



City of Talent

Planning Commission

Public Meeting

Thursday, February 18, 2016 – 6:30 PM (Special Meeting Date)

Talent Town Hall, 206 East Main Street

AGENDA

The Planning Commission of the City of Talent will meet on Thursday, February 18, 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 and January 28, 2016 Planning Commission meetings;**
- IV. Public Comments on Non-Agenda Items;**
- V. Public Hearings;**
 - None
- VI. Discussion Items;**
 - a. Appointments of Citizens to Citizen Advisory Committee
 - b. Planning Commission Interpretation – Non Conforming Uses
 - c. Work Session – Tree and Landscaping Code Amendments
 - i. Continued discussion of Proposed Amendments
 - ii. Next Steps
- VII. Subcommittee Reports;**
- VIII. Propositions and Remarks from the Commission;**
- IX. Adjournment – Next Meeting March 24, 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.



**TALENT PLANNING COMMISSION
REGULAR MEETING
MINUTES
TALENT TOWN HALL
January 28, 2016**

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 January 28, 2016 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 Milan
Commissioner Schweitzer

Members Absent

Commissioner Hazel
Commissioner Pastizzo

Also Present:

Zac Moody, Community Development Director
Betsy Manuel, Minute-Taker
Councilor Abshire, City Council liaison

II. Brief Announcements

Moody announced that the next regularly scheduled meeting should be rescheduled according to the will of the Commission. He explained that he would not be able to attend the meeting due to a scheduling conflict.

III. Consideration of Minutes for December 17, 2015

Motion: *Commissioner Milan moved to table the Minutes of December 17, 2015 due to lack of a quorum. Commissioner Schweitzer seconded and the motion carried.*

IV. Public Comment on Non-Agenda Items

There was none.

V. Work Session - Planning Commission By-Laws

Moody stated that the City Council directed the Commission to review the organization section of the current by-laws to determine whether a five-member Commission was sufficient; or whether a seven-member Commission would be more efficient. He offered no recommendations.

Moody highlighted the differences between a Quasi-judicial quorum and a Legislative quorum, stating that the current Bylaws state that a Quasi-judicial matter requires a quorum of four (4) for decision making, whereas a Legislative quorum is reduced to three (3). He commented that standard public meeting regulations normally define a quorum as a simple majority. Moody reviewed the timeline for a Quasi-judicial decision (120 days) while noting that a Legislative decision has no mandated deadline.

Heesacker indicated that finding the optimal number of Commissioners required some consideration, as there was no one clear advantage for choosing a quorum of either three or four. There followed a brief discussion regarding the most workable options. Milan inquired whether the number of alternates affected requirements for a quorum of four for Quasi-judicial matters.

Schweitzer questioned the interview process for alternates, and the most appropriate way to choose a candidate. Discussion focused on the development of a series of questions to be asked of the candidates.

It was agreed by consensus that no changes in the by-laws were needed at this time.

VI. Work Session – Tree and Landscaping Code Amendments

Moody noted that the Tree and Landscaping Ordinance would become more user-friendly with a re-organization of the subject matter. He suggested a possible timeline for review and adoption to include a first work session on January 28th, a second work session in February, a first Public Hearing proposed for March 24th and a Council review and possible adoption on April 20th of 2016. In addition, Moody stated that he would like to conduct an unofficial focus session with various stakeholders prior to the March 24th Public Hearing.

In response to a question by Milan, Moody stated that the Oregon Department of Land Conservation and Development (DLCD) had reviewed and approved proposed changes of Talent's Tree and Landscaping Code. Moody surmised that DLCD was pleased with the development of quantitative rules that promotes the clarity and objectivity of the Ordinance.

Moody commented that distinguishing between the criteria for private trees and public trees was difficult in the current code. He proposed amendments that would revise the Code by separating into three parts: 1) Tree Code, 2) Landscaping Code and 3) Public Tree Code

Moody emphasized the overarching goal, was to recognize the importance of trees and landscaping and how they impact the character and beauty of Talent. Changes to the Code would accomplish the following:

- Recognize the important of trees and landscaping and how they impact the character and beauty of Talent
- Provide clear regulations for the management of private and public trees
- Provide incentives to preserve and/or incorporate existing trees into development plans
- Better define Heritage and Significant trees in Talent
- Provide better oversight for the removal and mitigation of significant and heritage trees
- Provide a process for tree removal, street tree planting and landscaping that is clear and objective to property owners and that can be quantified
- Organize existing and new code language in a manner that is easy to understand and to implement

He explained that 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. They provide shade and shelter in riparian areas which are essential for aquatic and land-going species. Trees also enhance the local economy and increase property values by providing an attractive and aesthetically pleasing environment. Moody noted that trees on undeveloped property should be preserved if possible so that they may be considered for incorporation into development plans.

Moody stated that trees would be protected and incorporated in site development plans whenever possible. There would be more significant tree designations based upon their size and species. The definition section has been expanded, critical root zones have been defined and identified, commercial woodlots are described and included in the Code. Moody noted that there is one potential commercial woodlot in Talent, along Belmont Road. Definitions for trees that are dead, dying, or dangerous are also articulated. Activities that damage a significant tree are more specifically explained for better protection.

The removal of trees is detailed – and permits for removal are outlined, along with procedures for doing so. A Type A Permit applies when three or fewer trees are removed within a twelve month period. The intent for a type A permit is to make tree removal for homeowners a simple process.

A Type B Permit would authorize removal of three or more trees in a twelve month period subsequent to land division approval, and probable mitigation. There will be a fee depending upon the importance of the trees slated for removal. There is also a process for protecting any trees left standing, if they are at risk. Mitigation can be either on-site or off-site.

A Type C Permit is applicable when three or more trees on a single parcel are removed in conjunction with a land use application (SPR, MLP or SUB). Mitigation is required that is in addition to any other landscaping planned. Submittal requirements are more extensive than with Type A or B. Percentages are assigned for the number of trees on the property, particularly if a significant or heritage trees are removed. Moody explained that incentives for planting trees would be available once a Tree Fund has been established. Funding would come from fees collected from tree removals.

Finally, the approval criteria for a Type D Permit is as follows:

- All heritage trees other than Douglas Fir will be protected in accordance with this chapter
- All non-fir significant trees in excess of three shall be mitigated
- All applicable standards of the Oregon Forest Practice Rules are met
- Erosion control plan has been approved by the City Engineer

Moody emphasized that there is no mitigation necessary for all Type B, C and D permits, for trees that have been defined as dead, dying or hazardous. He discussed circumstances that would allow for a waiver of the mitigation rules, with consideration for developments that would provide a strong economic benefit.*

Commentary from the Commissioners included questions about the specifics for economic waivers, the reduction of the amount of trees required for mitigation, the fee structure for fines and other details.

Moody introduced new quantitative requirements for the newly organized Fences and Hedges and Landscaping code. Requirements for landscaping are now detailed. Landscaping minimums are at 20% for residential properties, 10% for commercial lots and 5% for industrial properties. He noted that the amount of landscaping would be verified prior to the issuance of a certificate of occupancy. Landscaping material is defined and the quantity of trees and shrubs are designated.

Milan asked about landscaping requirements for drought stricken areas and incentives for water conservation. Moody agreed that further refinement of the code was needed to encourage the planting of trees while discouraging water intensive plantings.

Buffering and screening for commercial and industrial developments has been added to the Code, as well as agricultural buffers that would meet RPS (Regional Problem Solving) requirements.

At the suggestion of Schweitzer, Moody agreed to bring back additional examples of the various requirements. Solar and zero-scaping criteria would also be refined. In reply to a question by Milan, Moody said that there was work yet to be done to properly address urban agriculture.

A new public tree section was added to address the maintenance of street trees, and to establish standards for debris removal. Moody explained that there will now be a height requirement to trim branches that overhang a public street.

The Planning Commission agreed by consensus that the proposed changes would improve Talent's Tree and Landscaping Code and that further changes would further enhance the proposed revisions.

VII. Election of Planning Commission Chair and Vice Chair

Motion: *Commissioner Schweitzer moved to approve Eric Heesacker as Chair for 2016. Commissioner Milan seconded and the motion carried by roll call vote.*

Motion: *Commissioner Schweitzer moved to approve Felicia Hazel as Vice-Chair for 2016. Commissioner Milan seconded and the motion carried by roll call vote.*

VIII. Subcommittee Reports

Moody noted an opportunity for Planning Commissioners to participate in various workshops, meetings, or projects, regarding topics that could become areas of interest for the Planning Commission. He noted as an example that Commissioner Schweitzer was interested in solar uses and impacts, and the City of Talent was currently working on some solar cooperatives – something that Commissioner Schweitzer might find of value. Commissioner French was interested in Talent’s economic development and would participate in the upcoming economic opportunities analysis, and so on.

Moody stated that while there are no Subcommittees at this time, feedback from participation in areas that might impact land use developments would be of benefit.

IX. Propositions and Remarks from the Commission

There were none.

X. Next Meeting

It was agreed that the next regularly scheduled meeting would be February 18, 2016.

XI. Adjournment

There being no further business to come before the Commission, the meeting was adjourned at 9:00 p.m.

Submitted by: _____ Date: _____

Attest:

Zac Moody, Community Development Director

Chair Heesacker

*Further information on the Code amendments is available at the Community Development office.

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:	February 18, 2016	Primary Staff Contact:	Zac Moody
Department:	Community Development	E-Mail:	zmoody@cityoftalent.org
Staff Recommendation:	See Below	Estimated Time:	10 minutes

ISSUE BEFORE THE COMMISSION

The Commission is being asked by City Council to recommend appointments for the Citizen Advisory Committee (CAC) begin formed for the Economic Opportunity Analysis.

BACKGROUND

At the last Council meeting, staff requested the Council authorize forming a CAC to assist in the review of the upcoming Economic Opportunity Analysis. As part of the formation of this group, Planning Commission is asked to review applications from potential CAC members and make a recommendation to the City Council.

Staff is looking to appoint ten citizens to the CAC to encourage a broad review of potential policies, goals and implementation strategies. Councilor Pederson and Commissioner French will be two of the ten CAC members but do not require appointment, therefore no applications for their membership is being reviewed.

As of the date of this staff report, staff has received eight applications. There is a possibility that three more citizens may be interested, so it is important to know that the Planning Commission can recommend more than ten citizens. Staff would like to limit participation to no more than thirteen citizens. Staff is requesting Planning Commission review these applications and recommend appointment of each that have applied. Each applicant has expressed interest in the future economics of Talent and would be a good fit. The applicants are as follows:

Charlie Hamilton
Alexis McKenna
Kathy Trautman
John Harrison
Nancy Buono
Josh LeBombard
Bobby Townsend
Mike Davis

The CAC will meet four times between March and June and will provide comments to the Technical Advisory Committee and ultimately make a recommendation to the Planning Commission when the study is complete. Once this recommendation has been made, Staff will present the report and supplementary



documents to the Planning Commission at a public hearing where the Planning Commission will be asked to make a formal recommendation to the Council.

STAFF RECOMMENDATION

Appoint all six applicants.

RELATED CITY POLICIES

None

COMMISSION OPTIONS

Recommend that all six applicants be appointed, recommend certain applicants be appointed, do not appoint any of the applicants and ask staff to continue to take applications.

POTENTIAL MOTIONS

“I move to recommend the City Council appoint Charlie Hamilton, Alexis McKenna, Kathy Trautman, John Harrison, Nancy Buono, Bobby Townsend, Mike Davis, and Josh LeBombard to the CAC of the Economic Opportunity Analysis.”

ATTACHMENTS

Committee Applications

APPLICATION FOR COMMISSION or COMMITTEE

City of Talent

110 East Main Street/PO Box 445

Talent, OR 97540

PH (541) 535-1566 FAX (541) 535-7423

Web: www.cityoftalent.org E-mail: talent@cityoftalent.org

1. I am applying for an appointment to a position on the following commission, committee, board or other body:

⇒⇒⇒ Citizen Advisory Committee ⇐⇐⇐

2. Name:

Bobby Townsend

3. Mailing address:

PO Box 1376

City Talent

State OR

Zip 97540

4. Residence address (if different)

15 Renault Avenue

City Medford

State OR

Zip 97501

5. Current occupation:

Business Development Director

(*NOTE * If retired or unemployed, state your general or past profession)

6. Phone number(s): Home:

Work: 201.1050 Cell: 541.646.8001

Email: bobby@organicalcohol.com

Fax: _____

7. How long have you lived in Talent?:

November 2007

If you do not know if you live inside the city limits or urban growth boundary, please view the official zoning map at City Hall

8. How long have you lived in Jackson County?:

May 1996

9. Are you an employee of the City of Talent, an occasional or potential contract employee, or have any other real or potential conflict of interest in working or serving in this capacity?

