City of Talent

Planning Commission

Public Meeting

Thursday, January 28, 2016 – 6:30 PM

Talent Town Hall, 206 East Main Street

AGENDA

The Planning Commission of the City of Talent will meet on Thursday, January 28, 2016 at 6:30 P.M. in the Talent Town Hall, 206 E. Main Street.

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired, or for other accommodations for persons with disabilities, should be made at least 48 hours in advance of the meeting to the City Recorder at 541-535-1566, ext. 1012.

The Planning Commission reserves the right to add or delete items as needed, change the order of the agenda, and discuss any other business deemed necessary at the time of the study session and/or meeting.

I. Call to Order/Roll Call;

II. Brief Announcements by Staff;

III. Consideration of minutes from the December 17, 2015 Planning Commission meeting;

IV. Public Comments on Non-Agenda Items;

V. Public Hearings;

None

VI. Discussion Items;

a. **Work Session** - Planning Commission By-Laws

   i. Open Discussion of Needed Changes

b. **Work Session** – Tree and Landscaping Code Amendments

   i. Purpose of Proposed Amendments
   ii. Discussion of Proposed Amendments
   iii. Formation of Citizen Advisory Committee

c. **Election of Chair and Vice Chair**

d. **Commission Ad Hoc Appointments**

Note: This agenda and the entire agenda packet, including staff reports, referenced documents, resolutions and ordinances are posted on the City of Talent website (www.cityoftalent.org) in advance of each meeting. In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact TTY phone number 1-800-735-2900 for English and for Spanish please contact TTY phone number 1-800-735-3896.

The City of Talent is an Equal Opportunity Provider

VII. Subcommittee Reports;

VIII. Propositions and Remarks from the Commission;

IX. Adjournment – Next Meeting February 25, 2016

Note: This agenda and the entire agenda packet, including staff reports, referenced documents, resolutions and ordinances are posted on the City of Talent website (www.cityoftalent.org) in advance of each meeting. In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact TTY phone number 1-800-735-2900 for English and for Spanish please contact TTY phone number 1-800-735-3896.

The City of Talent is an Equal Opportunity Provider

TALENT PLANNING COMMISSION
REGULAR MEETING
MINUTES
TALENT TOWN HALL
December 17, 2015

Study Session and Regular Commission meetings are being digitally recorded and will be available on the City website: www.cityoftalent.org

The Planning Commission of the City of Talent will meet on Thursday, December 17, 2015 in a regular session at 6:30 P.M. in the Talent Town Hall, 206 E. Main Street. The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired, or for other accommodations for persons with disabilities, should be made at least 48 hours in advance of the meeting to the City Recorder at 541-535-1566, ext. 1012. The Planning Commission reserves the right to add or delete items as needed, change the order of the agenda, and discuss any other business deemed necessary at the time of the study session and/or meeting.

REGULAR COMMISSION MEETING- 6:30 PM

Anyone wishing to speak on an agenda item should complete a Public Comment Form and give it to the Minute Taker. Public Comment Forms are located at the entrance to the meeting place. Anyone commenting on a subject not on the agenda will be called upon during the "Citizens Heard on Non-agenda Items" section of the agenda. Comments pertaining to specific agenda items will be taken at the time the matter is discussed by the Planning Commission.

I. Call to Order/Roll Call 6:33 P.M.

Members Present:
Commissioner Heesacker
Commissioner Hazel
Commissioner Milan
Commissioner Pastizzo
Acting Commissioner Riley

Members Absent
Commissioner Schweitzer

Also Present:
Zac Moody, Community Development Director
Betsy Manuel, Minute-Taker
Councilor Wise, Council liaison

II. Brief Announcements

Moody presented a brief update of the StreamSmart program of which Talent is a participating member. He noted that Talent's riparian restoration projects were listed on the joint website,

and efforts are now underway to identify Talent's waterways, riparian areas and open space with StreamSmart low impact signage.

III. Consideration of Minutes for October 22, 2015

Motion: *Commissioner Milan moved to approve the Minutes of October 22, 2015 as presented. Commissioner Pastizzo seconded and the motion carried. The vote was all yes.*

Consideration of Minutes for November 19, 2015

Commissioner Milan moved to approve the Minutes of November 19, 2015 as presented. Commissioner Hazel seconded and the motion carried. The vote was all yes.

IV. Public Comment on Non-Agenda Items

Charlie Hamilton of 328 Talent Avenue, Talent OR. was called forward.

Hamilton noted that he had come before the Commission in October of 2015 to seek a variance for property located at 413 Creel Road in Talent. He stated that there had been discussion by the Commission at the time of approval, regarding a tree that was on the property, although there were no conditions of approval regarding the tree. There were subsequent efforts to protect the tree from damage, and the intent at the time was to save the tree.

Several factors developed that affected the outcome. Hamilton noted that compliance with the setback requirements resulted in re-positioning of the house footprint closer to the tree than was originally planned. He stated that excavation for the house uncovered tree roots that would have to be removed. An arborist was called in to examine the tree. It was his opinion that the impact of root removal would significantly interfere with the health of the tree, and approximately 30% of the root system would be in jeopardy.

In the meantime the original owner of the property decided to exercise his option to put in a new sewer line prior to completion of the flag lot project. A second arborist was called in who indicated that further damage would erode the health of the tree to the extent that it would have to be removed. He recommended removal whether or not the sewer line was put in, given that the current condition of the tree, and the impact of construction. Hamilton noted that it was unknown when the sewer line would be installed.

There followed a brief question and answer period about the cost of tree removal, the timing of the construction of an adjacent sewer line, and the easement owner's rights and responsibilities.

Public Hearing (Legislative) **Zoning Map Amendment** - Consideration of a Zone Change from Interchange Commercial (CI) to Highway Commercial (HC) on two parcels of land located at 251 W. Valley View and described as Township 38 South, Range 1 West, Section 23D, Tax Lot 200 and 201. **File: REZ 2015-001**. Decisions are based on the approval criteria found in Zoning Ordinance 8-3M.160. Applicant: Richard Stevens and Associates.

The opening statement was read. There were no exparte communications. Applicable code sections are referenced from Article 8-3M.160.

Staff Report: Moody noted that the site for the proposed zone amendment was originally the Talent Truck Stop and Restaurant. The restaurant is no longer in business, and the truck stop has minimal office activity, with truck repairs and servicing no longer offered.

Moody reviewed all of the noticing criteria for Type IV. Legislative Hearings. No written comments were received for this application. The pre-application conference was conducted on September 1, 2015.

There were three criteria from the Comprehensive Plan that were applicable to the application:

- **Element C - Natural Hazards**

Moody noted that the property was in 100 year floodplain and any future development would be required to submit a floodplain review substantiated by an engineer.

- **Element D – Transportation**

Expanded uses would be more transit oriented as development would allow mixed use and high density developments encouraging the use of alternative types of transportation.

- **Element E – Economy**

A broader zoning designation could positively impact economic growth in the area – facilitating a wide range of potential business uses. Moody emphasized the importance of adding high density residential land to the mix because it would mitigate the need for more residential land in Talent – a prerequisite for a thriving commercial environment.

- **Element F – Public Facilities**

50% of the properties within the Commercial Highway designation could become high density residential. Moody highlighted the benefits of commercial uses coupled with high density residential uses in an area that would not impact adjacent low density housing. He commented that it would assist Talent in meeting the land use requirements for future growth without affecting existing low density residential properties.

Moody noted that the requested zoning map amendment was not accompanied by a site plan review because there was no development planned at this time. The zone change would enhance future development.

Oregon's Administrative Rule 600 refers to possible changes to the transportation system because of increased traffic. Moody stated that the number of trips generated by changing the zone would be minimal. He referred to Talent's Transportation Plan and the scenarios therein for buildout. Moody commented that once a developer had proposed a plan for development, the City would be able to determine what the traffic impact would be.

The **Public Hearing** opened.

Ms. Megan LaNier of Richard Stevens & Associates Inc. 100 East Main Street, Suite O, Medford was called forward on behalf of Talent Commercial Leasing LLC.

Riley asked whether the zone change was contingent on a sale? LaNier replied that there was no sale pending, and indicated that there were no known plans for development. She stated that the zone change would make the property more marketable should the owners decide to sell.

Based on a comment from French, there followed a brief discussion about potential uses for the property. French referred to efforts to build a walkable community that was more oriented toward a healthy environment, stating that uses such as fast food drive-ins would be counter to those efforts.

Milan noted that the flood plain was a significant factor. He asked about future development in a flood zone. This question was deemed particularly relevant for a site plan review as opposed to a zoning amendment. LaNier noted that a floodplain review would be conducted by an engineer at the time of development, and mitigating factors would be considered. She also highlighted that the owner's intent in requesting the zone amendment was not yet determined and high density residential development was only one of many options. Milan raised the question that as to whether high density development in a flood plain should be restricted as a matter of policy.

Hazel stated that the zone change would allow high density residential to be considered. She expressed a concern about the potential for traffic congestion particularly in regard to the W. Valley View plans to narrow the roadway to one lane each way. Moody replied that there was a signalized traffic stop and recently established traffic thresholds (up to 20,000 annual daily trips) in Talent's Transportation System Plan (TSP) demonstrates that significant changes in traffic patterns could be accommodated. In addition, it would be most likely that a TIS (Traffic Impact Study) would be required at the time of development.

Pastizzo highlighted his experience with developments in floodplains, noting that the floodplain regulations tend to work well. He spoke in favor of the expanded uses as a way to provide increased economic opportunities.

Riley highlighted portion of the property currently in the floodplain and other portions that were part of the floodway. She recalled the flood of 1997 that affected the area. Pastizzo commented that there were more restrictive parameters for floodways – ensuring an increased level of scrutiny for any proposed development. He stated that the regulations would make it very difficult to build any structure in the floodway. LaNier noted that a developer would have to address all of these issues.

The **Public Hearing** closed.

Hazel reiterated concerns about development in a floodway and possible traffic congestion based on the uses permitted in the zone.

Motion: *Commissioner Pastizzo moved to recommend approval to the Talent City Council of the proposed zoning map amendment REZ 2015-001 changing the current zone from Commercial Interchange to Highway Commercial. Commissioner Hazel* seconded.

DISCUSSION:
Riley expressed concerns about the change in zoning, noting that the Comprehensive Plan did not reflect the necessity for a zone change. In addition, the TSP was predicated on the current zone. Riley stated that in her opinion, the proposed change should be attached to a proposal for development to reduce

the number of unknowns and/or too explain the rationale for development. Riley stated that changing the zone without a corresponding rationale was difficult to justify.

Heesaker spoke in favor of the proposal because it would increase the number of uses allowed in the zone. This in turn would encourage a wide variety of possibilities for a property that would be difficult to develop. The rationale in this case, would be that the change encourages greater economic opportunities in an area of Talent that could be less divisive than other future growth areas, such as TA 4 and 5.

Moody relayed that Talent's Zoning Code does not mandate that changes to a zone must be attached to an application for development. He referred to a precedent in Talent where such a zone change had been permitted, as well as comments from other communities that allow zone changes without requiring a site plan for development. Moody noted that there would be no corresponding change to the Talent's Comprehensive Plan because the property would remain a commercial designation.

In response to a question by Milan, Moody noted that the amount of open space or public land is predicated upon the type of use.

Motion: *Commissioner Pastizzo moved to recommend approval to the Talent City Council of the proposed zoning map amendment REZ 2015-001 changing the current zone from Commercial Interchange to Highway Commercial. Commissioner Hazel* seconded. *The motion was approved by a roll call vote with Commissioners Hazel, Milan and Pastizzo voting in favor and Acting Commissioner Riley voting against.*

V. **Public Hearing** (Legislative) **Zoning Code Amendment** - Consideration of Text Amendments to the Talent Zoning Code adding Title 8, Chapter 3, Division L, Article 9, Traffic Impact Study, amending Title 8, Chapter 3, Division M, Article 1, Section 150 (B), amending Title 8, Chapter 3, Division L, Article 2, Section(s) 244 and 246, and amending Title 8, Chapter 2, Section 260. New language allows the City to require a Transportation Impact Study when certain thresholds have been met. **File: DCA2015-001**. Applicant: City of Talent.

Staff Report:
Moody proposed text amendments that would clarify the triggers requiring a Traffic Impact Study (TIS). He used the Talent Truck stop as an example, stating that the decision making criteria would call for a comparison between the highest and best use for the current zone and the proposed zone. The establishment of thresholds would facilitate decision making as well.

