the conditions under which work will be permitted to resume.

(c) Injunctive relief: Whenever there exists reasonable cause to believe that a person is violating any applicable provision of

this article, the city may institute a civil action for an injunction in a court of competent jurisdiction ordering the defendant to correct the unlawful condition or to cease the unlawful use of the property.

**Sec. 29-12. Conflicts with Other OrdinancesReserved.**

Whenever a provision of this ordinance conflicts with or is inconsistent with another provision of this ordinance or of any other ordinance, regulation or statute, the more restrictive chapter, article or ordinance of the Portland City Code shall control.

**Sec. 29-13. ReservedEffective date.**

This ordinance shall become effective thirty (30) days following passage by the City Council. During the time between passage and the effective date, the City Arborist shall post a notice on the City Web Page and mail a notice about the ordinance to all licensed arborists in Cumberland County.

DIVISION 2. TREE TRUST

**Sec. 29-14. ReservedTree Trust.**

(a) Purpose. The purpose of enacting this section is to establish a tree trust fund to facilitate compliance with tree replacement requirements set forth in Chapter 29 of this Code

(b) Establishment of the tree trust fund. The city council hereby establishes a special revenue account under the name "City of Portland Tree Trust Fund." Deposits into the fund shall include:

1. Contributions made by anyone removing heritage trees and choosing to make a contribution in lieu of planting trees as specified in Chapter 29 of this code;
2. Funds appropriated to be deposited into the fund by vote of the city council;
3. Voluntary contributions of money or other liquid assets to the fund;

4. Any federal, state or private grant or loan funds provided for tree trust fund purposes; and/or

5. Interest from fund deposits and investments.

(c) Management of the trust fund. The city manager, or his or her designee, shall serve as the manager of the tree trust fund. The responsibilities of the manager, subject to the orders of the city council, shall include:

1. Maintaining the financial and other records of the tree trust fund;

2. Disbursing and collecting tree trust fund monies in accordance with the tree trust fund annual plan; and

3. Monitoring the use of monies expended and assuring compliance with the purposes of the fund and the conditions under which any portions of the fund were granted or loaned.

(d) Tree trust fund annual plan. Each fiscal year, the city council shall adopt a tree trust fund annual plan. The city manager shall submit to the city council a recommended tree trust fund annual plan, utilizing the revenues of the tree trust fund as well as any other funds the manager may propose as appropriate. The Sustainability and Transportation Committee of the city council, or such other committee as the council shall designate, shall conduct public hearings on the recommended plan and refer the matter to the council for action.

The tree trust fund annual plan shall include:

1. A description of all tree planting programs to be funded in part or in full by the tree trust fund;

2. Identification of the locations trees were planted in the prior year;

3. Identification of locations that would most greatly benefit from tree planting to reduce the amount of impervious surface, reduce urban heat islands, and manage stormwater;

4. The amount of funds used for tree planting in the prior year.

(f) Distribution and use of the tree trust fund's assets.

1. All distribution of principal, interest or other assets of the tree trust fund shall be made in furtherance of the public purposes set out in this article (Heritage Tree Protection Ordinance).

2. Funds shall not be used for city administrative expenses.

**Sec. 29-15. Reserved.**