Yes _____ No If yes, please describe: _____

APPLICATION FOR COMMISSION or COMMITTEE

City of Talent

110 East Main Street/PO Box 445

Talent, OR 97540

PH (541) 535-1566 FAX (541) 535-7423

Web: www.cityoftalent.org E-mail: talent@cityoftalent.org

1. I am applying for an appointment to a position on the following commission, committee, board or other body:

⇒⇒⇒ Citizen Advisory Committee ⇐⇐⇐

2. Name: Charlie Hamilton

3. Mailing address: PO Box 1313

City Talent State OR Zip 97540

4. Residence address (if different) 151 Max Loop

City Talent State OR Zip 97540

5. Current occupation: General Contractor - owner of Suncrest Homes LLC
(*NOTE* If retired or unemployed, state your general or past profession)

6. Phone number(s): Home: 541-535-7763 Work: 541-944-3976 Cell: 541-944-3976
Email: Suncresthomes@gmail.com Fax: 541-512-0926

7. How long have you lived in Talent?: 25 years

If you do not know if you live inside the city limits or urban growth boundary, please view the official zoning map at City Hall

8. How long have you lived in Jackson County?: 25 years

9. Are you an employee of the City of Talent, an occasional or potential contract employee, or have any other real or potential conflict of interest in working or serving in this capacity?

Yes _____ No If yes, please describe: _____

APPLICATION FOR COMMISSION or COMMITTEE

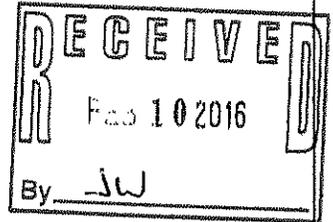
City of Talent

110 East Main Street/PO Box 445

Talent, OR 97540

PH (541) 535-1566 FAX (541) 535-7423

Web: www.cityoftalent.org E-mail: talent@cityoftalent.org



1. I am applying for an appointment to a position on the following commission, committee, board or other body:

⇒⇒⇒ CAC - 2016 Talent Economic Opportunity Analysis ⇐⇐⇐

2. Name: Alexis McKenna

3. Mailing address: PO Box 117

City Talent State OR Zip 97540

4. Residence address (if different) 311 Davidson Way

City Talent State OR Zip 97540

5. Current occupation: small business owner (counseling); university professor
(*NOTE * If retired or unemployed, state your general or past profession)

6. Phone number(s): Home: 541-535-6145 Work: Cell:

Email: amckenna4cmsn.com Fax:

7. How long have you lived in Talent?: 8 years

If you do not know if you live inside the city limits or urban growth boundary, please view the official zoning map at City Hall

8. How long have you lived in Jackson County?: 8 years

9. Are you an employee of the City of Talent, an occasional or potential contract employee, or have any other real or potential conflict of interest in working or serving in this capacity?

Yes No X If yes, please describe:

10. I believe that I am qualified for and should be considered for the above position(s) and should be considered for the following reasons: (Attach additional sheet if necessary).

I have a personal interest in the topic. I am generally well-read, well-educated, and can be counted on to perform the tasks assigned to me.

11. Signature: Allyson McKenna Date: 2/10/16

APPLICATION FOR COMMISSION or COMMITTEE

City of Talent

110 East Main Street/PO Box 445

Talent, OR 97540

PH (541) 535-1566 FAX (541) 535-7423

Web: www.cityoftalent.org E-mail: talent@cityoftalent.org

1. I am applying for an appointment to a position on the following commission, committee, board or other body:

⇒⇒⇒ Citizen Advisory Committee ⇐⇐⇐

2. Name:

Kathy Trautman

3. Mailing address:

100 E. Main Street, Suite A

City Medford State OR Zip 97501

4. Residence address (if different)

3524 Willow Springs Rd.

City Central Point State OR Zip 97502

5. Current occupation:

Business Development Manager - SOREDI

(*NOTE* If retired or unemployed, state your general or past profession)

6. Phone number(s):

Home: 541-664

Work: 541-773

Cell: 541-601-9793

Email:

Kathy@SOREDI.ORG

Fax:

7. How long have you lived in Talent?:

Do not live in Talent

If you do not know if you live inside the city limits or urban growth boundary, please view the official zoning map at City Hall

8. How long have you lived in Jackson County?:

Since 1971

9. Are you an employee of the City of Talent, an occasional or potential contract employee, or have any other real or potential conflict of interest in working or serving in this capacity?

Yes _____

No

If yes, please describe: _____

10. I believe that I am qualified for and should be considered for the above position(s) and should be considered for the following reasons: (Attach additional sheet if necessary).

SOREDI'S mission is to help businesses prosper to advance economic opportunities compatible with community values. We leverage our private-public partnerships, respecting every contribution. Talent is part of our region. It benefits all concerned to have a thriving community. I am qualified for appointment because SOREDI is the "pulse" of economic development in our region.

11. Signature:

Ruthy Thautman

Date:

2-9-16

APPLICATION FOR COMMISSION or COMMITTEE

City of Talent

110 East Main Street/PO Box 445

Talent, OR 97540

PH (541) 535-1566 FAX (541) 535-7423

Web: www.cityoftalent.org E-mail: talent@cityoftalent.org

1. I am applying for an appointment to a position on the following commission, committee, board or other body:

⇒⇒⇒ Citizen Advisory Board for Talent 2016 Economic Opportunity Analysis ⇐⇐⇐

2. Name: Nancy Buono

3. Mailing address: 240 Sweetbrier Drive

City Talent State OR Zip 97540

4. Residence address (if different) _____

City _____ State _____ Zip _____

5. Current occupation: Education Director

(*NOTE * If retired or unemployed, state your general or past profession)

6. Phone number(s): Home: _____ Work: _____ Cell: 516-810-6102

Email: buononancy@gmail.com Fax: 888-280-5717

7. How long have you lived in Talent?: 5 months

If you do not know if you live inside the city limits or urban growth boundary, please view the official zoning map at City Hall

8. How long have you lived in Jackson County?: 2 years

9. Are you an employee of the City of Talent, an occasional or potential contract employee, or have any other real or potential conflict of interest in working or serving in this capacity?

Yes _____ No X If yes, please describe: _____

10. I believe that I am qualified for and should be considered for the above position(s) and should be considered for the following reasons: (Attach additional sheet if necessary).

I'm passionate about living in this small town. There are so many different offerings for residents as well as the opportunity to actively participate in town governance and policies. The people here are fervent about our both quality of life and our stewardship for nature.

While we know how great this small city is, it needs a viable economic base for it to thrive and continue. We need to develop a 'brand' and signature for Talent, one that is worthy of its name. My 20+ years of work in marketing, PR, education, small business support and real estate could help me contribute to this cause. It would be an honor to work with other citizens and the town to help find our way forward, so we may maintain our small town charm and warmth, while offering something unique and of value to all of the Rogue valley. We have a great start, with a lovely community center, Bee City status and many thoughtful citizens. I'm looking forward to what we will create together.

11. Signature: _____

Nancy Burns

Date: _____

February 10, 2016

APPLICATION FOR COMMISSION or COMMITTEE

City of Talent

110 East Main Street/PO Box 445

Talent, OR 97540

PH (541) 535-1566 FAX (541) 535-7423

Web: www.cityoftalent.org E-mail: talent@cityoftalent.org

1. I am applying for an appointment to a position on the following commission, committee, board or other body:

⇒⇒⇒ Economic Opportunities Analysis _____ ⇐⇐⇐

2. Name: Josh LeBombard

3. Mailing address: 100 E. Main Street, Suite A

City Medford

State OR

Zip 97501

4. Residence address (if different) _____

City _____

State _____

Zip _____

5. Current occupation: Regional Representative- Dept. Land Conservation and Development

(*NOTE * If retired or unemployed, state your general or past profession)

6. Phone number(s): Home: _____

Work: 541-414-7932

Cell: _____

Email: josh.lebombard@state.or.us

Fax: _____

7. How long have you lived in Talent?: N/A

If you do not know if you live inside the city limits or urban growth boundary, please view the official zoning map at City Hall

8. How long have you lived in Jackson County?: 9 years

9. Are you an employee of the City of Talent, an occasional or potential contract employee, or have any other real or potential conflict of interest in working or serving in this capacity?

Yes _____ No X _____ If yes, please describe: _____

10. I believe that I am qualified for and should be considered for the above position(s) and should be considered for the following reasons: (Attach additional sheet if necessary).

Department of Land Conservation and Development provided \$20,000 grant to the city to preform this work.

11. Signature: Josh LeBombard Date: 2/11/16

APPLICATION FOR COMMISSION or COMMITTEE

City of Talent

110 East Main Street/PO Box 445

Talent, OR 97540

PH (541) 535-1566 FAX (541) 535-7423

Web: www.cityoftalent.org *E-mail:* talent@cityoftalent.org

1. I am applying for an appointment to a position on the following commission, committee, board or other body:

⇒⇒⇒ CITIZEN ADVISORY COMMITTEE ⇐⇐⇐

2. Name: JOHN A HARRISON

3. Mailing address: 345 Willow Springs Dr

City Talent State OR Zip 97540

4. Residence address (if different) _____

City _____ State _____ Zip _____

5. Current occupation: Retired, Supervisor US Postal Service
(*NOTE * If retired or unemployed, state your general or past profession)

6. Phone number(s): Home: 541-897-0570 Work: _____ Cell: 619-253-2044
Email: _____ Fax: _____

7. How long have you lived in Talent?: 18 months

If you do not know if you live inside the city limits or urban growth boundary, please view the official zoning map at City Hall

8. How long have you lived in Jackson County?: 18 months

9. Are you an employee of the City of Talent, an occasional or potential contract employee, or have any other real or potential conflict of interest in working or serving in this capacity?

Yes _____ No _____ If yes, please describe: _____

10. I believe that I am qualified for and should be considered for the above position(s) and should be considered for the following reasons: (Attach additional sheet if necessary).

I am very interested in the future of Talent and the 2016 Talent Economic Opportunity Analysis and believe

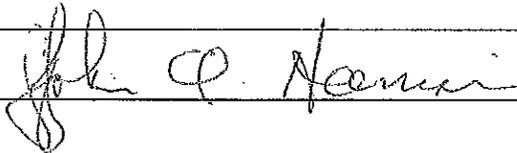
that my experience and education can assist the City of Talent.

BS Computer Tech

Accounting UN of Reno

Supervision

11. Signature:



Date:

02.09.2016

APPLICATION FOR COMMISSION or COMMITTEE

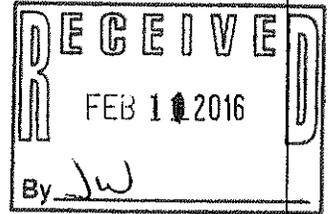
City of Talent

110 East Main Street/PO Box 445

Talent, OR 97540

PH (541) 535-1566 FAX (541) 535-7423

Web: www.cityoftalent.org E-mail: talent@cityoftalent.org



1. I am applying for an appointment to a position on the following commission, committee, board or other body:

⇒⇒⇒ CITIZEN ADVISORY COMMITTEE ←←←

2. Name: Mike Davis

3. Mailing address: 8475 Wagner Creek Rd

City Talent State OR Zip 97540

4. Residence address (if different) _____

City _____ State _____ Zip _____

5. Current occupation: Plumbing Contractor

(*NOTE* If retired or unemployed, state your general or past profession)

6. Phone number(s): Home: 541 535 6968 Work: 541 535 5063 Cell: 541 210 3129

Email: mikedavis555@charter.net Fax: _____

7. How long have you lived in Talent?: 31 Years

If you do not know if you live inside the city limits or urban growth boundary, please view the official zoning map at City Hall

8. How long have you lived in Jackson County?: 39 Years

9. Are you an employee of the City of Talent, an occasional or potential contract employee, or have any other real or potential conflict of interest in working or serving in this capacity?

Yes _____ No X If yes, please describe: _____

10. I believe that I am qualified for and should be considered for the above position(s) and should be considered for the following reasons: (Attach additional sheet if necessary).

See attached page.

11. Signature: Mike Davis

Date: 2-11-16

I have lived and operated a successful business in Talent for 31 years. My three children all attended school in the Phoenix/Talent school district.

I received a Bachelor's degree in Economics from Southern Oregon University in 1982. I previously served as a member of the Talent Architecture Committee and the Jackson County Plumbing Apprenticeship Committee. I currently serve as board member of the Southern Oregon Running Club. I have helped coach the Phoenix/Talent cross country and track teams for many years.

I believe the combination of my experience in business and my familiarity with the advantages and problems that the City of Talent faces uniquely qualified me to serve on the Citizen's Advisory Committee for Economic Development. I am invested in the future of Talent and hope this appointment will allow me to further contribute to its success going forward.



Commission Agenda Report

Meeting Date:	February 18, 2016	Primary Staff Contact:	Zac Moody
Department:	Community Development	E-Mail:	zmoody@cityoftalent.org
Staff Recommendation:	See Below	Estimated Time:	30 minutes

ISSUE BEFORE THE COMMISSION

Planning Commission is being asked to make an interpretation on code language found in Section 8-3M.240 of the Talent Zoning Code. Specifically, the Commission is being asked to define “increase” and “enlarge” in this section of code.