Moody explained that references elsewhere in the codes would refer to Division L Article 9 – Traffic Impact Study. He detailed the text revisions, noting that the new text would provide a quantitative measure for a TIS requirement. The purpose, authorities, and general applicability are defined. Triggers include net daily trips, peak hour trips, the proximity of highway intersections, mitigation requirements and other tools that would allow for an appropriate review. Approval criteria would be reviewed by a traffic engineer.

There followed a brief discussion about the applicant's responsibilities and the obligation of the City when reviewing a TIS**.** Moody noted that no public comments were received.

The **Public Hearing** opened**.**
The **Public Hearing** closed.

Motion: *Commissioner Riley moved to recommend approval of the proposed amendments to the Talent City Council, as described in the attached Exhibit A, amending the Talent Zoning and Subdivision Code, adding Title 8, Chapter 3, Division L, Article 9,Traffic Impact Study, amending Title 8, Chapter 3, Division M, Article 1, Section 150 (B), amending Title 8,Chapter 3, Division L, Article 2, Section(s) 244 and 246, and amending Title 8, Chapter 2, Section 260 including the definitions of terms. Commissioner Pastizzo seconded and the motion carried with all yes.*

VI. Discussion Items:

- *Planning Commission By-laws – Suggested Changes to Commission Structure.*

Moody relayed a suggestion from the City Council to consider a seven person Commission.

Riley proposed that a new Architectural Review Commission be established with a membership of three. She suggested that TARC members could also function as alternates to the Commission. Milan noted that he could support an increase of two Commission members, but he was concerned about the number of alternates. Hazel was generally in favor of extra Commissioners. Pastizzo was concerned about the requirements for a quorum.

Heesaker noted that the timing for making changes to the Commission was apropos as development begins to accelerate. It was agreed that Moody would research quorum requirements, and a By-laws work-study session would be initiated in January.

- *Planning Commission Goals*

Moody noted that the Council also suggested that the Commissioners represent interests that are appropriate to the work of the Commission. Moody gave some examples of interrelated activities and/or the formation of Sub-committees that are pertinent to the Commission's education and outreach goals.

- *Upcoming Code Amendments*

Moody referred to the Commission's list of code amendments such as updates to the flag lot and vacation rental codes and others. He explained that amendments to the tree and landscaping code will be revamped to win designation as a Tree City. He stated that the amendments would help Talent qualify for the award. The process will include meetings with stakeholders in Talent and other public processes. In addition, the code needs to contain more quantifiable language regarding tree removal, heritage trees and others.

Moody also expressed the need for further direction on marijuana facilities as State law evolves. Talent also needs to address marijuana in terms of urban agriculture.

VIII. Next Meeting

The Commission agreed to hold the next Planning Commission meeting on January 21, 2016. Once the meeting was set, Moody noted that a Public Hearing would be held to review a zoning map change for the Talent Truck Stop.

IX. Adjournment

There being no further business to come before the Commission, the meeting was adjourned at 8:44 p.m**.**

Submitted by: _____ Date:_____

Attest:

_____ _____

Zac Moody, Community Development Director Chair Heesacker

Note: These Minutes and the entire agenda packet, including staff reports, referenced documents, resolutions and ordinances are posted on the City of Talent website (www.cityoftalent.org) in advance of each meeting. The Minutes are not a verbatim record. The narrative has been condensed and paraphrased to reflect the discussions and decisions made.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact TTY phone number 1-800-735-2900 for English and for Spanish please contact TTY phone number 1-800-735-3896.

Commission Agenda Report

Meeting Date:	January 28, 2016	Primary Staff Contact:	Zac Moody
Department:	Community Development	E-Mail:	zmoody@cityoftalent.org
Staff Recommendation:	None	Estimated Time:	30 minutes

ISSUE BEFORE THE COMMISSION

Staff has been asked by the Council to evaluate the Organization section of the current Planning Commission Bylaws. The Council questioned the existing membership structure and would like the Planning Commission to discuss if there is a need to expand the existing membership from five (5) voting members to seven (7) voting members.

BACKGROUND

The current Planning Commission Bylaws require the Planning Commission to consist of five (5) members and three (3) alternate members (non-voting). Prior to the bylaw amendments in 2009, the Planning Commission consisted of seven (7) members.

Staff researched the reasons for the reduction in membership and has determined that the changes were likely proposed because there were a number of Quasi-Judicial meetings where the Planning Commission could not convene because of a lack of quorum. A "quorum" is defined in ORS 174.130 as a majority. Included with this report is an excerpt from the Attorney General's Public Records and Meeting Manual from 2014. The entire manual can be found at:

http://www.doj.state.or.us/public_records/manual/public_meetings.shtml

Based on this information, the majority of a seven (7) member Commission would be four (4) and therefore the quorum would be four (4).

As currently written, the Commission is required to consist of five (5) voting members and a quorum is four (4) for Quasi-Judicial matters and three (3) for Legislative matters.

With that said, changing the required membership to seven (7) would require only a change in the quorum requirements for all Legislative matters from three (3) to four (4).

Staff's only concern with the current bylaws is the quorum requirements for Quasi-Judicial matters. Currently, the bylaws require more than a majority. These matters usually require a final decision with 120 days and if there are quorum issues, we are at risk of not meeting these required timelines.

STAFF RECOMMENDATION

None

RELATED CITY POLICIES

Adopted Bylaws may be amended at any regular meeting by a vote of the majority of the entire membership; or if the amendment was submitted in writing at the previous meeting, then they may be amended by a two-thirds vote of those voting, a quorum being present (2009 Planning Commission Bylaws, Section K).

COMMISSION OPTIONS

Direct Staff to prepare amendments to the Planning Commission Bylaws and present proposed amendments at the February 25, 2016 Planning Commission meeting, table discussion for determined period or table discussion with no action.

POTENTIAL MOTIONS

None

ATTACHMENTS

Planning Commission Bylaws amended in 2009
Planning Commission Bylaws adopted in 1986
Public Meeting Law Excerpt

BYLAWS
of the
CITY OF TALENT
PLANNING COMMISSION

Principles of the Commission (from *Robert's Rules of Order*):

- The right of the majority to rule
- The right of the minority to be heard
- The right of the individual to participate in the decision-making process

The authority of the Planning Commission to adopt bylaws is found in Section 1-9.7 of the Talent General Ordinances (TGO).

A. ORGANIZATION

The Commission consists of five members and three alternate members appointed by the Mayor with the approval of the City Council. Members serve four-year terms, which may be repeated indefinitely. The two officers of the Commission are Chair and Vice-Chair. Planning staff, in addition to being advisor to the Commission, serves a functionary role as Commission secretary.

A.1. **Election of Chair and Vice-Chair** and Appointment of Commission Representatives [*TGO Sec. 1-9.5*]

a. The Commission, at its first regular meeting in January of each year, shall elect a Chair and Vice-Chair.

b. After consultation with the Commission regarding availability, the Commission shall appoint representative(s) to ad hoc committees as the need arises.

A.2. **Chair — Duties**

The Chair shall preside at all meetings of the Commission providing general direction for the meetings, assuring proper order of the Commission and public in all proceedings. Such duties shall include:

a. Announcing the business on the meeting agenda in the order in which it is to be acted on;

b. Receiving and submitting all motions and propositions presented by the members of the Commission;

c. Putting to a vote all questions which are properly moved, or those that arise in the course of proceedings, and to announce the result thereof;

d. Informing the Commission when necessary, or when called to, on any point of order or practice. The Chair may call upon staff for advice on such matters;

e. Maintaining order at the meetings of the Commission;

f. Moving the agenda along, holding down redundancy, referencing handouts and procedures graciously during meetings;

g. Receiving documents or other physical evidence as part of the record;

h. Recognizing speakers and members of the Commission prior to receiving comments and presentations of physical evidence; i.e., plans and pictures; and

i. The Chair may rule out of order any testimony or comment that is irrelevant, personal, or not pertinent to the matter being heard.

It shall be the duty of the Chair to authenticate by signature when necessary, or when directed by the Commission, all of the acts, orders and proceedings of the Commission.

A.3. **Duties of the Vice-Chair**

During the absence of the Chair the Vice-Chair will have and perform all the duties and functions of the Chair.

A.4. **Temporary Chair**

In the event of the absence or disability of both the Chair and Vice-Chair, the Secretary calls the meeting to order, calls the roll, and the Commission shall elect a temporary Chair to serve until the Chair or Vice-Chair so absent or disabled shall return. In such event, the temporary Chair shall have all the powers and perform the functions and duties herein assigned to the Chair of the Commission.

A.5. **Commissioners – Duties**

The duties of the other Commissioners include: contributing ideas; keeping on subject; being aware of personal agendas and acknowledge if appropriate; aiding and contributing to all of the Chair's responsibilities.

A.6. **Secretary – Duties**

The City Planner or assign shall serve as secretary of the Commission. The secretary shall have the following duties:

a. Give notice of all Commission meetings as hereinafter provided; attend every meeting of the Commission, call the roll and record for the record all members in attendance, read communications, resolutions and other papers which are ordered to be read by the Chair of the meeting; and receive and bring to the attention of the Commission messages and other

communications from other sources;

b. Keep the minutes of the proceedings of the Commission and record the same;

c. Keep and maintain a permanent record file of all documents and papers pertaining to the work of the Commission; and

d. Perform such other duties as may be required by these rules.

A.7. Alternate Members – Duties

Alternate members are ex-officio members and may sit with the Commission. The Alternate member's primary function shall be to assist the Planning Commission, as requested, and members shall be encouraged to attend all Planning Commission meetings. In the case of an absence or vacancy on the Commission, the Chair, with consent of the Commission, shall appoint an Alternate member to occupy the vacant position on a meeting-by-meeting basis. That Alternate member shall have the same rights and voting privileges as any Commissioner. In instances where a legislative matter, general discussion or study session is scheduled, the Chair shall request Alternate members' attendance and participation in the discussion

A.8. Potential Commissioner Appointments

After an initial interview by the Mayor and before the City Council consents to the Mayor's appointment of any new Planning Commission member or Alternate member, that individual will be invited to a question and answer session with the Planning Commission as to his/her qualifications during a regularly scheduled Planning Commission meeting. The Commission will then inform the Mayor and City Council as to its recommendation regarding the potential new member before the Council makes its final decision.

B. CONDUCT OF COMMISSION MEMBERS

B.1. Addressing Members

Commission members shall address other members as "Commissioner" and their last names. This is for the benefit of the record and the public, who may not know the various commissioners by their first names.

B.2. Preparation

Members of the Commission shall take such time as necessary to prepare themselves for hearings and meetings. If members visit a site or have familiarity with a site they shall disclose any observations.

B.3. Attendance

a. Every member of the Commission shall attend the meetings of the

Commission unless duly excused with advance notice or unless unable to attend because of extenuating circumstances. Any member desiring to be excused shall notify the secretary as soon as possible. The secretary shall call the same to the attention of the Chair.

B.4. **Conflict of Interest**

a. Disqualification. No member of the Planning Commission shall participate in discussion of an application or vote on an application for any quasi-judicial action when any of the following conditions exist:

(i) Any of the following have a direct or substantial financial interest in the proposal: members of the Planning Commission or the member's spouse, brother, sister, child, parent, father-in-law, mother-in-law, any business in which the member is then serving or has served within the past two (2) years, or any business with which the member is negotiating for or has an arrangement or understanding concerning prospective partnership or employment.

(ii) The member owns property within the area entitled to receive notice of the decision.

(iii) For any other reason, the member has determined that participation in the decision cannot be in an impartial manner.

(iv) Disqualification of a member of the hearings body as a result of contacts or conflict may be ordered by a majority of the voting members present. The person who is the subject of the motion may not vote on the motion to disqualify [*Sec. 8-3M.150(D)(5c)*].

In cases where a member is disqualified for conflict of interest, the member shall vacate the seat and physically join the audience. A dismissed Commissioner shall also declare an intent to testify if that Commissioner chooses to enter testimony in the record.

b. Disclosure of Potential Conflict of Interest. Whether or not he/she is disqualified, a public official shall disclose any potential conflict of interest as required by state law.

c. Ex Parte Contacts. Planning Commission members shall reveal any pre-hearing or *ex parte* contacts with regard to any matter at the commencement of the public meeting on the matter. An *ex parte* contact is any communication with a party or person entitled to notice. If such contacts have impaired the member's impartiality or ability to vote on the matter, the member shall so state and shall abstain.

d. Planning Commission Members Wishing to Give Testimony. A member who desires to give testimony at a meeting may do so only by abstaining from voting on the proposal, vacating the seat and physically joining the au-

dience, and declaring an intent to testify. Before testifying, the Commission member shall make full disclosure of his or her status and position at the time of addressing the Planning Commission and disclose that the person is testifying as an interested member of the public and not in his/her capacity as a member of the Commission.

C. MEETINGS

C.1. Place

Meetings of the Commission shall be held in the Community Center at 206 E. Main Street, Talent, Oregon, or at such other place in the City of Talent as the Commission may designate. A meeting having been convened at the place designated, may be adjourned by the Commission to any other place within the city of Talent for the sole purpose of investigating some particular matter of business which may be more conveniently investigated at such other place.

C.2. Regular Meetings

Regular meetings of the commission shall be held on the fourth Thursday of each month at the hour of 6:30 PM.

At 10:00 PM the Planning Commission will consider finishing the item presently being considered, and no additional items will be heard after that time unless a motion is made by a member of the Commission and approved by a majority of those present requesting to continue the agenda. All items remaining to be heard will be forwarded to the next agenda for consideration.

C.3. Special Meetings — Call

A special meeting may be called at any time by the Chair or by a majority vote of the Commission at any regular meeting of the Commission. Notice shall be given to each Commission member of the time and purpose of every special meeting of the Commission at least twenty-four (24) hours prior to such meeting. Such notice shall be delivered to each member of the Commission personally, or may be given by telephone or e-mail to the member of the Commission. Such notice may also be given by United States Mail, directed to the member of the Commission at the member's residence and mailed not less than four (4) business days prior to the time fixed for such special meeting. It is specifically provided, however, that any member may, in writing, waive prior notice of the time, place and purpose of such meeting; and such waiver, if made, shall be deemed a waiver of prior notice of the time and purpose thereof.

C.4. Meetings — Matters Considered

Any matter pertaining to the affairs of the City of Talent Planning Commission and falling within the authority and jurisdiction of the Commission may be considered and acted upon at any regular meeting of the Commission without prior notice

thereof, unless other notice is required under statute or other noticing policies of the Commission. At special meetings, a matter not included within the notice may not be considered or acted upon.

C.5. **Quorum**

a. For Legislative matters, three (3) members of the Commission shall constitute a quorum, and for Quasi-Judicial matters, four (4) members of the Commission shall constitute a quorum. In no case shall more than one non-resident Commissioner vote on any matter~~s~~.

b. Except as otherwise specifically provided in these Bylaws, a majority vote of the Commission members voting shall be required and shall be sufficient to transact any business before the Commission.

c. If all members of the Planning Commission abstain or are disqualified, all members present after stating their reasons for abstention or disqualification shall by doing so be requalified and proceed to resolve the issues.

d. If a quorum is not present, the Chair shall call the meeting to order, announce the lack of a quorum, and adjourn the meeting.

C.6. **Study Sessions**

Study sessions may be held as part of a regular Commission meeting or called in the same manner as a special meeting in order for the Commission to discuss matters at greater length or to obtain additional background information. The Commission shall take no vote during such study session, but may give directions to Staff regarding the presentation of options for future consideration.

C.7. **Oregon Public Meetings Law**

All meetings of the Planning Commission shall be noticed in conformance with the requirements of Oregon's Public Meetings Law.

D. PROCEDURE — ORDER OF BUSINESS

D.1. **Order of Business** shall be as follows:

a. Roll call

b. Brief Announcements by staff

c. Approval of minutes of prior meetings

d. Public Comments on Non-Agenda Items

e. Public Hearings

f. Discussion Items

g. Report(s) of any active subcommittee

h. Propositions and Remarks from the Commission

i. Assignment of representatives to the City Council

j. Adjournment

D.2. **Agenda for Meetings**

The secretary shall prepare a written agenda for each meeting a minimum of seven days prior to each regular meeting [*Sec. 8-3M.150 (C)(2b)*].

D.3. **Special Order of Business**

The Commission may suspend the rules as to the order of business, or return to an order already passed, on a motion supported by a two-thirds vote of the members of the Commission present.

E. ORDER and DECORUM

E.1. **Order of Consideration of Items**

The following procedure will normally be observed in a public hearing or other matter before the Commission; however, it may be rearranged by the Chair for individual items, if necessary, for the expeditious conduct of business:

a. Chair introduces item;

b. Abstentions, conflicts of interest and challenges are entertained and any declaration of conflicts of interest and ex parte contacts;

c. Staff makes a presentation on the criteria and standards and recommendations;

d. Applicant or applicant's agent presents evidence for the proposal;

e. Any opponents and/or proponents may comment;

f. Planning Commission members may question staff, applicant, proponents or opponents on all the above. Questioning of witnesses shall be brief and to the point. All questions shall be submitted to the witness through the Chair unless the Chair expressly permits the submission of questions directly to a witness;

g. Applicant's rebuttal;

h. Closing of the public hearing, if applicable;

i. Staff may provide new recommendations based on testimony;

j. The Commission discusses the item. During discussion members may further question any party appearing for or against the proposal as necessary, but generally, questions should be asked while the public hearing is open.

k. Motion is made and seconded; the Chair states the question (*e.g.* "It is moved and seconded to approve the application with the conditions applied as recommended in the staff report."); the Planning Commission may discuss the item further before voting.

Exceptions

l. Except when there is or is likely to be a continuance of the hearing, a participant may request (before the conclusion of the initial evidentiary hearing) that the record remain open for at least seven days after the hearing. The hearing shall be closed and deliberations postponed until the following meeting.

m. When the Planning Commission reopens a record to admit new evidence or testimony, any person may raise new issues that relate to the new evidence, testimony or criteria for decision-making that apply to the matter at issue.

E.2. **Public Hearings**

Nature of Hearing. All parties with standing shall have an opportunity to be heard, to present and rebut evidence before an impartial tribunal, to have the proceedings recorded, and to have a decision rendered in accordance with the facts on record and the law.

The Chair of the Planning Commission shall have authority to:

a. Regulate the course and decorum of the meeting.

b. Dispose of procedural requests and similar matters.

c. Impose reasonable limitations on the number of witnesses heard and set reasonable time limits for oral presentation, questions, and rebuttal testimony.

d. Question any person appearing, and allow other members to question any such person.

e. Waive, at his/her discretion, the application of any rule herein where the circumstances of the hearing indicate that it would be expedient and proper to do so, provided that such waiver does not act to prejudice or deny any party his/her substantial rights as provided herein or otherwise by law.

f. Take such other action as authorized by the Planning Commission to appropriately conduct the hearing.

Any member of the Planning Commission present at the hearing may challenge a ruling of the Chair. The challenge must be seconded. A ruling may be reversed by a majority of the members present and voting. A tie vote upholds the Chair's decision.

E.3. **Conduct of Persons before the Commission**

Proceedings shall at all times be orderly and respectful. The Chair may refuse to recognize or exclude from the hearing anyone who:

a. Is disorderly, abusive, or disruptive.

b. Takes part in or encourages audience demonstrations such as applause, cheering, display of signs, or other conduct disruptive to the hearing.

c. Testifies without first receiving recognition from the Chair and stating his or her full name and residence.

d. Presents irrelevant, immaterial, or repetitious evidence.

Persons making presentations or providing comments to the Planning Commission shall address the Commission from the podium or microphone and not from the audience; shall address all comments to the Planning Commission; and may not directly question or interrogate other persons in the audience or at the podium.

F. PROCEDURE — MOTIONS

F.1. **Making of Motions**

Upon review of the full public record on a request and due deliberation among the members of the Planning Commission, any Commissioner may move or second a motion. The motion shall include not only the direction of the motion, but shall also include the recitation of specific findings of fact supporting such motion. A second shall be required for each motion. Other members of the Commission may support the motion by adding compatible findings. A motion shall die in the absence of a second. Discussion of the motion should not take place until it has been seconded and the Chair has stated the motion and called for discussion. The Chair may decline to state the question on any main motion, amendment, or motion to commit[1], if it is not in writing.

F.2. **Withdrawing a Motion**

When a motion has been made but not yet stated by the Chair, whether or not it has been seconded, it can be withdrawn or modified by the mover. The member simply says, "Chair, I withdraw the motion."

If the mover wishes to modify his/her motion, he/she should specify the modification. Any member may suggest that the mover withdraw or modify his/her motion, but only the mover may withdraw it.

[1] i.e., a motion to refer the question to a committee.

If a motion is modified before being stated by the Chair, the second may withdraw his/her second.

After the Chair states a motion, it is the property of the commission. It can be withdrawn or modified at any time before voting by a majority vote to withdraw or modify.

F.3. **Motions in Order during Debate**

When a question is under debate, no motion shall be received except:

a. To fix the time to adjourn;

b. To adjourn;

c. To continue, table, or postpone indefinitely or to a specified time;

d. To amend; to substitute;

e. Refer to committee;

f. Previous question (immediately close debate);

g. Limit or extend limits of debate;

h. Take a recess;

i. Call for orders of the day;

j. Suspension of the rules;

k. Appeal rulings by the Chair;

l. Reconsider an undebatable motion must be Germane

No motion or proposition on a subject different from that under consideration is in order and no such motion or proposition shall be admitted under color of amendment.

F.4. **Motions to Deny**

When a motion to deny a request is defeated, a member of the Commission shall make another motion to dispose of the issue.

F.5. **Substitute Motions**

A motion to amend by striking out an entire section or paragraph of a main motion and inserting a different section or paragraph is called a "motion to substitute." Substitute motions shall supersede the main motion upon receiving the approval of a majority vote.

F.6. **Amendments**

All amendments must relate to the same subject as the original motion, resolution, proposition or ordinance. All amendments to the main motion require a second. If any amendment be offered, the question shall be first upon the amendment.

F.7. **Friendly Amendments**

A Commissioner may make a friendly amendment without a formal motion with unanimous consent of the members present. Typically, such motions are appropriate for clean-up items or an issue discussed but inadvertently neglected by the maker of the motion.

G. PROCEDURE — RECONSIDERATION, RESCENTION & AMENDMENT AFTER ADOPTION OF MOTIONS

G.1. **Motion to Reconsider**

A motion to reconsider proposes no specific change in a decision but simply proposes that the original question be reopened. It must be made in the same meeting as the motion that was voted on; it may only be made by a member who voted on the prevailing side; and it must be seconded. Any Commission member, regardless of vote on main motion, may second the motion. The motion is debatable. It can be applied to a vote that was either affirmative or negative. It requires a majority vote. It cannot itself be reconsidered.

G.2. **Motion to Rescind**

Applies to a final decision on a motion. Can be made by any member of the commission. Must be seconded. Is debatable. Can only be applied to a motion on which the vote was affirmative, and it proposes a specified change in a decision that may have been made at any time previously. Requires a two-thirds vote; or a majority vote when notice of intent to make the motion was made at a previous meeting; or a majority of the entire membership, whichever is the most practical to obtain. A negative vote on this motion may be reconsidered, but not an affirmative vote.

G.3. **Motion to Amend After Adoption**

Its purpose is to modify an adopted main motion. It can be proposed to modify only a part of the wording or text previously adopted, or to substitute a different version. The procedures for such a motion are identical to that of a motion to rescind.

G.4. **Alternative Motion Prior to Final Order Adoption**

At the meeting where the Commission considers the final order, but prior to adoption, any Commissioner may pull the item from the consent agenda and make a new motion. The action of the Commission will supersede any proposed final order that had been on the agenda.

H. PROCEDURE — DEBATE

H.1. Interruptions and Questions

No member of the Commission shall interrupt or question another Commissioner without obtaining the Commissioner's consent. To obtain such consent, the Chair shall be addressed requesting to interrupt or ask a question; e.g., "Madame/Mister Chair, I would like to ask [Commissioner] (name) a question or make a comment." The Commissioner speaking has the discretion to allow an interruption.

I. PROCEDURE — VOTING

I.1. Roll Call on Final Passage

The vote upon the final passage of any business shall be by yeas and nays given by members of the Commission individually on roll call, except a motion to adjourn, table, common consent, continue, proceed out of order, extend the meeting time, or receive for study may be done by voice vote. No member is allowed to explain his/her vote during the voting process. The names of the members on such roll call shall be called in rotation, except that the Chair shall be called last. In recording votes on roll call, the secretary shall record and report those absent or not voting. The Chair shall announce the result.

I.2. Minutes Approval

The Chair shall ask the Commission if they have had the opportunity to read the minutes and if there are any additions or corrections. Upon hearing from the Commission, the Chair shall declare the minutes approved either as presented or as amended. If the Commission has not had an opportunity to review the minutes, approval shall be postponed to the next regular meeting.

I.3. Changing Vote before Decision Announced

When a vote is taken on roll call on any question, any member may change his/her vote before the Chair has announced the decision of the question.

I.4. Voting or Changing Vote after Decision Announced

On any such vote no member shall be permitted to vote or to change his/her vote after the decision is announced by the Chair unless the member has the permission of the Planning Commission by general consent or motion if a member objects.