BACKGROUND

The owners of Green Valley Wellness, a medical marijuana facility are requesting to include recreational sales of marijuana in a zone where medical or recreational marijuana facilities are not allowed. Staff informed the business owners on January 29, 2016 and February 1, 2016 via email, that the current use of the building as a medical marijuana facility is a non-conforming use and expansions of non-conforming uses are not allowed based on the code language below:

8-3M.240 NON-CONFORMING USES OF LAND

Where, at the effective date of adoption or amendment of this Chapter, lawful use of land exists that is made no longer permissible under the terms of this Chapter, such use may be continued, so long as it remains otherwise lawful, subject to the following provisions:

- A. No such non-conforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Chapter; and*
- B. No such non-conforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use at the effective date of adoption or amendment of this Chapter; and*
- C. If any such non-conforming use of land ceases for any reason for a period of more than forty-five (45) days, any subsequent use of such land shall conform to the regulations specified by this Chapter for the zone in which such land is located.*

Subsequent to that email, the business owners asked to meet with Staff to obtain a better understanding of what defines a non-conforming use (see attached emails). Staff determined that even though the use was not being extended to occupy a greater area of land, that it was in fact enlarging or increasing the use.

It is clear to Staff that the language in Section 8-3M.240(A) above applies to both the expansion of space and the enlargement or increase of a use. Webster’s dictionary defines enlarge and increase as the following:



- *Enlarge; to make bigger or more extensive*
- *Increase; become or make greater in size, amount, intensity, or degree or; An instance of growing or making greater*

It is Staff's determination that the addition of retail sales to a use that was primarily medical in nature and limited to a small population "enlarges" (makes more extensive) or "increases" (expands or intensifies) the use.

The applicant's attorney provided findings attempting to support their argument that not only is this not an increase in existing use, but that the use has legal non-conforming status and that retail sales of marijuana have occurred since it was legalized in October 2015.

It is important for the Planning Commission to understand that the determination of a non-conforming use is an entirely different application process that requires a public hearing. At this time the only interpretation Staff is asking the Planning Commission to make is whether the terms "enlarge" or "increase" are specific to a spatial area, or if it also applies to intensity or expansion of a use.

Should the Planning Commission not agree with Staff's determination, the next step would be to prepare a code amendment to provide a more clear and objective standard. This necessary code amendment could be City initiated at the Council request or initiated by the business owner through a legislative code amendment.

Should the Planning Commission agree with Staff's determination, a change of use that intensifies the existing use or makes the use become more extensive would not be allowed and would be considered an expansion of a non-conforming use.

STAFF RECOMMENDATION

Accept Staff's interpretation that enlarge or increase are synonymous to expansion or increase in intensity.

RELATED CITY POLICIES

None

COMMISSION OPTIONS

Accept Staff's interpretation; Do not accept Staff's interpretation

POTENTIAL MOTIONS

"I move to accept Staff's interpretation that enlarge or increase are synonymous to expansion or increase in intensity."

ATTACHMENTS

Applicant's Statement

Staff Email Correspondence

JACK DAVIS
CHRISTIAN E. HEARN
EUGENE V. ANDERSON
JEFFREY K. McCOLLUM
GARRISON F. TURNER



SAM B. DAVIS - Retired
SIDNEY E. AINSWORTH (1927-2003)
DONALD M. PINNOCK - Retired
DANIEL L. HARRIS - Retired
DAVID V. GILSTRAP - Retired
SUSAN V. SALADOFF - Retired

515 EAST MAIN STREET
ASHLAND, OREGON 97520
(p) 541.482.3111 | (f) 541.488.4455
www.davishearn.com

February 8, 2016

City of Talent Planning Commission

c/o Zac Moody, Director of Community Development
P.O. Box 445
Talent, OR 97540

RE: Planning Commission Interpretation (nonconforming use determination)
Applicant: Green Valley Wellness LLC | 103 N. Pacific Hwy., Units B & C

Dear Commissioners:

Applicant Green Valley Wellness LLC ("Applicant" or "GVW") respectfully requests a "Planning Commission Interpretation" verifying Applicant's proposed continuation of legal OLCC-licensed and regulated retail sales of recreational marijuana be permitted to continue, in tandem with its medical marijuana retail sales at Applicant's existing location. Applicant's use does not constitute an "enlargement or expansion" of the current use (State-regulated retail marijuana sales), and is therefore permissible in the CBD zone as an existing nonconforming use. *City of Talent Zoning Ordinance, 8-3 Div. M. Art. 2.*

BACKGROUND

Applicant: Green Valley Wellness LLC
Location: 103 N. Pacific Highway, Units B & C
Talent Zoning: CBD
Use: State-regulated retail cannabis sales
Proposed Expansion of Use? No.

Applicant Green Valley Wellness LLC ("Applicant" or "GVW") requests a determination by the Planning Commission that it may continue State-regulated recreational marijuana retail sales at its current premises, along with continuing medical marijuana sales – just as Applicant has successfully done since July, 2014.

Applicant leased space at 103 N. Pacific Hwy., Units B & C, in mid-2014. Applicant has remained a solid tax-paying member of the Talent business community ever since. Granted, a plethora of Oregon laws and regulations concerning the Oregonians' use and sale of cannabis have ensued since June, 2014 (when GVW first opened in Units B & C). While State and local regulations have continued to change, Applicant has continued to be a responsible member of the City of Talent's business community. GVW is a "known quantity", having operated at this location for over 18 months, and conducted legal recreational sales at the location (in tandem with its previous medical cannabis sales) since October 1, 2015. In this situation, no question exists concerning adverse impacts in the neighborhood, since GVW was allowed by the State to consummate retail sales of recreational cannabis since October 1, 2015, and has done so on a daily basis ever since. As far as applicant is aware, City has received no complaints from neighboring property owners – despite the 4 months of GVW's cannabis retail sales which have since transpired on GVW's premises.

Applicant began its business selling medical marijuana in at 103 N. Pacific Hwy., Units B & C in June of 2014. GVW was granted approval for that use at the location, under the State and local laws as they existed at that time.

Logically, Green Valley Wellness views the cultural transition to OLCC-regulated cannabis retail sales as rendering their location optimal. It is on the same tax lot as, and shares ample parking with, the Talent Liquor store. It makes sense to have City of Talent's OLCC-regulated businesses (the Liquor Store and Green Valley) in the same proximity – for both planning and regulatory purposes. That's just practical, and offers both economies of scale and ease of enforcement for both the City of Talent and the State's OLCC.

After later revisions to the City of Talent Zoning Ordinance rendered new retail cannabis use neither outright permitted, nor conditionally permitted, within the City's "CBD" zone, GVW found itself sited and committed to a location which was legal and appropriate for its intended use – but then suddenly deemed "non-conforming" due to City's subsequent ordinance amendments. This is exactly the type of situation City's non-conforming use provisions are designed to guard against.

Since applicants' retail cannabis sales use in the premises was approved prior to City's adoption of more recent amendments to the Zoning Code, Applicant's current cannabis sales should be "grandfathered-in". Applicant has neither changed, nor expanded, nor enlarged its use of the premises. Applicant is still simply conducting State-regulated cannabis sales in Units B & C – just as it has since June, 2014. In the genre of Oregon land use planning, a threshold exists when "splitting hairs" with regard to technical dictionary definitions over the denotation of "use" at some point becomes overly academic. Sometimes, reason must prevail and connotation must rise to the level of technical denotation.

Also, it is important for the Commission to keep in mind that there is not true "precedent" set in local land use matters (unless it comes down from LUBA or the Oregon Court of Appeals). Each case turns on its own facts.

Based on non-conforming uses provisions in City's Zoning Code. GVW requests the Planning Commission use its "interpretation" powers to do the right thing – to make a practical and reasonable decision under these unique circumstances.

GVW requests the Planning Commission find that Applicant is "grandfathered-in" as a legal non-conforming use in its current space – which has not and will not be enlarged

- and may continue to conduct retail sales of State-regulated legal cannabis, both medical and recreational, in Units B & C (which also happens to be on the same tax lot as the similarly State-regulated Talent Liquor store).

PROPOSED FINDINGS SUBMITTED BY APPLICANT

Talent Zoning Code 8-3 M.210. INTENT

"Within the zones established by this Chapter, or amendments thereto, there exist lots, structures, and uses of land and structures which were lawful before this Chapter was enacted or amended by ordinance, but which would be prohibited, regulated, or restricted under the terms of this Chapter or amendments thereto. Such uses are generally considered to be incompatible with the permitted uses in the zone in which they are located, and their continuance shall therefore be permitted only in strict compliance with the restrictions of this Article. ... Subject to the provisions of this Article, a non-conforming structure or use may be continued and maintained in reasonable repair, but shall not be altered or extended except as provided herein. The extension of a non-conforming use to a portion of a structure, which was arranged or designed for the non-conforming use at the time of passage of this ordinance, is not considered an enlargement or expansion of a non-conforming use." 8-3 M.210.

DAVIS, HEARN,
ANDERSON & TURNER
A Professional Corporation
515 EAST MAIN STREET
ASHLAND, OREGON 97520
(541) 482-3111 FAX (541) 488-4455

FINDING: Since July, 2014, Applicant's "use" has always remained essentially the same. Namely, Applicant has continuously engaged in legal State-regulated retail sale of cannabis at 103 N. Pacific Hwy., Units B&C. Applicant is not engaging in a "new use" in the premises, because retail sale of marijuana has remained Applicant's use of the premises since July, 2014. Applicant has thus far apparently proved itself to be a compliant and responsible permittee, since it began State-regulated retail cannabis sales at this specific location in June of 2014.

No Expansion / No Enlargement of Use. Applicant proposes no expansion or enlargement of Applicant's current legal use. Applicant will continue to confine its OLCC-regulated retail cannabis sales to Units B & C.

No Negative Impacts to Neighboring Properties. Concerning impacts on neighboring properties – no additional impacts are anticipated, and no additional employees will be hired. Applicant has already been selling legal recreational cannabis, in addition to medical cannabis, since October 1, 2015.

Has City received complaints over the past four months concerning GVW's recreational cannabis sales during the past four months?

Logically, in light of several other recreational cannabis sales operations not yet open for business yet requesting approval from City at this point, is it logical that GVW's existing recreational cannabis sales will somehow magically accelerate from their current levels?

Talent Zoning Code 8-3 M.240. NON-CONFORMING USES OF LAND

"Where, at the effective date of adoption or amendment of this Chapter, lawful use of land exists that is made no longer permissible under the terms of this Chapter, such use may be continued, so long as it remains otherwise lawful, subject to the following provisions:

- A. No such non-conforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Chapter; and

- B. No such non-conforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use at the effective date of adoption or amendment of this Chapter; and

FINDING: Applicant does not propose moving its use to any other portion of the premises.

- C. If any such non-conforming use of land ceases for any reason for a period of more than forty-five (45) days, any subsequent use of such land shall conform to the regulations specified by this Chapter for the zone in which such land is located.

FINDING: Applicant has not ceased its use for 45 days.

8-3 M.250 NON-CONFORMING USES OF STRUCTURES AND PREMISES

"A lawful use of a structure, or of structure and premises in combination, existing at the effective date of adoption or amendment of this Chapter, and which does not conform to the use regulations for the zone in which it is located, shall be deemed to be a non-conforming use and may be continued only in compliance with the following regulations:

- A. Completion of structure. Nothing in this Chapter shall be deemed to require a change in the plans, construction, or designated use of any building for which a building permit was issued prior to the effective date of this Chapter and upon which construction has commenced, provided the building, if non-conforming or intended for a non-conforming use, is completed and in use within one (1)

year of the date of issuance of the building permit.

FINDING: This criterion does not apply.

- B. Repairs and maintenance. Routine maintenance and repairs, including repair or replacement of non-bearing walls, fixtures, wiring or plumbing, may be performed on structures and premises, the use of which is non-conforming. Nothing in this Chapter shall be deemed to prevent the strengthening or restoring to a safe condition any building or part thereof declared unsafe by any official charged with protecting the public safety, upon order of such official.

FINDING: This criterion does not apply.

- C. Change of non-conforming use. If a non-conforming use involving a structure is replaced by another use, the new use shall conform to this Chapter unless the planning commission determines that the proposed use is of the same or of a more restrictive classification, that the proposed use will not affect the character of the area in which it is proposed to be located more adversely than the existing or pre-existing use, and that the change of use will not result in the enlargement of the cubic space occupied by a non-conforming use, except as provided in subsection (d) below. An application for a change of use must be filed in accordance with

the provisions of Article 16, including the payment of required fee.

FINDING: Applicant does not propose to replace the existing use. The existing use is retail sale of State-regulated cannabis. Granted, Applicant seeks to continue offering State-regulated recreations cannabis to its customers, in addition to medical cannabis (as it has since October 1, 2015). However, the proposed use will not affect the character of the area in which it is located. Applicant’s business shares a parking lot with a liquor store. Traffic has not substantially increased. No structural expansion is proposed.

- D. Enlargement of non-conforming use. No existing structure that is wholly or partially occupied by a non-conforming use shall be structurally altered, move, extended, constructed, reconstructed, or enlarged in cubic space unless the alteration or enlargement will result in the elimination of non-conforming use; except that such building may be enlarged when authorized in accordance with the procedure and provisions set forth in Article 16, including the payment of the required fee."

DAVIS, HEARN,
ANDERSON & TURNER
A Professional Corporation
515 EAST MAIN STREET
ASHLAND, OREGON 97520
(541) 482-3111 FAX (541) 488-4455

FINDING: Applicant does not propose to replace the existing use.