I.5. Late Voting

A member entering the Chamber after the question is put, and before it is decided, may have the question stated, record his/her vote and be counted.

A member absent during the presentation of evidence in a quasi-judicial meeting may not participate in the deliberations or final decision regarding the matter of the meeting unless the member has reviewed all the evidence in the record to date, including

taped recordings of prior meetings.

I.6. Tie Votes

If a motion regarding any matter before the Commission receives an equal number of affirmative and negative votes the motion fails. The Commission shall continue to make motions until a majority vote is obtained. The option of continuing an item with the possibility that an odd number of members of the Commission would be at a subsequent meeting may be considered.

I.7. Explaining Vote

After the vote is taken, any member of the Commission desiring to explain his/her vote shall be allowed an opportunity to do so.

I.8. No Vote unless Present

No member of the Commission shall vote on any question unless the member is present when the vote is taken and when the result is announced. No member shall give his/her proxy to any persons whomsoever.

J. DOCUMENTS OF THE COMMISSION

J.1. Any and all materials submitted to the Planning Commission regarding a request shall be entered into the public record by the Chair by indicating that the material is "accepted for the record." The Staff Report submitted to the Planning Commission as part of the agenda is automatically part of the public record.

J.2. All notices, agendas, requests, agency or consultant letters or reports, staff reports, minutes of meetings, and resolutions of record shall constitute the documents of the Planning Commission and shall be indexed as public record.

K. AMENDMENT

Adopted Bylaws may be amended at any regular meeting by a vote of the majority of the entire membership; or if the amendment was submitted in writing at the previous meeting, then they may be amended by a two-thirds vote of those voting, a quorum being present.

L. MAINTAINING OF BYLAWS — COPIES TO BE FURNISHED

The secretary shall maintain a copy of these Bylaws, and all subsequent amendments thereto, and shall furnish an up-to-date copy to each member of the Commission in a form convenient for reference.

ORDINANCE NO. 472

AN ORDINANCE CREATING A PLANNING COMMISSION AND ADVISORY BOARD FOR THE CITY OF TALENT; PRESCRIBING THEIR POWERS AND DUTIES; ESTABLISHING THE TERMS OF OFFICE OF THEIR MEMBERS; AND REPEALING ORDINANCES NO. 420 AND 450.

The City of Talent ordains as follows:

Section 1. Pursuant to ORS 227.010 through 227.090, there is hereby created a commission to be primarily involved in community planning and development issues and to have those powers and duties specified in ORS 227.090 and more specifically outlined in the Talent Zoning Ordinance, Subdivision Ordinance, and other City regulations. This commission shall be known as the Planning Commission.

Section 2. Pursuant to ORS Chapter 225 which pertains to municipal utilities, the Planning Commission shall assume all functions and responsibilities of the City's utility board, including community-wide planning for water distribution, street system and other utilities, as directed by the City Council. The Commission shall also review plans for new or expanded telephone, electricity, natural gas, irrigation, cable television, and other systems that may have an impact on land use planning or community development and make appropriate recommendations to the City Council for action.

Section 3. The Planning Commission shall consist of seven members to be appointed by the Mayor with the consent of the City Council. Two members may live outside the City limits of Talent, but must live within the City's acknowledged Urban Growth Boundary. Commission members shall receive no compensation. The mayor and city attorney are designated as ex officio members and may sit with the Commission but shall have no vote thereon.

Section 4. Terms of office on the Commission shall be four years and shall expire on December 31 of the fourth year. A vacancy shall be filled by the Mayor with the consent of the City Council and that appointee shall serve the unexpired portion of the term.

Section 5. The Planning Commission shall, at its first meeting of each calendar year, elect a chairman, vice-chairman and secretary. The chairman and vice-chairman shall be appointed members. The secretary need not be a member of the Commission. The chairman and vice-chairman positions shall be rotated among the members so that the same Commissioner does not hold the same office for two consecutive years.

Section 6. The secretary shall keep an accurate record of all Commission proceedings, including written minutes of all meetings. A written Planning Commission Report shall be made monthly to the City Council summarizing all Commission activities and actions. A copy of the minutes of each Planning Commission meeting shall be delivered to the City Recorder for filing and said minutes shall be a public record and available for public inspection.

Section 7. Four members of the Commission constitute a quorum, but members fewer than a quorum at a regular meeting shall have the authority to fill vacancies with members of the Advisory Board for the purpose of making up a quorum. The Commission may adopt rules or procedure consistent with the law and its regular schedule of meetings shall include at least one meeting per month, unless cancelled at the direction of the Chairman due to lack of Commission business or other reason.

Section 8. Advisory Board. An Advisory Board consisting of not more than six members shall be appointed by the Mayor with consent of the City Council. One member may be a non-resident of Talent but must reside within the acknowledged Urban Growth Boundary. Members shall serve with no compensation for terms of two years, which shall expire on December 31 of the second calendar year. The Advisory Board's primary function shall be to assist the Planning Commission, as requested, and members shall be encouraged to attend all Planning Commission meetings. In the case of an absenteeism or vacancy on the Commission, the chairman, with consent of the Commission, may appoint a member of the Advisory Board to occupy the vacant position on a meeting-by-meeting basis. That Board member shall have the same rights and voting privileges as the adsent Commissioner. In instances where a general discussion or study session is scheduled, but with no formal Commission action anticipated, the chairman may request Board members' attendance and participation in the discussion. The Board may also meet on its own.

Section 9. If a member of the Planning Commission should, without valid reason, miss three regular Commission meetings within the same calendar year, that member shall be subject to removal from the Commission. Such removal shall be by the Mayor with consent of the City Council, following a hearing, and this process may be initiated by the City Council or by a recommendation from the Planning Commission.

Section 10. Repeal of Ordinances No. 420 and 450. Ordinance No. 420 which was adopted on June 24, 1980, and Ordinance No. 450 which was adopted on November 8, 1983 to amend Ordinance No. 420 are repealed.

PASSED by the City Council and signed by the Mayor in authentication thereof this 19th day of NOVEMBER, 1986.

James G. Walker
Mayor

ATTEST:

Tony C. Paxton
City Recorder

Ordinance No. 472

II.C.1. Public Meetings

The Public Meetings Law defines a meeting as the convening of any of the "governing bodies" described above "for which a quorum is required in order to make a decision or to deliberate toward a decision *on any matter*." ORS 192.610(5) (emphasis added).

II.C.1.a. Quorum Requirements

Top of page

"Quorum" is not defined in the Public Meetings Law. Special statutes often define "quorum" for state governing bodies. Local city and county governing bodies may have "quorum" defined by charter, bylaws or rules of order. ORS 174.130 defines "quorum" as a majority:

Any authority conferred by law upon three or more persons may be exercised by a majority of them unless expressly otherwise provided by law.

For purposes of the Public Meetings Law, we believe this general definition applies in the absence of a special definition of "quorum."

A governing body may only make a decision at a meeting at which a quorum is present, unless a vote by proxy or by mail is specifically authorized under Oregon law. See Appendix L for further discussion of quorum.

A gathering of less than a quorum of a committee, subcommittee, advisory group or other governing body is not a "meeting" under the Public Meetings Law. However, while a gathering of less than a quorum is not a "meeting," members of a governing body should not gather as a group or groups composed of less than a quorum for the purpose of conducting business outside the Public Meetings Law. Such a gathering creates the appearance of impropriety, and runs contrary to the policy of the Public Meetings Law, which supports keeping the public informed of the deliberations of governing bodies.

If the members of a committee, subcommittee or advisory group are charged to form their recommendations individually rather than collegially through a quorum requirement, the Public Meetings Law does not apply. We have previously stated:[304]

The test of whether an advisory group is covered * * * is whether the group is deliberative in the sense that votes are taken and there is normally a quorum requirement.

In other words, the application of the Public Meetings Law to meetings of a committee, subcommittee or advisory group depends on whether the appointing body directs the committee members to make their findings and recommendations individually or as a recommendation of the group. If the decision or recommendation is to be made by the group, whether by consensus or majority vote, the Public Meetings Law applies. However, if committee members are instructed to make individual rather than group decisions or recommendations, the "meetings" of the committee are outside the scope of the meetings law. This unquestionably is a difficult area of interpretation, and governing bodies are cautioned not to misuse the committee appointment process to subvert the policy of the Public Meetings Law.

Ordinarily, staff meetings are not covered by the Public Meetings Law because no quorum is required. A staff meeting called by a single official is not covered by the Public Meetings Law because the staff do not make decisions for or recommendations to a "public body." If, however, a quorum of a governing body, such as a three-member commission, meets with the body's staff to deliberate on matters of "policy or

administration," ORS 192.610 (3), or to clarify collegially a decision for staff, the meeting is within the scope of the law. Thus, we have stated:[305]

[G]overning body meetings with administrative staff are subject to the requirement of the Public Meetings Law if a quorum of the members of the governing body convenes to receive information from staff on topics related to particular substantive or administrative matters that a quorum of the governing body will or may be called upon to decide.

We also have observed that some agencies may have latitude to conduct business outside of the Public Meetings Law's requirements by not convening a quorum of the governing body. We stated:[306]

[M]any boards and commissions have authority to conduct official business through means other than the quorum decision-making that triggers the requirements of the Public Meetings Law. Specifically, the [Public Utility] [C]ommission has authority to delegate numerous duties to one commissioner or to staff under ORS 756.055, with specified limitations. Thus, a process of decision-making on day-to-day matters of agency administration legally may be conducted in private by a single commissioner or agency staffer to whom the commission properly has delegated administrative responsibility. However, delegating authority to one commissioner should not be interpreted as nullifying public meetings law requirements if one or more commissioners meet with the delegated commissioner to discuss the subject matter delegated. Arguably, such a maneuver might skirt the requirements of the Public Meetings Law. However, the appearance of impropriety would be substantial and open to charges of subterfuge. In our opinion the risks of such a strategy outweigh its benefits, and the legality of such an interpretation is not free from doubt.

Commission Agenda Report

Meeting Date:	January 28, 2016	Primary Staff Contact:	Zac Moody
Department:	Community Development	E-Mail:	zmoody@cityoftalent.org
Staff Recommendation:	None	Estimated Time:	30 minutes

ISSUE BEFORE THE COMMISSION

The Commission is being asked to participate in a work session designed to aid Staff in the amendment process of the City's Tree and Landscaping code.

BACKGROUND

Staff is proposing changes to the Tree and Landscaping section of the Talent Zoning code to address concerns about the removal of large trees on private property and to provide clearer landscape standards for new commercial, industrial and residential property. Staff is also seeking an opportunity for the City to receive a Tree City USA Growth Award.

As you all know, the City of Talent is a Tree City USA and has been for 15 years. What you may not know is to receive Tree City USA status, there are four core standards of sound urban forestry management that must be maintained. The City is required to maintain a tree board or department, have a community tree ordinance and spend at least $2 per capita on urban forestry and the celebration of Arbor Day.

For 15 years the City has maintain its Tree City USA status and received on Tree City USA growth award. A City can earn a Growth Award if it qualifies as a Tree City USA for at least two consecutive years and completes activities in eligible categories earning 10 or more points.

It has been 5 years since the City last applied for a Growth Award and Staff is confident that the City can receive the award again in 2016 with some changes to our Tree and Landscaping code. While many of the items necessary to receive points in the "Improved Ordinance" category have already been addressed, there is room for improvement.

In order to make the necessary changes to the Tree and Landscaping code, Staff began reviewing all sections of the Talent Zoning Code that related to trees or landscaping. This included reviewing the Tree and Landscaping section as well as the Off-Street Parking Standards specific to landscaping. After reviewing each section, it became clear to Staff that not only was additional language needed to address deficiencies, but a reorganization of the sections of code was also necessary to make the code more usable to our citizens.

With that said, Staff is recommending that the following changes the Talent Zoning Code:

- Remove Fences and Hedges section and consolidate with new Landscaping section
- Add Landscaping, Fencing and Hedges as a new section

- Add Tree Preservation and Protection section
- Add Public Trees section

Attached to this report is a very preliminary draft of the proposed amendments for review. It is Staff's goal to review these proposed changes with the Planning Commission and take suggestions on text that should be added or removed.

STAFF RECOMMENDATION
None

RELATED CITY POLICIES
None

COMMISSION OPTIONS
Direct Staff to continue to refine amendments and present proposed amendments during an additional work session at the February 25, 2016 Planning Commission meeting, table amendments for determined period or table amendments with no action.

POTENTIAL MOTIONS
None

ATTACHMENTS
Draft Title Page
Draft Tree Preservation and Protection language
Draft Landscaping, Fencing and Hedges language
Draft Pubic Trees language

CITY OF TALENT ZONING CODE

General Ordinances, Title 8, Chapter 3

DIVISION J. SITE DEVELOPMENT STANDARDS

Article 1.	General Provisions
Article 2.	Residential Lot Improvements
Article 3.	Tree Preservation and Protection (formally Fences and Hedges)
Article 4.	Landscaping, Fencing and Hedges (formally Tree and Landscaping)
Article 5.	Off-Street Parking and Loading
Article 6.	Access, Circulation and Street Improvements
Article 7.	Signs
Article 8.	Solar Access
Article 9.	Wireless Communication Facilities
Article 10.	Public Trees (new section)

8-3 Division J. Article 3.

TREE PRESERVATION AND PROTECTION

8-3J.300 DESCRIPTION AND PURPOSE

The City recognizes the importance of trees to the character and beauty of Talent. This chapter is intended to preserve and enhance that urban forest within the City of Talent through effective management of private and public trees. The City has therefore determined that reasonable regulation of the removal of certain trees is necessary and that this regulation of trees is based upon the following general guidelines

A. Trees benefit the public health, safety, and welfare by protecting air and water quality, preventing erosion and flooding, reducing energy costs, increasing property values, and providing natural beauty and contrast to the built environment which contributes to the physical and mental well-being of residents;

B. Trees provide both shade and shelter in riparian areas which are essential for aquatic and land-going species;

C. Trees enhance the local economy and increase property values by providing an attractive and aesthetically pleasing environment;

D. Undeveloped or development property should be protected from unregulated removal of trees prior to the approval of development plans. Trees on such properties should be preserved so that they may be considered for incorporation into development plans.

8-3J.310 DEFINITIONS

A. Arborist means a person who has met the criteria for certification from the International Society of Arboriculture or American Society of Consulting Arborists, and maintains his or her accreditation.

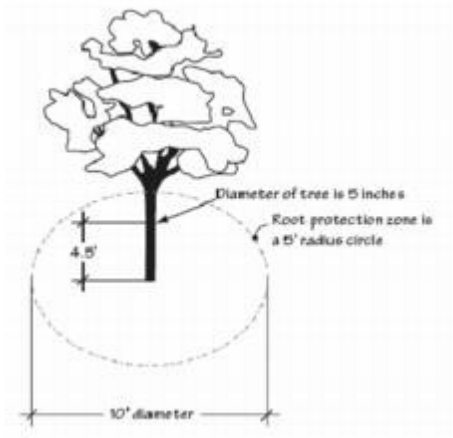
B. "Critical root zone" or "CRZ" means a circular area determined by either of the following methods. The method used shall be indicated on the plans.

1. Method A. A circular area equal to one foot in radius for every inch of tree diameter at breast height measured from the outside trunk of the tree at four and one-half feet above ground level; or

2. Method B. An area determined for an individual tree to be the necessary root area for the tree's continued normal growth as demonstrated in a written report by a certified arborist and based on documented field

DRAFT

investigations. Reasonable alteration of the shape based on factors such as existing infrastructures, tree lean or steep slopes may be considered.



C. "Community Development Director" means the City of Talent Community Development Director, or his/her designee.

D. "Commercial wood lot" means parcels or lots which meet the following criteria on the effective date of the ordinance codified in this chapter:

1. The site is at least two acres in size.

2. Trees have been actively managed and maintained on the subject property for the purpose of harvesting.

3. The owner has supplied the city with proof that the property has been in tax-deferred status under state law provisions such as forest land deferral or small woodlands deferral for a minimum of five consecutive years immediately prior to application.

E. "Diameter at breast height" or "dbh" means the diameter of the tree measured in inches at four and one-half feet above ground level. For trees with multiple trunks, dbh shall be measured at the narrowest point between ground level and the point where the trunk diverges, or shall be the sum of the diameters of the two largest trunks at breast height, whichever is smaller. All measurements shall be rounded to the nearest inch.

F. "Dead" means the tree is obviously lifeless without any live leaves, needles or buds.

G. "Dying" means the tree is in an advanced state of decline because it is diseased, infested by insects or rotting and cannot be saved by reasonable treatment or

DRAFT

pruning, or must be removed to prevent spread of the infestation or disease to other trees.

H. "Hazardous tree" means the condition or location of the tree presents a clear public safety hazard or a foreseeable danger of property damage to an existing structure and such hazard or danger cannot reasonably be alleviated by treatment or pruning.

I. "Heritage tree" means any of the following which are not hazardous trees as defined above.

Oregon white oak	18" or more dbh
Madrone	18" or more dbh
Douglas fir	48" or more dbh
Any other tree	36" or more dbh

K. "Impacted tree" means a significant tree whose critical root zone will be impacted by proposed development. Impacts include, but are not limited to, fill, cuts, soil compaction, paving, placement of structures, stockpiling of soil, utility trenching and other activities that may impact the health and viability of the tree.

L. "Remove" means:

1. To cut down a tree, or to damage a tree so as to cause the tree to decline and/or die within a three-year period. Types of damage which may constitute removal include but are not limited to topping, damage inflicted upon a root system by application of toxic substances, and girdling. "Removal" does not include normal trimming or pruning of trees as defined by ANSI A300 pruning standards current on the day this definition was adopted.

2. To perform activities which result in impacts to more than 30 percent of the critical root zone if the CRZ is determined by Method A in subsection (2) of this section.

3. To perform activities which impact any of the CRZ if determined using Method B in subsection (2) of this section.

DRAFT

M. "Significant tree" means any of the following as well as trees which have been planted or individually preserved as part of a previous tree removal permit. It can also be a tree that has been nominated and approved as a locally significant tree, see section about tree nomination in the Public Trees section --

Any tree	18" or more dbh
Douglas fir	18" or more dbh
Big leaf maple	12" or more dbh
Chinquapin	12" or more dbh
Oregon ash	8" or more dbh
Pacific dogwood	6" or more dbh
Madrone	6" or more dbh
Red alder	6" or more dbh
Ponderosa pine	6" or more dbh
Western red cedar	6" or more dbh
California black oak	6" or more dbh
Oregon white oak	6" or more dbh

N. "Street tree" means any tree planted or preserved within a dedicated street right-of-way.

O. "Topping" 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.

P. "Tree" means any significant tree or tree within a designated wetland or riparian area setback as defined by Section 8-3H.230(C) of the Talent Zoning Code.

8-3J.320 PERMIT EXEMPTIONS

A. City sanctioned activities that intend to increase overall wellbeing of the environment and the lives of those who live in talent.

B. Removal of dead or dying trees.

DRAFT

C. Activities associated with tree trimming for safety, as mandated by the Oregon Public Utilities Commission. Tree trimming shall be done by a certified arborist, Journeyman Tree Trimmer, or partied designated by the Community Development Director.

8-3J.330 APPLCATION FOR TREE REMOVAL PERMIT

A. A person seeking to remove one or more trees shall apply for a tree removal permit Type A, B, C, or D, depending on the applicable standards as provided in this chapter.

B. By submission of an application, the applicant shall be deemed to have authorized city employees, representatives, or consultants to have access to applicant's property after providing 24 hours' notice as may be necessary to verify the information provided, to observe site conditions, and, if a permit is granted, to verify that terms and conditions of the permit are followed.

C. Time of Application. Application for a tree removal permit shall be approved before removing or transplanting significant trees except in emergency situations where immediate action must be taken to ensure public safety, or imminent property damage. See section 8-3J.320 for exemptions. Where the site is proposed for development necessitating site plan or tentative plat review, application for a tree removal permit shall be made concurrent with subdivision, partition, site plan review, or other development application as specified in this chapter.

D. Fees. A person applying for a tree removal permit shall pay an application fee, as established by resolution of the City Council.

8-3J.340 APPLICATION REVIEW PROCEDURE

A. Reviewing Authority.

1. Type A, B, or D. Where site plan review or tentative plat approval by the Planning Commission is not required by city ordinance, the review of the tree removal permit application shall be the responsibility of the Community Development Director.

2. Type C. Where the site is proposed for development necessitating site plan review or plat approval by the Planning Commission, the tree removal permit shall be reviewed concurrently by the Planning Commission.

B. Timeline and Notice – Review Period for Complete Applications.

DRAFT

1. Type A and B permit applications shall be approved or denied within 10 calendar days.

2. Type C permit applications shall be reviewed for completeness within 30 calendar days, and final action shall take place within 120 days as required by ORS 227.178. Notice of proposed action shall be given to surrounding property owners according to 8-3M.150. A Type C permit shall follow the hearings procedures required for the accompanying land use application. If the accompanying land use application is denied or is withdrawn or expired, the tree removal permit shall similarly be denied, withdrawn, or expired.

3. Type D permits shall be approved or denied within 45 calendar days.

C. Conditional Approval. Whenever an application for a tree removal permit is granted, the Community Development Director may attach to the permit any reasonable conditions considered necessary to ensure compliance with applicable standards.

D. Tree removal permits and tree surveys shall be valid for a period not to exceed three years.

8-3J.350 PERMIT TYPES

Type A permit.

A. Type A permit applications will be approved when all of the following conditions are met:

1. A completed request for Type A permit has been filed on the forms provided by the city.

2. The request is for removal of three or fewer trees within a single 12-month period.

3. The trees subject to removal are not heritage trees or street trees.

4. The trees subject to removal were not retained as part of a previous site development approval or planted as mitigation for a previous tree removal.

5. The tree removal is not to be performed in conjunction with land development which requires a land use approval including but not limited to site plan review or amendment, subdivision, or partition approval.

DRAFT

B. Tree removals under a Type A permit do not require mitigation; however, replanting is generally recommended, and recipients of Type A permits who wish to replant may qualify for assistance from the city's tree fund.

Type B permit.

A. An applicant must apply for a Type B permit to remove trees when any of the following conditions are met:

1. The applicant proposes to remove more than three trees within a 12-month period, independent of an application for site development review; or

2. The applicant proposes to remove a tree or trees which were preserved as part of a previous land use permit or planted as mitigation for previous tree removal; or

3. The applicant proposes to remove a heritage tree; or

4. The proposed tree removal is for clearing of a home site on a lot subsequent to land division approval. All trees removed for home sites prior to occupancy shall be mitigated according to the standards of this chapter.

B. Application for the Type B permit shall contain the following information unless specifically waived by the reviewing authority under subsection (2)(g) of this section:

1. A brief statement explaining why tree removal is being requested, to ensure that another permit type or consolidated application is not more appropriate.

2. An accurate map, drawn to scale, which shows:

a. The shape and dimensions of the property, and the location of any existing and proposed structures, improvements, easements and setbacks.

b. The location of all impacted trees on the site including critical root zones, species and/or common name, and diameter at breast height (dbh).

3. Tree Protection. Tree protection measures must be outlined to address protection of the tree trunks, canopy and soils within the critical root zones during and after the tree removal process. Examples of tree protection

DRAFT

methods include mulching, irrigation, protective fencing, compaction reduction measures, erosion control, etc.

4. Field Identification. All trees to be removed shall be identified by a method obvious to a site inspector, such as tagging, painting, or flagging, in addition to clear identification on construction or application documents.

5. Mitigation Plan. A description of the proposed tree replacement program with a detailed explanation including the number, species, size within five (5) years, size at maturity and any necessary activities to ensure viability including, but not limited to, mulching and irrigation.

6. Existing Covenants, Conditions and Restrictions (CC&Rs). Where the applicant is proposing to remove trees on common areas governed by CC&Rs, the applicant shall provide a copy of the applicable CC&Rs, including any landscaping provisions.

7. Waiver of Documentation. The reviewing authority may waive any of the above information requirements where the information has already been made available to the city, the information is not necessary to review the application, or alternate forms of information have been provided which provide sufficient detail to allow the reviewing official to review the application.

C. Approval Criteria. Tree removal or transplanting pursuant to a Type B permit shall be limited to instances where the applicant has applied for a Type B permit in accordance with subsection (1) of this section and has provided complete and accurate information as required by this chapter.

Type C permit.

A. Approval to remove more than three trees on a single lot or parcel as part of a site plan review or amendment, subdivision, or partition application may be granted as a Type C permit in conformance with subsection (5) of this section.

B. Type C permit applications shall be reviewed concurrent with the development review process. If a Type C permit or its associated development application is appealed, no trees shall be removed until the appeal has been resolved.