CONCLUSION: Applicant respectfully requests the Planning Commission find that Applicant's proposal to continue to offer State-regulated retail cannabis sales to customers over 21 years of age does not constitute a new, expanded or enlarged use of Applicant's Premises at 103 N. Pacific Hwy., Units B & C. The use remains retail sale of State-regulated cannabis. Applicant does not seek to expand its use, and no greater negative impacts to surrounding properties will result.

In closing, having personally served for a number years as a member of the Ashland Planning Commission (and, later, as a member of Ashland's City Council), and represented a diverse variety of clients in 25-30 LUBA appeals, I respectfully request the Commission carefully review the facts and practicalities presented by the very unique circumstances surrounding this particular request, and that the Commission exercise its interpretive powers accordingly under these compelling circumstances. While this area of the law is undergoing rapid changes, I suggest the Commission not throw logic to the side. The OLCC-regulated liquor store is on the same property. Does it not make sense to allow this similar new OLCC-regulated use, which have been conducting responsible activities there since June of 2014, and responsible recreational

DAVIS, HEARN,
ANDERSON & TURNER
A Professional Corporation
515 EAST MAIN STREET
ASHLAND, OREGON 97520
(541) 482-3111 FAX (541) 488-4455

*Page -12-
City of Talent Planning Commission
(re: 103 N. Pacific Hwy., Ste. B & C)
February 8, 2016*

sales without complaint since October 1 to remain in its accepted location?

This request is supported by the Declaration of Peter Gross (chief operating officer of Green Valley Wellness LLC). **Attached as Exhibit "A", with sub-Exhibits 1-3.**

Sincerely,

Davis Hearn Anderson & Turner PC



Christian E. Hearn (OSB # 911829)

Enclosures: as stated above

cc: Green Valley Wellness LLC

DAVIS, HEARN,
ANDERSON & TURNER
A Professional Corporation
515 EAST MAIN STREET
ASHLAND, OREGON 97520
(541) 482-3111 FAX (541) 488-4455

**DECLARATION OF PETER GROSS (GREEN VALLEY WELLNESS LLC)
IN SUPPORT OF PLANNING COMMISSION INTERPRETATION
("Nonconforming Use" at 103 N. Pacific Hwy., Units B & C)**

I, PETER GROSS, declare as follows:

1. If called to testify as a witness at a quasi-judicial land use hearing, I would testify to the following facts from my own personal knowledge.
2. I am one of the managing members of Green Valley Wellness LLC ("Green Valley"). Green Valley's place of business is located at 103 N. Pacific Hwy., Units B & C ("Green Valley" or the "Premises"). Green Valley's store is located on the same tax lot as the OLCC-regulated Talent Liquor store. See *attached Exhibit "1"*.
3. On June 27, 2014, Green Valley began legal retail sales of Medical Marijuana at the Premises. Attached as Exhibit "2" is a copy of Green Valley's City of Talent Business License Application, submitted to City on 12/02/2014. Following approval of the City of Talent Business License Application attached as Exhibit "2", I believe Green Valley has twice renewed its City Business License.
4. At the time Green Valley began retail sales of medical marijuana at Green Valley's Store in 2014, my understanding is that the provisions of City of Talent's Zoning Code (8-3 Div. D. Art. 2) permitted legal sale of marijuana in the relevant Commercial Zone – Central Business District ("CBD" Zone).
5. Green Valley has continuously sold legal state-regulated marijuana at its store (Units B & C at 103 N. Pacific Hwy.) since June of 2014.

6. On October 1, 2015, Green Valley also began selling legal recreational marijuana at its store in Units B & C – as part of the state’s legal limited recreational marijuana sales program.
7. After Green Valley received all required approvals and began selling state-regulated marijuana at its store in Units B & C, I understand that City amended certain provisions in the City of Talent Zoning Code, including City of Talent Zoning Code 8-3 Div. D Art. 2 (CBD district permitted and conditional uses).
8. I understand the recent amendments to 8-3D.230(B), still allow retail stores as a Type-2 Site Development Plan Review, but now exclude “sales of medical or recreational marijuana by ... retail outlets”. 8-3D.230(B).
9. In the course of recent discussions with City’s Community Development Director, a question of interpretation arose concerning whether Green Valley’s request to continue its retail sale of recreational marijuana in Units B & C is “grandfathered-in” as a “non-conforming use” under the provisions of City’s Zoning Code. *Courtesy copy of current City of Talent Zoning Code provisions (8-3 Div. D, Art. 2; and 8-3 Div. M, Art. 3) are attached as Exhibit “3”.*
10. Green Valley believes it is “grandfathered-in” as a non-conforming use for the following reasons:
 - A. Since June of 2014, Green Valley has continuously operated a state-regulated retail sales establishment selling marijuana to qualifying adults in Green Valley’s existing space in Units B & C.

B. While Green Valley's state-regulated sales of marijuana were limited to "medical" marijuana sales to qualifying customers from June of 2014 to the present (and have only included "recreational" marijuana sales to qualifying customers since October 1, 2015), the fact remains that Green Valley is still doing the same thing, and in the same space, as it has done since 2014. Namely, selling state-regulated marijuana to retail customers.

C. The fact that the state now allows cannabis to be sold to customers over the age of 21 who do not have a "medical marijuana card" does not change the nature or scope of the activity which has continued in Green Valley's Units B & C ever since June of 2014.

D. Green Valley does not plan to expand the space or the scope of its retail sales to customers. It will continue to do the same thing in exactly the same space as before the Zoning Code was amended.

E. Green Valley does not plan to hire additional employees, and the impact of Green Valley's use has not changed.

11. Based on the facts, and in light of the specific circumstances presented, Green Valley respectfully requests the Planning Commission find that Green Valley's sale of state-regulated recreational cannabis in its existing space

constitutes neither a "new use", nor an "expansion" of use sufficient to disqualify ongoing state-regulated adult-use cannabis sales (for both recreational and medical purposes) as a non-conforming use.

Pursuant to ORCP 1E, I hereby declare the facts above are correct based on my knowledge and belief.

Dated: February 8, 2016

See next page (signature page)

Peter Gross
Chief Operating Officer, Green Valley Wellness LLC

Chris Hearn

From: P&M Holdings <pandmholding@gmail.com>
Sent: Monday, February 08, 2016 3:32 PM
To: Chris Hearn
Subject: Re: Declaration of Peter Gross re PC Interpretation - Nonconforming Use at 103 N. Pac. Hwy.- 02-08-2016

Here is the signature page:

constitutes neither a "new use", nor an "expansion" of use sufficient to disqualify ongoing state-regulated adult-use marijuana (for both recreational and medical purposes) as a non-conforming use.

Pursuant to ORCP 1E, I hereby declare the facts above are correct based on my knowledge and belief.

Dated: February 8, 2016



Peter Gross
Chief Operating Officer, Green Valley Wellness LLC

Exhibit "1"

Subject Property
103 N. Pacific Hwy.

Layer | Legend

Property Data Online Legend

- Highlighted Feature
- Tax Lot Outlines
- Tax Lot Numbers
- I-5 (Interstate)
- I-5 N
- I-5 S
- Talent Zoning
- CN
- CBD
- CBH
- CH
- CI
- IL
- RS-MH
- RS-5
- RS-7
- RM-22
- Rivers and Lakes
- Primary
- Secondary
- Street Names
- Streets
- Trail
- Unimproved County Road
- Major Road
- Major USFS / BLM Road
- On/Off Ramp
- Freeway
- Highway

Exhibit "1" pg. 1



**Green Valley Wellness
103 N. Pacific Hwy., Units "B" and "C"**

Exhibit "1", Pg. 2

CITY OF TALENT 2015 BUSINESS LICENSE APPLICATION

110 E. MAIN STREET PO BOX 445, TALENT, OR 97540
 Main (541)535-1566 FAX (541) 535-7423 Email: talent@cityoftalent.org
 PLEASE PRINT OR TYPE

Submitted on: 12/2/14

Name of Business or Corporation: GREEN VALLEY WELLNESS LLC **Exhibit "2"**

Business phone #: 541-~~621-1840~~ 535-3022 Email: greenvalleywellness@gmail.com

Business address: 103 N. Pacific Hwy Units B & C
 City: Talent State: OR Zip code: 97540

Mailing address: 489 Euclid St.
 City: Ashland State: OR Zip code: 97520

Type of business: Retail MMF State License #: MM067166 Expires: 5/29/2015
 (please be specific)

Existing Talent Business New Business Home Occupation Industrial

Owner(s): (if more than 2 attach a separate page)
 1: P & M Holdings LLC 541-621-1840 2: _____
 Full name Contact# Full Name Contact#

mm (Initials) Approval of a business license application shall not be construed to constitute a permit to engage in any activity prohibited by a law or a waiver of any other regulatory license requirement imposed by federal, state, or local law. A business license does not imply or indicate the City's endorsement of any business or business activity. An approved business license is required before conducting business within the City.

mm (Initials) If this application concerns a business establishing a new location within the City or changing the use for a location within the City, pursuant to zoning code Section 8-3J.150, the City will perform a use classification to verify that the proposed use is an allowed use at the proposed location. The Community Development Department will provide the applicant the results of the use classification.

Issuance of this business license does not substitute any other applicable federal, state or local laws, ordinances or regulations.

Applicant's signature: 1: *[Signature]* 2: _____

FEE SCHEDULE			2015
Initial fee: License period	\$60.00 (Jan.-Dec.)	\$30.00 (Jul.-Dec.)	\$ 60.00
# of employees working within the City limits over 2,	(3 x \$5.00)		15.00
Late Fee (Renewals only):	\$10.00 per month for payments made after Feb. 1 st		
Total enclosed			\$ 75.00

***** OFFICE USE *****

Land Use Review: Complete N/A Comm. Dev. Review: _____ Date: _____ City Mgr. Review: _____ Date: _____

YEAR	DATE	RECEIPT No.	AMOUNT PAID	LICENSE # ISSUED
2015				

In compliance with the Americans with Disabilities Act, if you need special assistance, please contact TTY phone number 1-800-735-2906 for English and for Spanish, please contact TTY phone number 1-800-735-3896

The City of Talent is an Equal Opportunity Provider

**Exhibit "2"
Pg. 1 of 1**

Exhibit "3" (Talent Zoning Code 8-3D. Art. 2 & 8-3M. Art. 2)

8-3 Division D. Article 2.

COMMERCIAL ZONE

CENTRAL BUSINESS DISTRICT (CBD)

8-3D.210 DESCRIPTION AND INTENT

The Central Business District (CBD) Zone shall serve as the hub of government, public services and social activities; shall permit retail trade, personal and business services; and shall include residential uses to strengthen and enliven the community core. The CBD shall be pedestrian oriented and shall highlight and incorporate historic places and structures, parks and public transit facilities and opportunities.

8-3D.220 BUILDINGS AND USES PERMITTED SUBJECT TO TYPE-1 PERMIT REVIEW

No building structure or land shall be used, and no building or structure shall be hereafter erected, enlarged or structurally altered except for the following uses, none of which shall include drive-in, drive-up, or drive-through facilities:

- A. Existing residential uses, without any increase in density, or any expansion of use, floor area or improvements.
- B. Dwelling units, provided the units are above non-residential uses and the ground floor is devoted entirely to a commercial use or uses permitted in this Article. One dwelling unit is allowed at ground level behind a non-residential use, and cannot exceed 50 percent of the total ground floor space of buildings on the parcel.
- C. Use of existing structures for the permitted uses listed in Sections 230 and 240 of this Article, where all the provisions of the Zoning Ordinance and any amendment thereto are met.
- D. Uses and structures customarily incidental to the above uses, including the usual accessory buildings and structures provided in the low- and medium-density residential zones.
- E. Paving, surfacing, or resurfacing of existing parking lots subject to city staff review for conformance with the provisions of Article 8-3J.5. If a question arises as to conformance with said provisions, the City Planner shall subject the project to a site plan review without a public hearing.

8-3D.230 BUILDINGS AND USES SUBJECT TO TYPE-2 SITE DEVELOPMENT PLAN REVIEW

No structure shall be erected, enlarged or structurally altered, nor shall land be developed, except for the following uses or structures, which shall not include drive-in, drive-through or drive-up facilities. The following uses are permitted subject to the provisions of Article 8-3L.1 and review by the Planning Department.

- A. Any use permitted subject to site plan review without a required public hearing in the Neighborhood Commercial Zone (CN).
- B. Retail stores (excluding sales of medical or recreational marijuana by producers, wholesalers, processors and retail outlets) and offices; personal, business and repair services, not including automotive repair. Such uses may not exceed 6,000 square feet. Automotive parts and sales are permitted provided that the activity happens fully within enclosed buildings.
- C. Eating and drinking establishments (which may include entertainment) not exceeding 6,000 square feet.
- D. Churches and other religious institutions not exceeding 6,000 square feet.
- E. Guest lodging, not exceeding 10 rooms.
- F. Performing arts theaters and motion picture theaters (not including drive-ins), not exceeding 6,000 square feet.
- G. Public and commercial off-street parking lots or structures, not exceeding 200 parking spaces.
- H. Wireless communication antennae subject to the provisions of Section 8-3J.910.
- I. Other uses similar to those listed above, where permitted by the City Planner after written application. Where there is question as to similarity, the Planner shall refer the matter to the Planning Commission for a determination.
- J. Uses and structures customarily incidental to the above uses.
- K. Live-work units.