C. Submittal Requirements. The applicant must provide 10 copies of a tree maintenance and protection plan completed by a certified arborist that contains a summary of existing conditions and a mitigation plan as follows:

1. Summary of existing conditions including a topographical survey bearing the stamp and signature of a qualified, registered professional containing all the following information:

   a. Property Dimensions. The shape and dimensions of the property, and the location of any existing or proposed structures, utility installations, grading, or other improvements.

   b. Tree Survey.

      i. The survey must include an accurate drawing of the site based on accurate survey techniques at a minimum scale of one inch equals 100 feet including:

         A. The location, number of trees, tree size as dbh (see 8-3J.310 (5), and proposed trees for removal.

         B. The critical root zone of impacted trees, and the extent of likely impacts.

         C. The common name of impacted trees.

         D. Heritage trees shall be clearly noted on the survey.

      ii. Where a stand of 20 or more contiguous trees will be removed, the required tree survey may be simplified to accurately show the location of all heritage trees, and significant trees which are within 50 feet of the edge of the development envelope. Only these trees are required to be field tagged. Interior tree areas shall be depicted with clouds or other similar linework and the dbh, common name, and total number of all interior trees shall be accurately stated on the plans.

      iii. Neighboring Properties. All impacted trees on neighboring properties shall be shown on the tree survey. If the applicant cannot obtain permission to survey the neighboring properties, the person or persons preparing the survey shall make a note to this effect on the survey and locate the trees and CRZs to the best of their ability. The survey shall show the percentage of CRZ for these trees which will be impacted by the proposed improvements.

DRAFT

A. When a proposal includes activities which will result in removal of trees on neighboring properties, the applicant shall include the removal of the neighboring trees in the permit application and mitigate for their removal.

c. Arborist Report. The report shall describe the health and condition of all heritage trees including species, common name, dbh, approximate height, and age. The report shall identify hazardous, dead, or dying trees. The report shall identify opportunities for preservation of groves or stands of trees and make recommendations regarding special tree protection and maintenance practices necessary to restore preserved trees to full health.

d. Field Identification. Impacted trees shall be designated with metal tags that are to remain in place throughout the development. Those tags shall be numbered, with the numbers keyed to the tree survey map that is provided with the application.

e. Tree Protection. A statement addressing tree protection during construction. See section 8-3J.380.

2. Mitigation Plan. A plan prepared by a certified arborist or landscape architect describing the proposed tree replacement program with a detailed explanation including the number, species, size at five (5) years, size at maturity and planting location of replacement trees, and any necessary activities to ensure viability including, but not limited to, mulching and irrigation.

D. Waiver of Documentation. The Planning Commission may waive any of the above information requirements where the information has already been made available to the city, the information is not necessary to determine conformance with applicable criteria, or alternate forms of information have been provided which provide sufficient detail to allow such a determination.

E. Approval Standards for Type C Permits. All Type C permits submitted as part of a proposed residential development shall be reviewed under Option A in subsection (5)(a) of this section unless the applicant chooses the alternative design review available in Option B in subsection (5)(b) of this section. All commercial and industrial developments shall comply with the criteria of Option B.

DRAFT

1. Option A – Numerical Preservation Standard for Residential Developments. Existing trees must be preserved. The total tree diameter on the site is the total diameter of all significant trees on the site, minus the diameter of all exempt trees as defined by this chapter. The applicant must choose one of the following options. Calculations shall be in accordance with subsection (5)(c) of this section.

    a. Preserve at least 30 percent of the total significant tree diameter on the site;

    b. Preserve all heritage trees and at least 30 percent of the significant trees on the site;

    c. If the site is larger than one acre, preserve at least 25 percent of the total tree canopy area on the site.

2. Option B – Commercial/Industrial and Alternative Residential Design Review. Tree preservation and conservation as a design principle shall be equal in concern and importance to other design principles. Application of the standards of this section shall not result in a reduction of overall building square footage or loss of density, but may require an applicant to modify plans to allow for buildings of greater height, different design, or alternate location. Tree removal or transplanting pursuant to a Type C permit shall be limited to instances where the applicant has provided complete and accurate information as required by this chapter and where the reviewing authority determines that the following criteria have been met.

    a. The proposal includes provisions for mitigation and tree protection.

    b. The proposed removal is necessary for the construction of roads, structures, or other site improvements and the applicant has demonstrated that there are no feasible and reasonable location alternatives and/or design options which would better preserve significant trees on the site while providing the same overall level of density and design functionality.

    c. Other. Where the applicant shows that tree removal or transplanting is reasonable and necessary under the circumstances.

3. Under Option A, when calculating the amount of tree diameter and the number of significant trees on the site, the applicant may choose one of the following methods of measurement:

DRAFT

a. Tree Inventory. A tree inventory identifies all trees on the site, specifying location, species, and diameter of each tree; or

b. Statistical Sampling. Statistical sampling may be used to estimate the total tree diameter and total number of significant trees present. Sampling must be carried out by individuals with demonstrated experience performing such surveys and shall be based on generally accepted standard methodologies.

c. Tree Canopy. When calculating the amount of tree canopy on the site, the total canopy area is based on the most recent aerial photograph available. If the most recent aerial photograph available is more than five years old, the applicant must provide a more recent photograph.

Type D permit. The owner or operator of a commercial wood lot shall apply and receive approval for a Type D permit before beginning harvesting operations of more than three trees within any 12-month period. Type D permit applications shall be reviewed by the Community Development Director.

A. Application for a Type D permit shall include the following:

1. Proof that the subject property is a "commercial wood lot" as defined by this chapter;

2. A map of the property including property boundaries;

3. The size, species and location of all significant trees other than Douglas fir;

4. The size, species and location of all heritage trees.

B. Approval Standards for Type D permits. An application for a Type D permit shall be granted when all of the following criteria are met:

1. The applicant has submitted a complete application as required by subsection (1) of this section;

2. All heritage trees other than Douglas fir will be protected according to the requirements of this chapter;

3. All non-fir significant trees in excess of three shall be mitigated.

4. All applicable standards of the Oregon Forest Practice Rules are met;

DRAFT

5. The applicant has submitted and obtained approval of an erosion control plan from the city engineer; and

6. If the tree removal proposed is a final harvest, and no further planting, maintenance, or rotation of trees is proposed, the applicant shall submit a long-term erosion control and revegetation plan for review and approval.

8-3J.360 MITIGATION

A. Requirement Established. Type B or C tree removal permit grantees shall plant one replacement tree for each significant tree removed in excess of the three that could otherwise be removed under a Type A permit. Type D permit grantees shall mitigate nonfir trees as required by Section 8-3J.360(B) below. Mitigation is not required for removal of hazardous, dead, or dying trees.

B. Heritage trees shall be mitigated based on the following methodology:

Replacement trees = 1 + (A - Q)

Where:

A = Actual dbh of the tree in question.

Q = Minimum dbh for this species to qualify as a heritage tree.

C. Replacement Trees. Trees planted as mitigation must meet all of the following standards:

1. To encourage a diversity of species when four or more trees are required as mitigation, no more than 25 percent of trees planted as mitigation shall be of any one species. Use of native trees where appropriate is encouraged;

2. All replacement trees shall be appropriately chosen for the site conditions (especially soil and hydrology) from an approved tree species list supplied by the city, and shall be state Department of Agriculture and American Association of Nurserymen (AAN) American Standards for Nursery Stock (ANSI Z60.1) for top grade;

3. All replacement trees shall be two-inch caliper. The planning official or planning commission may allow the use of replacement Oregon white oaks and other native trees with the largest available nursery stock if two-inch caliper trees are not available;

DRAFT

4. Replacement trees shall be planted prior to plat for land divisions and prior to issuance of final certificate of occupancy for other applications. Mitigation requirements shall run with the land until all required mitigation has been completed;

5. Replacement trees must be staked, fertilized, mulched, and irrigated as necessary to ensure survival; and

6. Trees planted as mitigation for a Type C permit shall be guaranteed by the permit grantee or the grantee's successors-in-interest for three years after the planting date through an irrevocable development agreement.

D. Alternatives to On-Site Mitigation.

1. Relocation or Replacement Off Site. If in the opinion of a certified arborist or landscape architect there is insufficient available space on the subject property to accommodate the required mitigation plantings, the following alternatives may be used to fulfill mitigation requirements:

a. Replanting may occur on other property in the applicant's ownership or control within the city, or in a city-owned or dedicated open space or park. If planting on city-owned or dedicated property, the city may specify the species, size, and location of the trees. Nothing in this section shall be construed as an obligation of the city to allow trees to be planted on city-owned or dedicated property.

b. Payment in Lieu of Planting. The applicant may pay into the tree fund an amount equal to the number of replacement trees required times a per-tree rate as established by resolution of the city council.

E. Trees preserved or planted as mitigation may be used to fulfill the landscaping requirements as set forth in Section 8-3J.4.

F. To encourage the retention of established trees which do not yet meet the criteria for significance, credit towards mitigation requirements shall be given on a tree-for-tree basis for preservation of the following healthy, structurally sound trees. If such trees are to be used towards meeting the mitigation requirements of this section, required tree preservation and planting plans shall include the size, species, and location of these trees, and these trees shall be given the protections in accordance with Section 8-3J.370 and shall then be considered significant trees. Trees located within the greenway/open space subzone may not be counted towards required mitigation.

DRAFT

Big leaf maple	2 – 12" dbh
Oregon ash	2 – 8" dbh
Madrone	2 – 6" dbh
Red alder	2 – 6" dbh
Ponderosa pine	2 – 6" dbh
Western red cedar	2 – 6" dbh
Chinquapin	2 – 6" dbh
Pacific dogwood	2 – 6" dbh
Douglas fir	2 – 6" dbh
Oregon white oak	2 – 6" dbh

G. Economic Development Waiver. The city council may reduce or waive mitigation requirements for developments on commercial and industrial zoned parcels when all of the criteria below are met. Request for waiver shall be made in writing to the city council following the approval of land use applications and resolution of all appeals.

1. The applicant has complied with the landscaping requirements of Section 8-3J.4.

2. The applicant is unable to meet the mitigation requirements through on-site plantings or off-site mitigation as determined by a professional landscape architect.

3. The council determines that the proposed development will provide substantial economic, employment, and service benefits to the community including provision of family-wage jobs or services currently lacking within the city.

8-3J.370 AMENDMENTS TO APPROVED PERMITS

8-3J.380 TREE PROTECTION DURING CONSTRUCTION

Where trees are to be preserved as part of a development plan, the following standards apply:

A. All trees to be protected must be clearly differentiated from those being removed by clearly marking trees to be removed in an obvious visible manner such as bright-colored paint, ribbon, etc.

DRAFT

B. Protective Barrier. Before development, vegetation removal, filling, or any land alteration for which a tree removal permit is required, the developer shall erect and maintain suitable barriers to prevent damage to remaining trees. Barriers shall be erected at the edge of the critical root zone of trees to be preserved. Protective barriers shall not be moved and shall remain in place until the city authorizes their removal or issues a final certificate of occupancy, whichever occurs first. At a minimum, barriers shall consist of 48-inch-high heavy duty, high visibility plastic fencing, or silt fencing, attached to anchored metal or wooden posts.

C. Prior to commencement of ground-disturbing activities, the applicant shall request and receive an inspection of all tree protection barriers to ensure that the approved tree removal plans are accurately implemented on the ground. All inspection requests shall provide a minimum of 24 hours' notice.

D. Construction Near Preserved Trees. No person may conduct any construction activity damaging to a tree designated to remain, including, but not limited to, placing solvents, building material, construction equipment or depositing soils within the tree protection zone, attaching fencing or other items to trees, using trees as anchors, or placing irrigated landscaping within the protective barrier.

E, Where trees are removed from within the CRZ of a tree to remain, the removal shall be done by cutting the tree near the ground and grinding the stump or leaving it in place. Removal of trees or stumps within the CRZ of a protected tree by pushing trees down or pulling trees and/or stumps out of the ground is prohibited.

8-3J.390 TIMING OF REMOVAL, INSPECTIONS AND EXPIRATION OF APPROVED PERMITS

A. No tree removal permitted as a Type B, C, or D permit shall take place until the applicant has received a notice to proceed from the city engineer on public improvements. When no public improvements are proposed, tree removal shall not occur until building permits have been issued. The building official may make exceptions to this requirement when warranted due to extenuating circumstances or when no such permits are necessary.

B. For applicants seeking a Type B permit to remove trees independent of site improvements, no tree removal shall take place until tree protection measures have been inspected and approved by the building official.

C. Inspection and approval of all required tree protection measures by the building official is required prior to tree removals permitted as Type B, C, and D permits.

DRAFT

D. Forty-eight hours prior to tree removal, a copy of the tree removal permit shall be prominently displayed on the subject property and shall remain on display at all times while tree removal operations are being conducted.

8-3J.395 ENFORCEMENT

A. Any person found to have removed a significant tree in violation of this chapter shall incur a penalty of not more than $1,000 nor less than $250.00 per violation.

B. Any person found to have removed a heritage tree in violation of this chapter shall incur a penalty of not less than the value of the tree according to VMC 8.10.120 plus no less than $500.00 for each heritage tree removed.

C. Failure to comply with any condition of the permit issued to the applicant shall constitute a violation of this chapter and shall subject the applicant to a fine of not more than $1,000, nor less than $500.00. Any fines collected by the city under this section shall accrue to the city tree fund.

D. Each tree removed in violation of this chapter or any permit issued pursuant to this chapter shall constitute a separate violation.

E. Each tree that the applicant fails to replant or replace as required by the terms of the permit, and each violation of any other condition of a permit, shall constitute a separate violation.

F. Retroactive Permit. A person who removes a tree without obtaining a Type A permit may apply retroactively for a permit. In addition to all application requirements of this chapter, the person must be able to demonstrate compliance with all requirements of this chapter, in addition to paying an additional fee as established by resolution of the city council. Mitigation requirements of this chapter may apply to all retroactive permits.

G. Withholding Permits and Stop-Work Orders. The building official has the authority to issue a stop-work order, withhold approval of a final plat, or withhold issuance of a certificate of occupancy, permits or inspections until the provisions of this chapter, including any conditions attached to a tree removal permit, have been fully met.

H. Revocation of Permit. The city administrator may revoke any tree removal permit when the planning official or designee thereof has clearly demonstrated that the application was incomplete or inaccurate to such a degree as to invalidate the approval. Such a revocation may be immediately followed by a stop-work order and the applicant required to either:

DRAFT

1. Revise and resubmit the permit for review and approval; or

2. Pay fines for removing trees in violation of the permit under subsections (1) and (2) of this section.

I. The city shall notify the property owner in writing that a violation has occurred and mitigation is required. Within 30 days of the date of mailing of the notice, the property owner shall provide a mitigation plan to the city. The plan shall provide for replacement of a tree or, at the city's discretion, payment into the tree fund in accordance with Section 8-3J.10.

K. Alternative enforcement. In the event that a person, company, or other operating unit commits more than one violation of this chapter, the following alternative fees may be imposed by the City:

1. If a person has gained money or property through the commission of an offense under this section may be required to pay an amount, fixed by the City, not to exceed double the amount of the gain from the commission of the offense.

2. "Gain" is defined as the amount of money or value of property derived from the commission of the violation, less the amount of money or value of property seized by or surrendered to the city. "Value" shall be the greater of the market value or replacement cost as determined by a licensed professional in the tree, nursery, or landscape field.

DRAFT

8-3 Division J. Article 4.

LANDSCAPING, FENCING AND HEDGES

8-3J.410 DESCRIPTION AND PURPOSE

The purpose of this Article is to provide for the regulation of planting, maintenance, and removal of landscaping within the City of Talent. All yards, required buffers or screening areas, and parking areas shall be landscaped in accordance with this chapter.

8-3J.415 MINIMUM LANDSCAPED AREA

A. The minimum percentage of required landscaping is as follows:

1. Residential Zones. 20 percent of each lot for residential developments.
2. Central Business District (CBD) and Central Business Highway (CBH) Zones. 10 percent of the site.
3. Commercial Highway (CH) and Commercial Interchange (CI) Zones. 10 percent of the site.
4. Industrial Zones (IL). 5 percent of the site.
5. When the above requirements conflict with landscaping requirements found elsewhere in this ordinance, the standard which maximizes landscaped area shall apply.

8-3J.420 MINIMUM VEGETATION AND GROUND COVER

A. Minimum number of trees and shrubs acceptable per 1,000 square feet of landscaped area:

1. One tree, minimum 2" caliper.
2. Four 5-gallon shrubs or accent plants.

B. Minimum percentage Ground Cover. All landscaped area, whether or not required, that is not planted with trees and shrubs, or covered with non-plant material as defined in Section 8-3J.420(C) below, shall have ground cover plants that are sized and spaced to achieve 75 percent coverage of the area not covered by shrubs and tree canopy.

C. Landscape Materials. Permitted landscape materials include trees, shrubs, ground cover plants, non-plant ground covers, and outdoor hardscape features, as described below. "Coverage" is based on the projected size of the plants at maturity, i.e., typically three (3) or more years after planting.

1. **Existing Vegetation**. Existing non-invasive vegetation may be used in meeting landscape requirements.

DRAFT

2. **Plant Selection**. A combination of deciduous and evergreen trees, shrubs, and ground covers shall be used for all planted areas, the selection of which shall be based on local climate, soil, exposure, water availability, and drainage conditions. Applicants are encouraged to select native plants which are drought tolerant to reduce the demand on the City's water supply.

3. **Plant Establishment**. Unless a certified landscape architect specifically recommends otherwise, all new landscaping shall be irrigated for a minimum of two (2) years to ensure viability.

4. **Soil amendment**. When new vegetation (including sod) is planted, topsoil shall be added and/or soils amended or aerated as necessary, to allow for healthy plant growth. Compaction of the planting area shall be minimized whenever practical and compacted soils shall be amended and/or aerated as necessary prior to planting.

5. **"Invasive" plants**, shall be removed during site development and the planting of new invasive species is prohibited. Lists of locally invasive species are available through the local USDA extension office.

6. **Hardscape features**. May cover up to ten percent (10%) of the required landscape area; except in the Downtown Area where publicly accessible hardscape features may cover up to eighty percent (80%) of the required landscape area, subject to approval through Site Plan Review. Swimming pools, sports courts, and similar active recreation facilities, as well as paving for parking and access, may not be counted toward fulfilling the landscape requirement.

7. **Non-plant Ground Covers**. Bark dust, chips, aggregate, or other non-plant ground covers may be used, but shall cover no more than 25 percent of the area to be landscaped and shall be confined to areas underneath plants. Non-plant ground covers cannot be a substitute for ground cover plants.

8-3J.421 TREES PROHIBITED

No person shall plant on any public property the following trees: poplar, willow, cottonwood, fruit tree, or ailanthus, unless part of a City-authorized riparian restoration project. The Recommended Street Tree List should be consulted before any tree is planted within or adjacent to the public right-of-way. No person shall plant any tree anywhere in the City so as to adversely affect public utilities.

DRAFT

8-3J.422 BUFFER AND SCREENING

The Planning Commission shall require a buffer when a development or use proposed in a commercially and industrially zoned area is adjacent to a conflicting land use zone or an incompatible but permitted use within the same zone.

A. **Commercial and Industrial Transition Buffers.** The following standards shall be considered during any land use review that include commercial or industrial uses adjacent to a residential use.

1. The buffer shall be sufficient to protect the intent of the adjacent zone or the integrity of the incompatible use.

2. The type of buffer shall be considered in relation to existing and future land use, the degree of conflict between adjacent uses, and the amount of permanence desired.

3. Buffers may consist of spatial separation, physical barriers, landscaping, and natural topography or other features.

a. When a fence or wall is being proposed as a buffer it shall be sight-obscuring. In order to be "sight-obscuring", fences and walls must be at least 75 percent opaque when viewed from any angle at a point 25 feet away from the fence or wall.

b. Hedges shall be of an evergreen species which will meet and maintain year-round 75 percent opacity. Opacity shall be obtained within three (3) years of planting.

c. Creative use of deciduous hedge materials may be proposed to provide screening in conjunction with wider planting areas. Deciduous hedges may be approved on a case by case basis at the discretion of the Community Development Director or Planning Commission.

B. **Single-family Transition Buffers**. The following buffers may be required during any land use reviews that include single-family development adjacent to a non-residential zone:

1. The Planning Commission may require application of the same buffering standards as are required of commercial development (Section 460(B)2, above).

2. In addition to the general provisions of Section 460(B)2, the Planning Commission may require one or more of the following types of buffering fences, walls and landscaping:

a. A masonry wall (stucco, stone, or similar quality material), coupled with trees planted 30 feet on center planted within six (6) feet of the wall.

b. A "see-through" wall (wrought iron or similar quality material), coupled with trees planted 30 feet on center.

DRAFT

c. A "living wall" where a combination of trellises and plants provide a 95% opaque vegetative screen to a minimum height of six (feet). The living wall shall be coupled with trees planted 30 feet on center planted within 10 feet of the living wall. A five (5) foot wide planted strip that has continuous landscaping consisting of ground cover(s), shrubs that potential to reach minimum 6-feet in height and be 95% opaque, and trees planted 30-feet on center.

C. **Agricultural Buffers**

To implement the Agricultural Buffering Standards of the Greater Bear Creek Valley Regional Plan, the Agricultural Buffering & Mitigation provisions in Section 8-3J.XXX shall be addressed when urban development on land along the urban growth boundary abutting land zoned Exclusive Farm Use is proposed.

8-3J.423 FENCES AND HEDGES

Fences, walls, hedges, screen plantings and similar regulated objects[1] provide privacy and promote security. Tall fences are appropriate in some locations and for some purposes, but inappropriate where they interfere with public safety and neighborliness. Excessive heights between properties inhibit the enjoyment of light and air and, in residential zones, can create the same confining effect as a building directly against the property line.

All fences and hedges are subject to the following standards:

A. **Materials.** No one may construct fences or walls of or containing material(s) that can do bodily harm, such as barbed wire, broken glass, or any other hazardous or dangerous materials. For barbed wire and electric fence exceptions, see Section 4-8.13 of the City Ordinances.

B. **Placement.** Fences and walls may be erected directly up to common property lines. An exception to this rule may be required when the placement would prevent the use of adjacent property or right-of-way, or prevent the safe use of a driveway or alley. In such cases, the City may require the fence or wall to be set back a minimum distance from the driveway, right-of-way, alley or property line.

Hedges and screen plantings may be planted in locations where their growth does not encroach on public rights-of-way. Encroachment on private property is commonly a private civil matter; the City will not become involved in such disputes unless it deems there is a significant safety concern.

C. **Height Limitations.** *Figure 3-1* illustrates the regulations. See also definitions of "yards" in 8-3B.1.

DRAFT

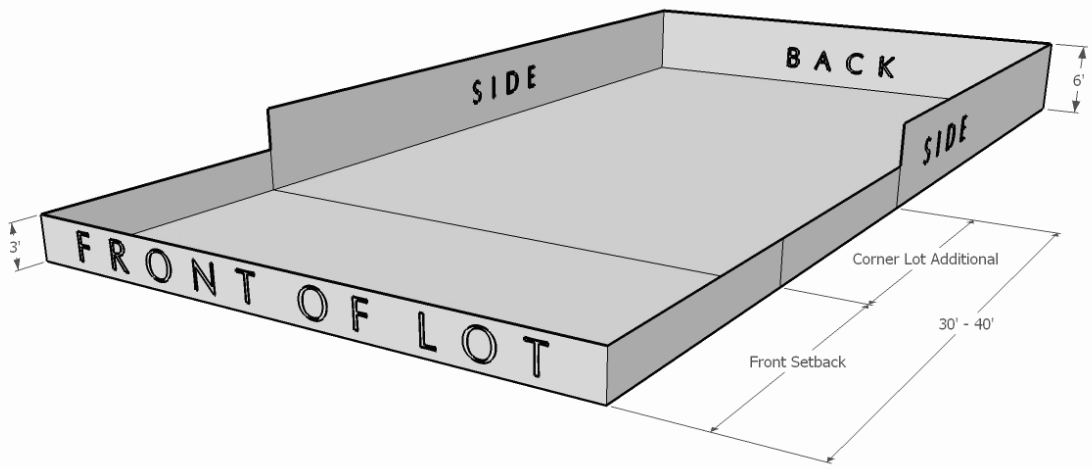
A. Front Yard: 3 feet.

B. Side Yard: 6 feet.

C. Rear Yard: 6 feet.

D. Corner Lot: 3 feet for a distance of 40 feet along the street side yard when that street is a collector or arterial; otherwise 30 feet. This is to provide a clear 'sight triangle' of 30' x 30' or 30' x 40' at intersections.

Figure 3-1



D. **Measuring Height.**

1. Generally, height is measured from the adjacent ground upward.

2. When fences are built on top of retaining walls, or one lot is markedly higher than an adjacent lot, height shall be measured from the highest adjacent grade, except that a fence or wall may not be higher than eight (8) feet above the lowest adjacent grade.

3. Below-Grade Lots. On lots that are not generally level with the adjacent street, height may be measured from the top of the adjacent curb, or, where curbs are absent, from the crown of the adjacent street. Exercise of this exception shall be at the discretion of the City.