8-3D.240 BUILDINGS AND USES PERMITTED SUBJECT TO TYPE-3 SITE DEVELOPMENT PLAN REVIEW

No structure shall be erected, enlarged or structurally altered, nor shall land be developed, except for the following uses or structures, which shall not include drive-in, drive-through or drive-up facilities. The following uses are permitted subject to the provisions of Article 8-3L.1 and review by the Planning Commission in a public hearing. Although permitted, the following uses have characteristics that may negatively impact nearby properties.

- A. Any use permitted subject to site plan review with a required public hearing in the Neighborhood Commercial Zone (CN), excluding utility substations.
- B. Any use listed in Section 230, above, that exceeds the listed size/capacity threshold.

- C. Craft Manufactory & Retail, provided the structure housing the manufactory is sound and suitable for the intended use (refer to definition in Article 8-3B.1 for further information).
- D. Public parks, playgrounds and other similar publicly owned recreational areas.
- E. Passenger terminals for bus or rail.
- F. Public and semi-public buildings essential to the physical welfare of the area, such as fire and police substations, libraries, and government offices. Such uses, which may be developed in campus-like settings, are exempt from the dimensional requirements of the zone, except for parking lot setbacks.
- G. Other uses similar to those listed above, or under Sections 220 or 230, where permitted by the planning commission after written application.
- H. Uses and structures customarily incidental to the above uses.

8-3D.250 BUILDINGS AND USES PERMITTED SUBJECT TO CONDITIONAL USE REVIEW

The planning commission may grant or deny a conditional use permit in accordance with the procedure and provisions set forth in Article 8-3L.2.

- A. Any uses permitted conditionally in the Neighborhood Commercial Zone (CN).
- B. Brewery, Distillery, Winery not exceeding 6,000 square feet (pub or tasting room required).
- C. Commercial or trade schools.
- D. Wireless communication towers.
- E. Buildings over two-and-a-half (2½) stories or thirty (30) feet in height, whichever is the lesser. Buildings more than 30 feet in height are permitted only if they include residential uses.
 - 1. The maximum height allowed through conditional use review is forty (40) feet. The proposed building must include site design and architectural elements such that it is compatible with the small town character of Talent. Building elements to be considered include, but are not limited to, size, proportion, massing, articulation, detailing and location. Landscaping, buffering, fencing and similar elements may also be considered, but not as the only method of ensuring compatibility.
- F. Temporary uses.
- G. Pump stations and water reservoirs.

- H. Other buildings or uses that the planning commission determines to be similar to other uses permitted conditionally in the CBD zone.

8-3D.260 YARDS REGULATIONS

- A. Front yard.
 - 1. Minimum: Zero (0) feet.
 - 2. Maximum: Ten (10) feet for no more than 50 percent of the ground-floor width.
 - 3. Parking lots: Ten (10) feet, which shall be landscaped to provide screening.
- B. Side yard.
 - 1. Minimum: Zero (0) feet.
 - 2. Maximum: Ten (10) feet for no more than 50 percent of the ground-floor width on street-facing sides; ten (10) feet on alley-facing sides.
 - 3. Parking lots: 10 feet, which shall be landscaped to provide screening.
- C. Rear yard. No rear yard is required between commercially zoned properties.
- D. General provision applying to all setbacks: Where public utility or similar easements exist on or across property lines, setbacks shall be measured from the lot-interior edge of the easement.
- E. Adjacency to residential zones: Where lots abut residentially zoned lots, all setbacks shall be twenty (20) feet on the side(s) abutting said lots. This includes front setbacks in order to provide a transition.
- F. Exceptions to setback provisions shall be made and shall be required on corner lots where vision clearance for automobiles would be impaired by strict observance of the provisions.

8-3D.270 LOT AREA AND DIMENSIONS

For dwelling units above the ground floor of a business, there shall be a minimum of 1,200 square feet of total lot area for each dwelling unit. For all other permitted uses, there shall be no minimum lot size or lot width.

8-3D.280 LOT COVERAGE RESTRICTIONS

In the CBD zone there shall be no lot coverage restrictions except as provided in the yard setback and off street parking regulations.

8-3D.290 PARKING AND LOADING REQUIREMENTS

- A. Off-street loading spaces shall be provided as prescribed in Article 8-3J.5. Off-street parking spaces adequate to serve commercial establishments shall be made available, but may be provided on a district-wide or joint use basis rather than adjacent to each commercial use. If adequate public or commercial parking areas are not available, the individual business shall be responsible for providing adequate off-street parking in conformance with the requirements of Article 8-3J.5.
- B. On-site parking is prohibited between the building and the street, with the exception of sites with three or more frontages. Access to parking lots shall be from alleys wherever possible.

8-3D.295 LANDSCAPING, FENCES, WALLS AND SIGNS

All areas not occupied by structures, roadways or parking areas, walkways, bicycle paths, patios or other specific uses shall be landscaped and maintained. Fences, walls, hedges and screen plantings shall be permitted in conformance with Article 8-3J.3. In all cases, and at all times, they shall not exceed four (4) feet in height within front and street-side yards. All fences, walls, hedges and screen plantings shall be properly maintained. Signs shall be permitted and in conformance with Article 8-3J.7.

8-3D.296 BUFFERING

When a development or use is proposed on property within the CBD zone which abuts or is adjacent to a conflicting land use zone or an incompatible but permitted use within the same zone, the planning commission shall require a buffer sufficient to protect the intent of the adjacent zone or the integrity of the incompatible use. In many cases a fence, wall, hedge or screen planting along the property line closest to the conflicting use or zone will be sufficient. However, the type of buffer shall be considered in relation to existing uses, and the amount of permanence desired. Buffers may consist of spatial separation, physical barriers, landscaping, natural topography or other features. The greatest amount of buffering shall be required where necessary to protect an agricultural resource. Proposed buffers shall be subject to the approval of the planning commission, who shall review the buffering for adequacy and appropriateness as part of the site plan review.

When the Planning Commission determines that buffering is required to promote compatibility between a CBD property or use and an adjacent use (in any zone), buffering may be required in accordance with Section 8-3J.460(B). Similarly, the Planning Commission may waive buffering that would otherwise be required by Section 8-3J.460(B) if it finds that the need to fulfill the intent of the CBD zone outweighs the need for buffering.

8-3 Division M. Article 2.

NON-CONFORMING USES, LOTS AND STRUCTURES

8-3M.210 INTENT

Within the zones established by this Chapter, or amendments thereto, there exist lots, structures, and uses of land and structures which were lawful before this Chapter was enacted or amended by ordinance, but which would be prohibited, regulated, or restricted under the terms of this Chapter or amendments thereto. Such uses are generally considered to be incompatible with the permitted uses in the zone in which they are located, and their continuance shall therefore be permitted only in strict compliance with the restrictions of this Article. However, existing single-family residential uses shall not be treated as non-conforming uses, unless such use is voluntarily discontinued [amended by Ord. no. 777; 12/01/2004]. Subject to the provisions of this Article, a non-conforming structure or use may be continued and maintained in reasonable repair, but shall not be altered or extended except as provided herein. The extension of a non-conforming use to a portion of a structure, which was arranged or designed for the non-conforming use at the time of passage of this ordinance, is not considered an enlargement or expansion of a non-conforming use.

A use or structure which, on the date this ordinance takes effect and Ordinance Number 146 and amendments thereto are repealed, violates that ordinance as it then reads, shall not be regarded as non-conforming but shall remain in violation under this ordinance.

8-3M.220 NON-CONFORMING LOTS OF RECORD

In any zone in which single-family dwellings are permitted, notwithstanding limitations imposed by other provisions of this ordinance, a single-family dwelling and customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of the Zoning Chapter. This provision shall apply even though such lot fails to meet the requirements for area or width, or both. Yard dimensions and other requirements not involving area or width or both shall conform to the regulations for the zone in which such lot is located. For purposes of this Section, the pre-existing status of a lot must be clearly established by separate tax lot in the records of the Jackson County Assessor. No division of any parcel shall be permitted which leaves remaining any lot with width or areas below the requirements stated in this Chapter.

8-3M.230 NON-CONFORMING STRUCTURES

A structure that houses a conforming use, but that does not conform with height, setback, lot coverage, or structural requirements, may be altered or extended, if the alteration or extension does not deviate further from the standards of this Chapter. If a structure that does not meet minimum setback requirements is altered or extended under this provision, special construction standards may be required for fire safety, pursuant to the building code.

8-3M.240 NON-CONFORMING USES OF LAND

Where, at the effective date of adoption or amendment of this Chapter, lawful use of land exists that is made no longer permissible under the terms of this Chapter, such use may be continued, so long as it remains otherwise lawful, subject to the following provisions:

- A. No such non-conforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Chapter; and
- B. No such non-conforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use at the effective date of adoption or amendment of this Chapter; and
- C. If any such non-conforming use of land ceases for any reason for a period of more than forty-five (45) days, any subsequent use of such land shall conform to the regulations specified by this Chapter for the zone in which such land is located.

8-3M.250 NON-CONFORMING USES OF STRUCTURES AND PREMISES

A lawful use of a structure, or of structure and premises in combination, existing at the effective date of adoption or amendment of this Chapter, and which does not conform to the use regulations for the zone in which it is located, shall be deemed to be a non-conforming use and may be continued only in compliance with the following regulations:

- A. **Completion of structure.** Nothing in this Chapter shall be deemed to require a change in the plans, construction, or designated use of any building for which a building permit was issued prior to the effective date of this Chapter and upon which construction has commenced, provided the building, if non-conforming or intended for a non-conforming use, is completed and in use within one (1) year of the date of issuance of the building permit.
- B. **Repairs and maintenance.** Routine maintenance and repairs, including repair or replacement of non-bearing walls, fixtures, wiring or plumbing, may be performed on structures and premises, the use of which is non-conforming. Nothing in this Chapter shall be deemed to prevent the strengthening or restoring to a safe condition any building or part thereof declared unsafe by any official charged with protecting the public safety, upon order of such official.
- C. **Change of non-conforming use.** If a non-conforming use involving a structure is replaced by another use, the new use shall conform to this Chapter unless the planning commission determines that the proposed use is of the same or of a more restrictive classification, that the proposed use is of the same or of a more restrictive classification, that the proposed use will not affect the character of the area in which it is proposed to be located more adversely than the existing or pre-existing use, and that the change of use will not result in the enlargement of the cubic space occupied by a non-conforming use, except as provided in subsection (d) below. An application for a change of use must be filed in accordance with the provisions of Article 16, including the payment of required fee.

-
- D. **Enlargement of non-conforming use.** No existing structure that is wholly or partially occupied by a non-conforming use shall be structurally altered, move, extended, constructed, reconstructed, or enlarged in cubic space unless the alteration or enlargement will result in the elimination of non-conforming use; except that such building may be enlarged when authorized in accordance with the procedure and provisions set forth in Article 16, including the payment of the required fee.
- E. **Discontinuance of non-conforming use.**
1. Any structure, or structure and premises, in or on which a non-conforming use is superseded by a permitted use, shall thereafter conform to the requirements for the zone in which such structure is located, and the non-conforming use may not thereafter be resumed.
 2. If a non-conforming use of a structure is discontinued for a period of more than ninety (90) days, the further use of the property shall conform to this Chapter.
- F. **Destruction of Non-Conforming Use.** If a structure containing a non-conforming use is destroyed by fire, flood, explosion or other calamity to an extent exceeding seventy-five percent (75%) of the appraised value of the structure, as determined by the records of the county assessor for the year preceding destruction, a future structure or use on the property shall conform to the regulations for the zone in which it is located.

8-3M.260 IMPROVEMENT OF CERTAIN NON-CONFORMING USES

A use which is non-conforming with respect to provision for screening or buffering shall provide such screening or buffering within a period of three (3) years from the date this Chapter is adopted.

8-3M.270 CERTAIN USES NOT CONSIDERED NON-CONFORMING

Any use for which a conditional use permit or variance has been granted shall not be deemed a non-conforming use, and may be conducted only on the terms of the original permit and subject to all limitations under which the permit or variance was awarded.

THIS CHECK IS VOID WITHOUT A COLORED BACKGROUND AND AN ARTIFICIAL WATERMARK ON THE BACK - HOLD AT ANGLE TO VIEW

DAVIS HEARN
ANDERSON TURNER
ATTORNEYS AT LAW
515 E. MAIN STREET
ASHLAND, OR 97520

PEOPLE'S BANK OF COMMERCE
ASHLAND, OR 97520
96-673/1232

8914

DATE 2/8/2016

PAY
TO THE
ORDER OF

City of Talent

\$ **37.00

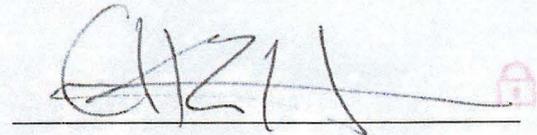
Thirty-Seven and 00/100***** DOLLARS

City of Talent

FOR:

MEMO

GREEN VALLEY WELLNESS LLC



⑈008914⑈ ⑆123206736⑆0200281600⑈

DAVIS, HEARN, ANDERSON & TURNER / ATTORNEYS AT LAW

8914

City of Talent

2/8/2016

5439 · Client Costs Advanced

16-151 CEH - Monarch - Filing Fee

37.00

Peoples Bk Op Acct 1

37.00

Zac Moody

From: GreenValleyWellness <greenvalleywellness@gmail.com>
Sent: Saturday, January 30, 2016 9:30 AM
To: Zac Moody
Subject: Re: Expansion of a Non-Conforming Use

How does Monday at 1pm work?

On Jan 29, 2016, at 3:22 PM, Zac Moody <ZMoody@cityoftalent.org> wrote:

I have time on Monday early afternoon and Wednesday most of the day. Let me know what works best and I will get you on my schedule.

Thanks,

Zac

Zac Moody
Community Development Director
City of Talent
110 E. Main Street
Talent, Oregon 97540

Office: 541-535-7401
www.cityoftalent.org

From: Green Valley Wellness [<mailto:greenvalleywellness@gmail.com>]
Sent: Friday, January 29, 2016 3:03 PM
To: Zac Moody <ZMoody@cityoftalent.org>
Subject: Re: Expansion of a Non-Conforming Use

Mr. Moody,

Thank you for your prompt response and for taking the time to expound with this email. Michael and I would love to set an appointment with you to learn more about the ordinance and discuss what's possible, at your earliest convenience.

Thank you again for your time,

Peter Gross
541-778-9733

On Friday, January 29, 2016, Zac Moody <ZMoody@cityoftalent.org> wrote:

Mr. Gross,

I received an email stating that you had some questions about expanding your medical marijuana facility to include recreational sales. I left you a message about your request, but wanted to provide you a response in email as well.

The existing use (medical marijuana facility) is currently not allowed in the zone. With that said, we would classify your use as non-conforming. In doing so, your request must meet the provisions of Section 8-3M.240, Non-Conforming Uses of Land which states:

8-3M.240 NON-CONFORMING USES OF LAND

Where, at the effective date of adoption or amendment of this Chapter, lawful use of land exists that is made no longer permissible under the terms of this Chapter, such use may be continued, so long as it remains otherwise lawful, subject to the following provisions:

A. No such non-conforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Chapter; and

B. No such non-conforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use at the effective date of adoption or amendment of this Chapter; and

C. If any such non-conforming use of land ceases for any reason for a period of more than forty-five (45) days, any subsequent use of such land shall conform to the regulations specified by this Chapter for the zone in which such land is located.

Considering the requested use is NOT allowed in the zone your business is located, the existing use in non-conforming and cannot occupy a greater area of land and the non-conforming use cannot be increased. With that said, Community Development would not be able to approve your requested addition of recreational sales of marijuana.

I have attached both the allowed uses in the Central Business District (CDB) and the regulations for non-conforming uses. I am certain that you will have questions about this determination, so please feel free to call or email me to set up an appointment if you would like to discuss this in more detail.

Thank you,

Zac

Zac Moody
Community Development Director
City of Talent
110 E. Main Street
Talent, Oregon 97540

Office: 541-535-7401

From: Coleen Bradley
Sent: Friday, January 29, 2016 12:35 PM
To: Zac Moody <ZMoody@cityoftalent.org>
Subject: Peter Gross

Peter Gross would like to talk to you re: zoning requirements to add recreational marijuana to his medical marijuana facility.

Phone #541-778-9733

Coleen Bradley

Community Development Clerk

541-535-7401

City of Talent
PO Box 445
110 East Main St.
Talent, OR 97540

www.CityofTalent.org

The City of Talent is an Equal Opportunity Provider

PUBLIC RECORDS LAW DISCLOSURE: This is a public document. This e-mail is subject to the State Retention Schedule and may be made available to the Public.

CONFIDENTIALITY NOTICE: This internet email message, replies and/or forwarded copies (and the materials attached to it, if any) are private and confidential. The information contained in this email or materials is privileged and is intended only for the use of the addressee. If you are not the intended addressee, be advised that the unauthorized use, disclosure, copying, distribution, or the taking of any action in reliance on the contents of this information is strictly prohibited. If you have received this transmission in error, please immediately notify us by telephone (541-535-1566) AND by email that you have received this email in error and have deleted it.

Talent, Oregon

City of Talent
PO Box 445
110 East Main St.
Talent, OR 97540

www.CityofTalent.org

The City of Talent is an Equal Opportunity Provider

PUBLIC RECORDS LAW DISCLOSURE: This is a public document. This e-mail is subject to the State Retention Schedule and may be made available to the Public.

CONFIDENTIALITY NOTICE: This internet email message, replies and/or forwarded copies (and the materials attached to it, if any) are private and confidential. The information contained in this email or materials is privileged and is intended only for the use of the addressee. If you are not the intended addressee, be advised that the unauthorized use, disclosure, copying, distribution, or the taking of any action in reliance on the contents of this information is strictly prohibited. If you have received this transmission in error, please immediately notify us by telephone (541-535-1566) AND by email that you have received this email in error and have deleted it.

[Talent, Oregon](#)

City of Talent
PO Box 445
110 East Main St.
Talent, OR 97540

www.CityofTalent.org

The City of Talent is an Equal Opportunity Provider

PUBLIC RECORDS LAW DISCLOSURE: This is a public document. This e-mail is subject to the State Retention Schedule and may be made available to the Public.

CONFIDENTIALITY NOTICE: This internet email message, replies and/or forwarded copies (and the materials attached to it, if any) are private and confidential. The information contained in this email or materials is privileged and is intended only for the use of the addressee. If you are not the intended addressee, be advised that the unauthorized use, disclosure, copying, distribution, or the taking of any action in reliance on the contents of this information is strictly prohibited. If you have received this transmission in error, please immediately notify us by telephone (541-535-1566) AND by email that you have received this email in error and have deleted it.

[Talent, Oregon](#)

Peter Gross COO, PRF
Green Valley Wellness LLC
greenvalleywellness@gmail.com

Zac Moody

From: Zac Moody
Sent: Wednesday, February 10, 2016 4:40 PM
To: 'Chris Hearn'
Cc: Tom Corrigan
Subject: RE: Rogue Valley Wellness | 103 N. Pacific Hwy., Units B & C | Request for City of Talent Planning Commission Interpretation

Mr. Hearn,

I have received and reviewed your request for the Planning Commission submitted on February 9, 2016 and am confused by the request. When we spoke, I advised that your client was concerned about Staff's interpretation of the term "increased use". My emails to your clients (forwarded to you) provide staff's interpretation of what defines an "increased use".

Your clients disagreed with staff's interpretation of "increased use" and therefore I recommended they request a code interpretation from the Planning Commission. While your finding do address this issue, the basis for your request of the Planning Commission appears to seek determine that the non-conforming use is legal and existed prior to the adopted zoning ordinance in December 2014. Your client's began their medical dispensary business in July of 2014 when recreational sales were NOT legal. Simply adding the use when it became legal in the State of Oregon doesn't make it a legal non-conforming use, it makes it a land use violation. No City approval has been given for recreational sales of marijuana at that location. If you feel your clients have a case for the legal non-conforming use, that is an entirely different process.

The request to determine "legal non-conforming" status is a Type III application reviewed by the Planning Commission. Although the application you submitted is directed to the Planning Commission, the determination of a legal non-conforming use does in fact require a public hearing and is required by the Talent Zoning Code and State Law to be noticed to the neighbors.

Your request is no longer simply asking for Planning Commission to define what "increased use" is, but rather you are asking them to determine that the recreational sales that began in October 2015 is an extension of the non-conforming use that began in July of 2014.

Considering that your request has changed, and the application begin presented is a Type III review, you will need to provide the appropriate land use fee which is \$222.00. We can apply the \$37 fee you previously paid to your application which would reduce the fee to \$185.00. Once we have this fee, we can process this application as a Type III review. You will receive a letter of completeness, followed by a notice of public hearing.

If the fee is remitted by March 1, 2016, we can begin processing the application and schedule it for the March 24, 2016 Planning Commission meeting.

If you would like to simply request an interpretation of "increased use" without requesting legal non-conforming status, we can continue to process your requested Planning Commission interpretation as previously discussed. Please note that staff will only be asking for an interpretation of "increased use" if you proceed with an interpretation. The Planning Commission will NOT hear your legal non-conforming use request at this meeting.

A hard copy of this information will be mailed to you tomorrow. Please let me know if you have any questions about this process.

Thanks,

Zac

Zac Moody

Community Development Director
City of Talent
110 E. Main Street
Talent, Oregon 97540

Office: 541-535-7401
www.cityoftalent.org

From: Chris Hearn [mailto:chearn@davishearn.com]
Sent: Monday, February 08, 2016 8:45 PM
To: Zac Moody <ZMoody@cityoftalent.org>
Cc: Coleen Bradley <coleen@cityoftalent.org>
Subject: Rogue Valley Wellness | 103 N. Pacific Hwy., Units B & C | Request for City of Talent Planning Commission Interpretation

Zac:

Please be so kind as to delete the previous submittal I sent you this afternoon as an email attachment, and to replace it with the attachment to this email message (which I recently updated to correct a few typos -- which I missed before).

This message is sent with the following final file attachment:

Rogue Valley Wellness LLC's Request for a Planning Commission Interpretation – 02/08/2016.

I will provide you with “hard copies” of the file attachment and check tomorrow morning.

As always, please let me know if you have questions or concerns.

ATTACHMENT. As referenced above, this message is sent with one (1) “.pdf” files appended to it. The file attachment appended to this message is provided for your review, information and files. Please contact me if you have any questions or concerns after reviewing the attachment. If you have any difficulty opening any attachment, or if you would like a hard copy of any file attachment transmitted to you by FAX or First Class Mail, then please contact my legal assistant, Dawn Caldwell (dcaldwell@davishearn.com or 541.482.3111).

Thanks and Best Regards,

Chris

CHRISTIAN E. HEARN | OSB #911829 | CSB # 134842
DAVIS, HEARN, ANDERSON & TURNER | a professional corporation
515 E. MAIN ST. | ASHLAND, OREGON 97520
email: chearn@davishearn.com | web: www.davishearn.com
phone: 541-482-3111 | fax: 541-488-4455
bio: <http://www.davishearn.com/attorneys/christian-e-hearn-attorney-at-law/>



CONFIDENTIALITY NOTICE: This message is from a law firm and may contain information that is confidential or legally privileged. If you are not the intended recipient of this message, please immediately advise the sender by reply email that this message has been inadvertently transmitted to you, delete this email and any attachments from your system, and promptly shred any printed copies. Thanks, *DAVIS, HEARN, ANDERSON & TURNER, PC* (541-482-3111) (www.davishearn.com).

Zac Moody

From: Zac Moody
Sent: Thursday, February 04, 2016 3:17 PM
To: 'Chris Hearn'
Subject: FW: Expansion of a Non-Conforming Use

Zac Moody

Community Development Director
City of Talent
110 E. Main Street
Talent, Oregon 97540

Office: 541-535-7401
www.cityoftalent.org

From: Zac Moody
Sent: Monday, February 01, 2016 4:03 PM
To: 'GreenValleyWellness' <greenvalleywellness@gmail.com>
Cc: Tom Corrigan <TCorrigan@cityoftalent.org>
Subject: RE: Expansion of a Non-Conforming Use

Mr. Gross,

Thank you for taking the time to come in and discuss your concerns about your proposed recreational dispensary use. As we discussed, I believe that the code language in Section 8-3D.230 specifically excludes a medical or recreational facility as an allowed use in the Central Business District zone. With that said, the current use is non-conforming and the provisions of Section 8-3M.240 apply.

The language states:

No such non-conforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Chapter.

It is Staff's determination that adding an additional use (recreational facility) is in fact increasing the non-conforming use and is therefore not allowed. In our discussion, you stated that you did not feel that you were "increasing" the non-conforming use. Webster's Dictionary defines increase as:

*"to become larger or greater in size, amount, number, etc." and;
"to become progressively greater (as in size, amount, number **or intensity**)"*

The addition of a recreational dispensary will likely intensify the use.

Some options we discussed:

- Request a Planning Commission interpretation on the terms "enlarge or increase" and/or (this will determine if you can expand the non-conforming use)

- Request a zone change to allow the use subject to a conditional use permit (this would be necessary if the Planning Commission determines the addition of recreational sales is an enlargement or increase in the use)

To request an interpretation you will need to submit a letter identifying the specific language you would like interpreted and the basis for request. In order to get your request on the next Planning Commission meeting agenda, you will need to provide a letter with your request by February 4, 2016 at 5pm. Planning inquiries or interpretations have a filing fee of \$37, which must be paid at the time the request is made.

Because this is NOT a public hearing, there will not be an opportunity to engage the Commission, so it is important that all of your arguments are included in your requested interpretation. The Planning Commission will receive a memo from Staff with its interpretation. The Planning Commission will discuss it and make an interpretation by motion. This is no appeal process for a Planning Commission interpretation unless a land use application is filed.