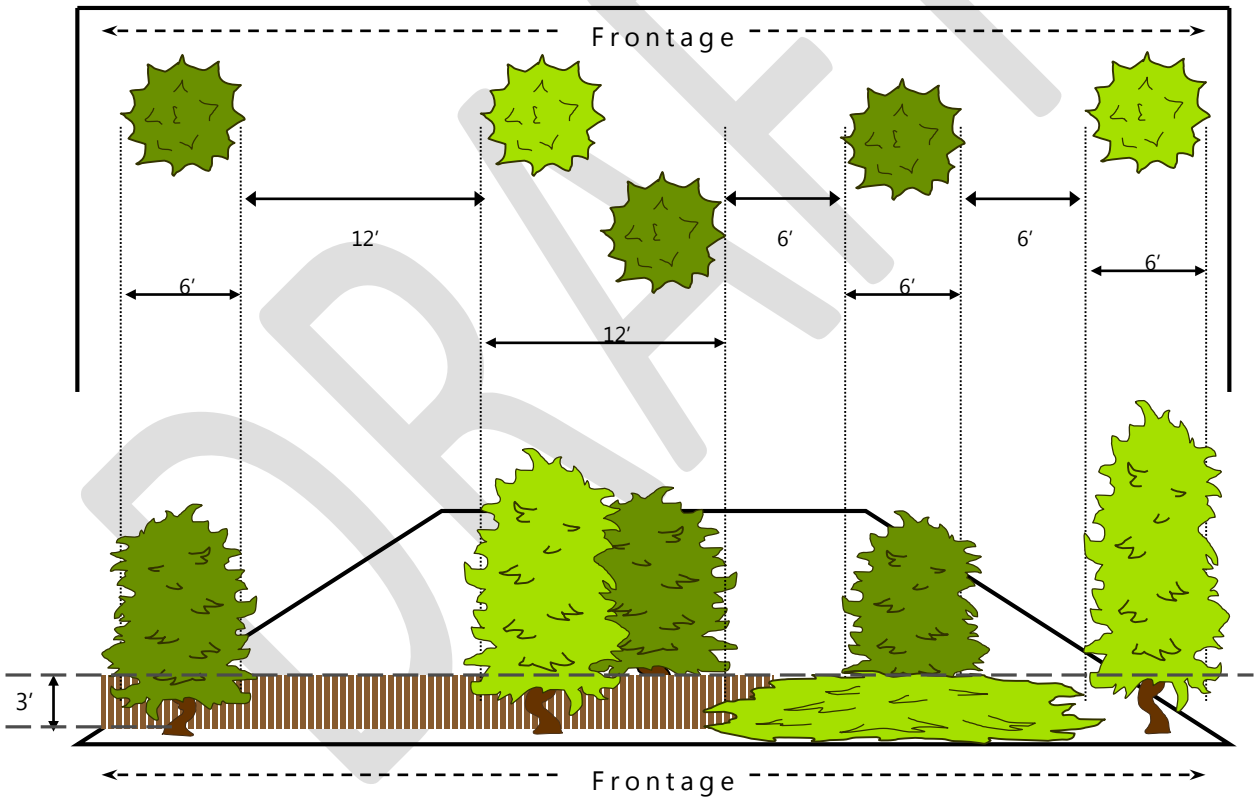
4. Lots on Collector Streets. Because of heavier traffic volumes and greater speeds, the same exception allowed in the preceding subsection may apply to lots on collector streets. Exercise of this exception shall be at the discretion of the City.

E. **Allowances.**

1. A hedge or a screen planting is defined as vegetation that has the purpose or effect of obscuring or blocking casual viewing through it and is six (6) feet or more in diameter or width. Non-pyramidal trees are not considered to be such vegetation.

   Individual bushes, trees, hedges, and similar vegetation, or groupings of such, that have the effect of substantially inhibiting visibility above the height limitation for the yard in which they are located are permitted if the total blockage of the frontage is 50 percent or less *and* there are six-foot gaps for every 12 feet of grouping (see *Figure 3-2*). This allowance does not extend to the 'sight triangle' area in 350(D).

Figure 3-2. Illustration of Blockage and Gapping (in Plan view and Perspective view). Note the fence and low hedges in between that do not exceed the 3' height limit.



Blockage = 6 + 12 + 6 + 6 = 30 feet

= 30 feet blockage on a 60-foot-wide lot

= 50% blockage: **Allowed**; and the 6-in-12 gapping standard is met.

DRAFT

2. Entryway or gate arbors are permitted in front yards provided they are no more than 8 feet tall, 6 feet wide, 6 feet deep, and are no less than 15 feet from a property corner or driveway, including those on adjacent lots.

3. The City Planner may grant a special allowance for fences, walls, hedges, or screen plantings that exceed the height limits or location requirements of this Article for the circumstances listed below. The process used for granting a special allowance will be administrative and include consultation with the Police Department and/or Public Works Department, and notification of adjoining neighbors, whose interests will be considered.

    a. Lots with unusual shapes or in unique situations, where it is shown that public safety is not decreased.

    b. Fences or walls surrounding tennis courts, swimming pools, schools, or other special facilities, not including residences, where it is shown that the normal use or level of protection requires a greater height for safety or other reasons.

4. Security fences may be constructed up to 10 feet high in commercial and industrial areas, provided they are a see-through, chain-link type and set back a distance equal to their height in front yards and street-facing side yards, plus any necessary accommodations for sight distance on corners.

F. **General Safety Provisions.**

1. Recognizing that the best intentions and most careful crafting of regulations do not account for all variables, the City can either disallow or require the elimination or mitigation of fences, walls, hedges, screen plantings, and similar that it finds deleterious to public health or safety, or at odds with the purpose of this Article.

2. Property owners aggrieved by a decision made under this Section may appeal the decision to the Planning Commission, which may reverse, uphold or modify staff's decision based on its evaluation of the evidence presented.

8-3J.424 LANDSCAPE MAINTENANCE

It shall be the responsibility of the property owner to maintain landscaping on their property. All landscaping and trees shall be provided with irrigation or other facilities for the continuing care of the vegetation.

A. Residential Areas

1. **Landscaping**. In all residential zones, areas on a lot not occupied by roadways, parking areas, walkways, patios or structures shall be maintained. Fences, walls, hedges and screen plantings shall be permitted in conformance with the requirements of 8-3J.3. All fences, walls, hedges and screen plantings shall be maintained.

B. Commercial Areas

1. **Landscaping.** In commercial zones, areas not occupied by structures, roadways or parking areas, walkways, bicycle paths, patios or other specific facilities shall be maintained. Fences, walls, hedges and screen plantings shall be permitted in conformance with the requirements of 8-3J.3XX above.

8-3J.425 SOLAR CONSIDERRATIONS

Solar energy use can be considered as an option to reduce the total number of required trees for a development plan. A clear plan must be created which demonstrates the location of solar panels, intended use of energy from them, and demonstration that the planting of all required trees would pose an obstacle to the development.

8-3J.426 XERISCAPING

Xeriscaping is landscaping that is intentionally designed to conserve water and protect the environment. It is a relevant option for landscaping, and is a potential option to reduce requirements for total number of trees to be planted, or total landscaped area. This option requires that a plan be submitted that that demonstrates the benefits of utilizing xeriscaping, and how reduction in total tree planting requirements of landscaped area is beneficial.

8-3J.1000 DESCRIPTION AND PURPOSE

This article is intended to define the practices for removal, maintenance, and planting of trees in the public right of way.

8-3J.1010 PREMISSION TO PLANT OR REMOVE

A. **Tree Removal.** The removal of Public Trees should be compatible with guidelines adopted by the Oregon Department of Forestry. Except for the purposes of removal of dying or hazardous branches, maintenance by city crews, or pruning for purposes of maintaining tree health, no person shall plant, remove, cut above the ground, or disturb any Public Tree until a permit has been issued by the Community Development Department. Applicants for a removal permit may be required to replace the tree or trees being removed with a tree or trees of comparable value from a City-approved Recommended Street Tree List. A permit for the removal of any Public Tree may be granted based on the following standards:

1. Tree removal is necessary to protect the public health and safety, or,

2. Tree removal will not be materially detrimental to a significant historic site or structure in the city, and

   a. Tree removal is necessary to protect a significant historic structure in the city, or

   b. Tree removal is necessary for solar utilization, or

   c. There is no reasonable alternative design for a proposed development that would eliminate the need to remove the tree.

3. Trees with a transferable blight, infestation, or disease shall be removed. Before any permit shall be issued, each applicant shall first file evidence of possession of liability insurance in the minimum amounts of $300,000 for bodily injury and $100,000 property damage indemnifying the City of any person injured or property damaged resulting from the pursuit of such endeavors as herein described.

8-3J.1020 STREET TREE PLANTING

The City may plant trees on any public right-of-way, park, or other public property. The City will notify private property owners at least five working days in advance before any tree, shrub, or plant is planted on public property within six feet of any owner's property.

8-3J.1030 TREES PROHIBITED

No person shall plant on any public property the following trees: poplar, willow, cottonwood, fruit tree, or ailanthus, unless part of a City-authorized riparian restoration project. The Recommended Street Tree List should be consulted before any tree is planted within or adjacent to the public right-of-way. No person shall plant any tree anywhere in the City so as to adversely affect public utilities.

8-3J.1040 TREE MAINTENANCE

Tree Maintenance. The City may require any trees, shrubs, plants, or vegetation in any public right-of-way, park, or other public property to be trimmed or pruned.

The City will maintain trees within the public right-of-way abutting private property along collector and arterial streets. Property owners will be notified at least five working days in advance before any City representative will trim, prune, or remove any tree, shrub, plant, or vegetation in the public right-of-way abutting (within six feet) the owner's property. The property owner will be given the option to maintain the tree and assume the responsibility and cost for maintenance.

The owners of property abutting streets other than arterial and collector streets in residential zoning districts within the City shall be responsible for the care and maintenance (trimming, pruning and spraying) of trees and shrubs located in the public right-of-way. Property owners shall also be responsible for repairing damage done to a street, sidewalk or curb by the roots of any tree or shrub located in the public right-of-way adjacent (within six feet) to the private real property owned by the property owner.

1. All owners of property within the City shall be responsible for the following:

    a. Trimming, pruning and spraying trees on private property that overhang a public right-of-way.

    b. Trimming, and pruning of vegetation that obstructs motorist or pedestrian view of traffic signals, signs, street lights, street names, or other markings or safety fixtures in the public way.

    c. Repairing damage done to a street, sidewalk or curb by the roots of any tree or shrub on private property.

d. Removing trees and shrubs on private property that have been declared a public nuisance.

2. If any property owner by the owner's neglect to perform any duty required by this section causes injury or damage to any person or property, that owner shall be liable to the person suffering such injury or damage and shall indemnify the City for all damages the City has been compelled to pay in any such case. Such damages may be collected in a civil action against the property owner.

8-3J.1050 TREE TOPPING

It shall be unlawful as a normal practice for any person, firm, or city department to top any tree in the public right of way. 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.

a. Trees several damaged by storms, or other causes, or certain trees under the utility wires or other obstructions where other pruning practices are impractical may be exempt from this provision.

8-3J.1060 TREE PLANTING NOTIFICATION

8-3J.1070 TREE COMMITTEE

A. **Tree Committee**. The Tree Committee shall be a subcommittee of the Parks and Recreation Commission and may consist of Planning Commission and City Council members and interested citizens. The responsibilities of the Tree Committee shall include the following:

1. Making recommendations to the City Council for nominating trees for Locally Significant Tree designation;

2. Reviewing Locally Significant Tree preservation plans and making recommendations to the Community Development Director or the Planning Commission; and

3. Assisting City staff with Arbor Day observance.

8-3J.1080 ARBOR DAY OBSERVANCE

City shall observe Arbor Day once a year. The Tree Committee shall assist City staff with organizing any event to celebrate Arbor Day and the mayor shall issue a proclamation declaring the observance of Arbor Day.

8-3J.1070 HERITAGE OR SIGNIFICANT TREE NOMINATIONS

1. Procedure. Any community member may go before the Tree Committee to nominate a tree to be designated as a Locally Significant Tree. The Tree Committee will make a recommendation to the City Council. Upon owner approval, City Council may pass a resolution to designate the nominated tree. The City suggests that a conservation easement be attached to the deed of the property, although this is not required.

2. Preservation. A tree that has been singled-out as a Locally Significant Tree must not be removed or damaged during any construction adjacent to the tree.

3. Root Protection. When construction encroaches into the drip line area of a Locally Significant Tree, special consideration must be taken to protect the roots of the tree. The person(s) proposing the construction must submit a tree preservation plan prepared by an independent certified arborist. The Tree Committee shall review the plan and make a recommendation to the City Planner or Planning Commission.

    a. Excavation adjacent to a protected tree is not allowed if it will damage the root system.