Please let me know if you have any other questions about preparing the letter to the Planning Commission.

Thanks,

Zac

Zac Moody
Community Development Director
City of Talent
110 E. Main Street
Talent, Oregon 97540

Office: 541-535-7401
www.cityoftalent.org

From: GreenValleyWellness [<mailto:greenvalleywellness@gmail.com>]
Sent: Saturday, January 30, 2016 9:30 AM
To: Zac Moody <ZMoody@cityoftalent.org>
Subject: Re: Expansion of a Non-Conforming Use

How does Monday at 1pm work?

On Jan 29, 2016, at 3:22 PM, Zac Moody <ZMoody@cityoftalent.org> wrote:

I have time on Monday early afternoon and Wednesday most of the day. Let me know what works best and I will get you on my schedule.

Thanks,

Zac

Zac Moody
Community Development Director
City of Talent
110 E. Main Street
Talent, Oregon 97540

Office: 541-535-7401
www.cityoftalent.org

From: Green Valley Wellness [<mailto:greenvalleywellness@gmail.com>]
Sent: Friday, January 29, 2016 3:03 PM
To: Zac Moody <ZMoody@cityoftalent.org>
Subject: Re: Expansion of a Non-Conforming Use

Mr. Moody,

Thank you for your prompt response and for taking the time to expound with this email. Michael and I would love to set an appointment with you to learn more about the ordinance and discuss what's possible, at your earliest convenience.

Thank you again for your time,

Peter Gross
541-778-9733

On Friday, January 29, 2016, Zac Moody <ZMoody@cityoftalent.org> wrote:

Mr. Gross,

I received an email stating that you had some questions about expanding your medical marijuana facility to include recreational sales. I left you a message about your request, but wanted to provide you a response in email as well.

The existing use (medical marijuana facility) is currently not allowed in the zone. With that said, we would classify your use as non-conforming. In doing so, your request must meet the provisions of Section 8-3M.240, Non-Conforming Uses of Land which states:

8-3M.240 NON-CONFORMING USES OF LAND

Where, at the effective date of adoption or amendment of this Chapter, lawful use of land exists that is made no longer permissible under the terms of this Chapter, such use may be continued, so long as it remains otherwise lawful, subject to the following provisions:

A. *No such non-conforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Chapter; and*

B. *No such non-conforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use at the effective date of adoption or amendment of this Chapter; and*

C. *If any such non-conforming use of land ceases for any reason for a period of more than forty-five (45) days, any subsequent use of such land shall conform to the regulations specified by this Chapter for the zone in which such land is located.*

Considering the requested use is NOT allowed in the zone your business is located, the existing use is non-conforming and cannot occupy a greater area of land and the non-conforming use cannot be increased. With that said, Community Development would not be able to approve your requested addition of recreational sales of marijuana.

I have attached both the allowed uses in the Central Business District (CDB) and the regulations for non-conforming uses. I am certain that you will have questions about this determination, so please feel free to call or email me to set up an appointment if you would like to discuss this in more detail.

Thank you,

Zac

Zac Moody
Community Development Director
City of Talent
110 E. Main Street
Talent, Oregon 97540

Office: 541-535-7401
www.cityoftalent.org

From: Coleen Bradley
Sent: Friday, January 29, 2016 12:35 PM
To: Zac Moody <ZMoody@cityoftalent.org>
Subject: Peter Gross

Peter Gross would like to talk to you re: zoning requirements to add recreational marijuana to his medical marijuana facility.

Phone #541-778-9733

Coleen Bradley

Community Development Clerk

541-535-7401

City of Talent
PO Box 445
110 East Main St.
Talent, OR 97540

www.CityofTalent.org

The City of Talent is an Equal Opportunity Provider

PUBLIC RECORDS LAW DISCLOSURE: This is a public document. This e-mail is subject to the State Retention Schedule and may be made available to the Public.

CONFIDENTIALITY NOTICE: This internet email message, replies and/or forwarded copies (and the materials attached to it, if any) are private and confidential. The information contained in this email or materials is privileged and is intended only for the use of the addressee. If you are not the intended addressee, be advised that the unauthorized use, disclosure, copying, distribution, or the taking of any action in reliance on the contents of this information is strictly prohibited. If you have received this transmission in error, please immediately notify us by telephone (541-535-1566) AND by email that you have received this email in error and have deleted it.

Talent, Oregon

City of Talent
PO Box 445
110 East Main St.
Talent, OR 97540

www.CityofTalent.org

The City of Talent is an Equal Opportunity Provider

PUBLIC RECORDS LAW DISCLOSURE: This is a public document. This e-mail is subject to the State Retention Schedule and may be made available to the Public.

CONFIDENTIALITY NOTICE: This internet email message, replies and/or forwarded copies (and the materials attached to it, if any) are private and confidential. The information contained in this email or materials is privileged and is intended only for the use of the addressee. If you are not the intended addressee, be advised that the unauthorized use, disclosure, copying, distribution, or the taking of any action in reliance on the contents of this information is strictly prohibited. If you have received this transmission in error, please immediately notify us by telephone (541-535-1566) AND by email that you have received this email in error and have deleted it.

Talent, Oregon

City of Talent
PO Box 445
110 East Main St.
Talent, OR 97540

www.CityofTalent.org

The City of Talent is an Equal Opportunity Provider

PUBLIC RECORDS LAW DISCLOSURE: This is a public document. This e-mail is subject to the State Retention Schedule and may be made available to the Public.

CONFIDENTIALITY NOTICE: This internet email message, replies and/or forwarded copies (and the materials attached to it, if any) are private and confidential. The information contained in this email or materials is privileged and is intended only for the use of the addressee. If you are not the intended addressee, be advised that the unauthorized use, disclosure, copying, distribution, or the taking of any action in reliance on the contents of this information is strictly prohibited. If you have received this transmission in error, please immediately notify us by telephone (541-535-1566) AND by email that you have received this email in error and have deleted it.

Talent, Oregon

Peter Gross COO, PRF
Green Valley Wellness LLC
greenvalleywellness@gmail.com



Commission Agenda Report

Meeting Date:	February 18, 2016	Primary Staff Contact:	Zac Moody
Department:	Community Development	E-Mail:	zmoody@cityoftalent.org
Staff Recommendation:	See Below	Estimated Time:	30 minutes

ISSUE BEFORE THE COMMISSION

The Commission is being asked to participate in a second work session designed to aid Staff in the amendment process of the City's Tree and Landscaping code. The purpose of this work session is to discuss suggested Commission recommendations from the last work session.

BACKGROUND

During the last Planning Commission work session, staff and the Planning Commission discussed the reasons for the draft code amendments. During the work session, staff presented the recommended code amendments splitting the current Tree and Landscaping and Fence codes into three separate divisions. Since then, Staff has reached out to arborists, Friends of Wagner Creek and private developers with the goal of receiving their comments and concerns. To date, we have one arborist and a representative from Together for Talent and Friends of Wagner Creek participating. The proposed amendments are as follows and are now discussed in three separate articles:

- Tree Preservation and Protection
- Landscaping, Fences and Hedges
- Public Trees

Tree Preservation and Protection

As mentioned in the previous work session, staff drafted the tree preservation and protection code based on state model code and other codes used throughout the State. Considering the different climates that exist in Oregon, using a model codes really only helped to establish a backbone for the code and didn't provide Staff with a lot of support for the type of trees in this region. Because of that, there are trees listed in the code that are not prominent in the Valley.

These trees only serve as a placeholder for the actual trees that will be included in the code. Staff is currently working with a local arborist to define what should be classified as prominent in Talent. This portion of the code is critical and provides staff with a quantitative means of determining if a tree has a significant or heritage classification. This determination allows Staff to quantify any mitigation necessary to replace the removed tree. Without this quantitative methodology, Staff is forced to only address tree removal in a riparian area or if a tree has been nominated by the City and classified as significant. Under the current regulation no mitigation is required unless the removed tree is within a riparian area.



Mitigation is an important part of the proposed code amendments and is necessary to encourage preservation and protection of the City's urban canopy. As proposed, mitigation is not required if three or less, non-heritage trees are removed within a calendar year (Type A Permit). Mitigation of significant trees only applies on a one to one basis if more than three trees are removed during the calendar year. Otherwise, mitigation is only required for trees with Heritage status. Some Planning Commissioners had concerns with the minimal mitigation requirements, but after reviewing other city's tree ordinances, what is being proposed is similar in regard to mitigation.

Landscaping, Fences and Hedges

As proposed in the last work session, the draft landscaping code provides staff with a quantitative methodology to determine the number of trees and shrubs required for any development. Initially, staff proposed percentages of required landscaping that was thought to be sufficient. However, during our discussion, the Planning Commission expressed concerns that the percentages of required landscaping were too low, especially if we were to allow a reduction of landscaping requirements if xeriscaping was proposed.

Based on these concerns, staff increased the required landscaping by 10% in each zone. Now a single family lot in a residential zone will be required to landscape 30% of the parcel. For example, an 8,000 square foot lot with 20% landscaping requirement would need to landscape a minimum of 1,600 square feet (2 trees and 8 shrubs). As revised, that single family lot would be required to landscape 2,400 square feet (3 trees and 12 shrubs). This increased percentage has a larger impact on commercial and industrial development that typically have a larger lot size. However, considering the potential requirements for screening and development of stormwater facilities on these properties, most new developments will find that they will exceed the requirements. Considering this, staff is not concerned with the increase in the percentage required.

In the proposed landscaping amendments, staff has recommended two sections of code be added to address citizen concerns about water and energy conservation and to provide some incentives to encourage the installation of solar and xeriscapes. The language originally proposed was more of a placeholder than anything while staff researched potential code language. As you can see with the revised amendments, staff has recommended new xeriscaping language and updated sections of the code that conflicted with xeriscaping, such as required landscaping materials. These changes are highlighted in red in the revised draft amendments. Much of the language was taken from the City of Ashland's Lawn Replacement Program which provides cash incentives for removal of "live lawn" or grass. Since the City of Talent is not in the position to provide cash incentives, staff modified the ordinance to provide other incentives, such as the reduction of landscaped area if xeriscaping is used.

Staff proposes retaining the current solar code language for now, as it provides flexibility to reduce the required amount of landscaped area and/or the quantity of landscaping material to accommodate solar installations. Staff feels that this section is sufficient until such time that evaluating energy savings from tree influence on ambient temperature versus energy savings from active and passive solar installations becomes practical.



Public Trees

Changes in this section were minimal based on the last draft language. Staff provided Public Works the opportunity to review the draft language and made some modifications based on their comments and concerns.

Public Works was concerned that some of the language in the existing code could obligate them to maintain of private trees adjacent to public property. The existing language appears to state that if a private tree is within six (6) feet of the right-of-way, it is maintained by the City. This is not the case and has never been the intent.

To remedy this, staff removed language that identified a public tree as one that was within six (6) feet of the public right-of-way. This change in language obligates Public Works to only maintain trees in the public right-of-way and gives the City the ability to better address private tree issues that are impacting the right-of-way.

Attached to this report are the final drafts of the proposed amendments for your review. It is Staff's goal to review these proposed changes with the Planning Commission and take additional suggestions on text that should be added or removed or to bring forward any potential code conflicts or concerns.

STAFF RECOMMENDATION

None

RELATED CITY POLICIES

None

COMMISSION OPTIONS

Direct Staff to continue to refine amendments and present proposed amendments during a public hearing at the March 24, 2016 Planning Commission meeting or prepare a third work session.

POTENTIAL MOTIONS

None

ATTACHMENTS

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

8-3 Division J. Article 3.

TREE PRESERVATION AND PROTECTION

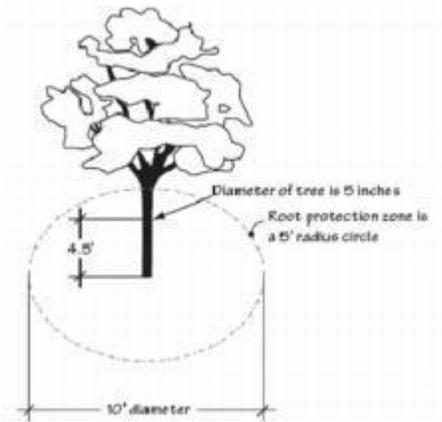
8-3J.300 DESCRIPTION AND PURPOSE

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 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 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.

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 in accordance with Section 8-3J.1080.

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. "Public tree" A tree or woody plant with its base located within or adjacent to a public right-of-way or any tree or woody plant within a city park, or other publicly owned property. Public Trees include trees within existing planting strips or sidewalk tree wells. Public Trees typically have a single trunk at least 2 inches in diameter at a point six inches above the mean ground level at the base of the trunk.
- 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.
 - 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 party designated by the Community Development Director.

8-3J.330 APPLICATION 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.

-
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 public 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 request is not proposed 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.
- 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 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.
 - 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.
 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:
- 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;
 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:

$$\text{Replacement trees} = 1 + (A - Q)$$

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;
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.

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 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.
- 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.380 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.
- 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.390 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 Section 8-3J.360(D) 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:
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. A person that 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.

DR

8-3 Division J. Article 10. PUBLIC TREES

8-3J.1000 DESCRIPTION AND PURPOSE

The purpose of this Article is to provide for the regulation of planting, maintenance, and removal of publicly owned trees, shrubs, and other plants and Street Trees adjacent to public rights-of-way.

8-3J.1010 DEFINITIONS

- A. **Public Tree.** A tree or woody plant with its base located within or adjacent to a public right-of-way or any tree or woody plant within a city park, or other publicly owned property. Public Trees include trees within existing planting strips or sidewalk tree wells. ~~Trees are considered adjacent if they are within 6 feet (measured at the center of the tree) of public rights of way along arterial, collector, and local streets.~~ Public Trees typically have a single trunk at least 2 inches in diameter at a point six inches above the mean ground level at the base of the trunk.
- B. **Significant and Heritage Tree.** See Section 8-3J.310 of the Talent Zoning Code.

8-3J.1020 PREMISSION TO PLANT OR REMOVE

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. A permit for the removal of any public tree shall be in accordance with the Tree Preservation and Protection requirements of Section 8-3J.3 of the Talent Zoning Code. Applicants for a removal permit may be required to mitigate the removal of tree or trees in accordance with the provisions of Section 8-3J.360 Mitigation.

Planting of public trees shall generally follow construction of curbs and sidewalks, however, the City may defer tree planting until final inspection of completed dwellings to avoid damage to trees during construction. When public trees are proposed, their selection and installation shall be according to the following requirements.

- A. **Species selection.** Trees shall be selected from the City's adopted tree list and shall be appropriate for the planting location based on the criteria found therein.
- B. **Caliper Size.** All street trees shall be a minimum of 2 inch caliper at time of planting.
- C. **Spacing and Location.** Street trees shall be planted within the street right-of-way within existing and proposed planting strips or in sidewalk tree wells on streets without planting strips, except when utility easements occupy these areas. Street tree spacing shall be determined by the type of tree(s) selected and the canopy size at maturity and, at a minimum, the planting area shall contain 16 square feet, or typically, 4 feet by 4 feet. In general, trees shall be spaced at 30-40 foot intervals, except where planting a tree would conflict with existing trees, retaining walls, utilities and similar physical barriers. All street trees shall be placed outside utility easements and clear vision areas.
- D. **Growth Characteristics.** Trees shall be selected based on climate zone, growth characteristics and site conditions, including available space, overhead clearance, soil conditions, exposure, and

desired color and appearance. The following should guide tree selection by developers and approval by the City:

1. Provide a broad canopy where shade is desired, except where limited by available space.
2. Use low-growing trees for spaces under low utility wires.
3. Select trees which can be “limbed-up” to comply with vision clearance requirements.
4. Use species with similar growth characteristics on the same block for design continuity.
5. Use deciduous trees for summer shade and winter sun, unless unsuited to the location due to soil, wind, sun exposure, annual precipitation, or exhaust.

E. **Replacement.** Replacement of public trees shall be the responsibility of the developer for a period of 2 years from the time of planting, and shall be guaranteed through a warranty bond prior to final plat.

8-3J.1030 TREE PLANNING NOTIFICATION

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 (6) feet of any owner’s property.

8-3J.1040 TREES PROHIBITED

No person shall plant on any public property **or private property within six (6) feet of a public right-of-way** 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.1050 PUBLIC TREE MAINTENANCE

A. **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.

1. 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. ~~or within six (6) feet of the owner’s property.~~ The property owner will be given the option to maintain **public** trees and assume the responsibility and cost for maintenance.
2. 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~~ located on private property within six (6) feet of the public right-of-way.

3. 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. Branches over the street shall be pruned to a height of thirteen feet, six inches (13'6") and eight (8) feet above a sidewalk.
 - 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.
 - e. Debris Removal. The person working on trees on a street, highway, or public area shall be required to remove all debris from the right-of-way by sunset of the same day, unless specifically authorized to do otherwise by the Community Development Director, or designee. The acceptable standard shall be a broom clean finish or better.
 4. 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.
 5. 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.
- B. **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. Trees severely 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.
- C. **Dangerous Tree – Nuisance – Removal.** Any tree or shrub growing in any public property, on private property, or in a planting strip abutting public property, which is a public safety hazard or which may endanger the security or usefulness of any public street, sewer, or sidewalk; is declared to be a public nuisance. The abatement procedure of 4-8.20 through 4-8.25 shall be applied.
- D. **Trees – Abuse – Mutilation.** No person shall abuse, destroy, or mutilate any tree, shrub, or plant in a public planting strip, park, or any other public property. This includes attaching or placing any rope or wire (other than one used to support a young or damaged tree), signs, posters, or handbills to any public tree; or allowing any wire charged with electricity, or any gaseous, liquid, or solid substance which is harmful to the trees, to come in contact with the roots or leaves of any such tree.

8-3J.1060 PUBLIC 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:

- A. Making recommendations to the City Council for nominating public trees for Locally Significant or Heritage Tree designation;
- B. Assisting City staff with Arbor Day observance.

8-3J.1070 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.1080 TREE NOMINATIONS – HERITAGE OR SIGNIFICANT

Any community member may go before the Tree Committee to nominate a public tree to be designated as a Locally Significant or Heritage 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.

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.420 MINIMUM LANDSCAPED AREA

- A. The minimum percentage of required landscaping is as follows:
1. Residential Zones. 30 percent of each lot for residential developments.
 2. Central Business District (CBD) and Central Business Highway (CBH) Zones. 20 percent of the site.
 3. Commercial Highway (CH) and Commercial Interchange (CI) Zones. 20 percent of the site.
 4. Industrial Zones (IL). 10 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.430 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.430(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 **unless a xeriscape plan is approved.**
- 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. **The landscape materials below may be modified as part of an approved xeriscape plan.**
1. **Existing Vegetation.** Existing non-invasive vegetation may be used in meeting landscape requirements.

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 (unless a xeriscape plan is approved); 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 Development 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 unless approved as part a xeriscape plan.

8-3J.440 TREES PROHIBITED

No person shall plant on any public property or within 10 (ten) feet of 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 ten (10) feet of the public right-of-way. No person shall plant any tree anywhere in the City so as to adversely affect public utilities.

8-3J.450 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 8-3J.450(A), above).
 2. In addition to the general provisions of Section 8-3J.450(A), 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.
- 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, buffering provisions in Section 8-8.560 shall be addressed when urban development on land along the urban growth boundary abutting land zoned Exclusive Farm Use is proposed.

8-3J.460 FENCES AND HEDGES

Fences, walls, hedges, screen plantings and similar regulated objects¹ 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:

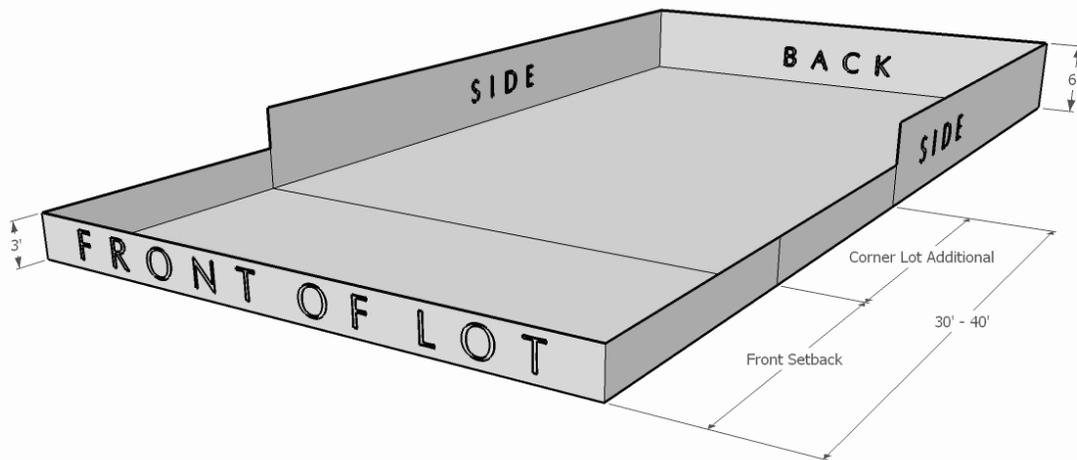
- A. **Materials.** No one may construct fences or walls of or containing material(s) that can do bodily harm, such as barbed wire, broken glass, or any other hazardous or dangerous materials. For barbed wire and electric fence exceptions, see Section 4-8.13 of the City Ordinances.
- B. **Placement.**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

- 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.

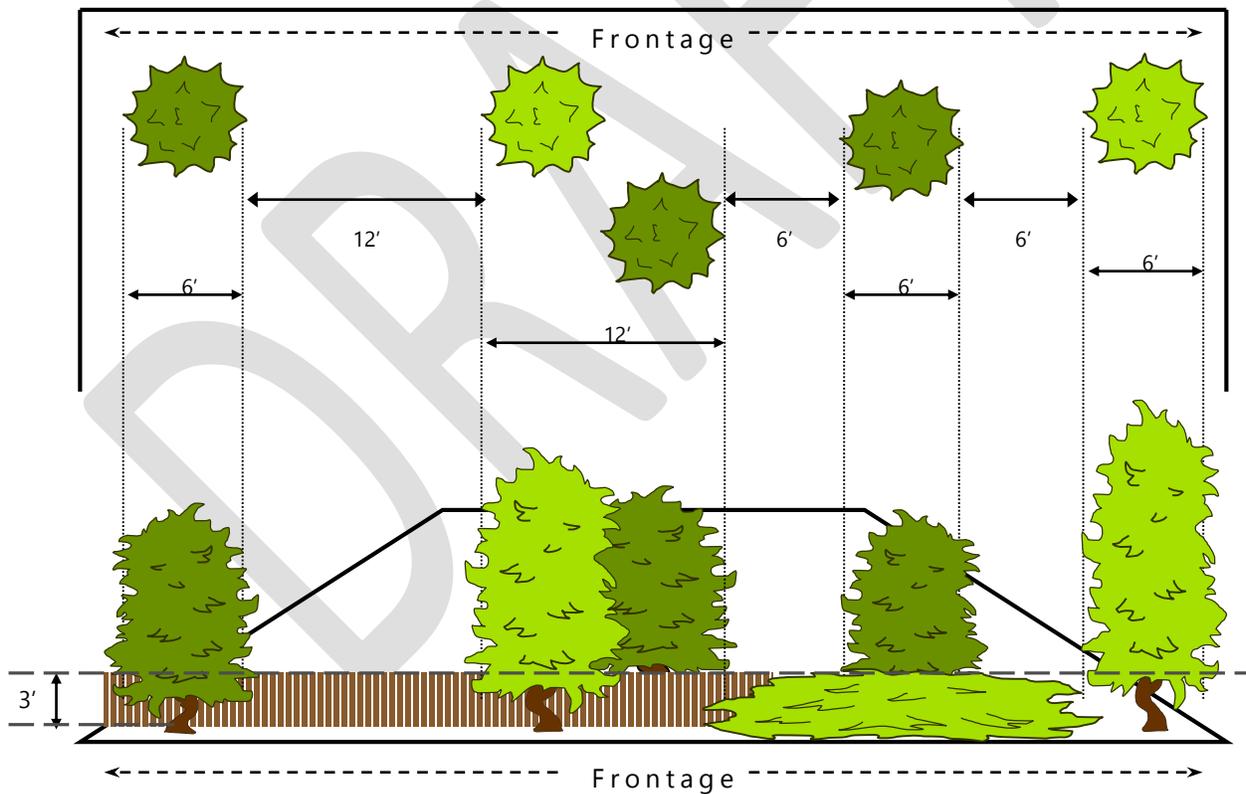
E. Allowances.

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

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.



$$\begin{aligned} \text{Blockage} &= 6 + 12 + 6 + 6 = 30 \text{ feet} \\ &= 30 \text{ feet blockage on a 60-foot-wide lot} \\ &= 50\% \text{ blockage: } \mathbf{Allowed}; \text{ and the 6-in-12 gapping standard is met.} \end{aligned}$$

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).

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.470 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

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

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.420 and 430–above.

8-3J.480 SOLAR CONSIDERATIONS

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.490 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 landscaping requirements ~~for~~ including a reduction of the total number of trees to be planted, or total landscaped area. To be eligible for reduced landscaping requirements, the following requirements must be met.

A. Eligibility.

1. Must be City of Talent utility customer with potable water (not TID) for irrigation.
2. Project must demonstrate a reduction in water use compared to the necessary water required for standard landscaping.
3. The square footage of the xeriscape area must be at least 50% of the required landscaped area in Section 8-3J.415. Proposed projects meeting this requirement will be allowed to reduce the overall landscaped area by 10% of that required in Section 8-3J.415 above.

B. Submittal Requirements. The following must be included with any xeriscaping project when a reduction of landscape requirements is being requested.

1. Interested parties wishing to xeriscape a portion of a parcel to reduce landscaping requirements shall supply the City with a completed xeriscape application.
2. Site Description. Applicants are required to submit a simple site design plan including all required landscaping, proposed xeriscaping and irrigation to be installed. The plan shall include the location of plants and type of irrigation for each plant. All xeriscaping shall meet the landscaping requirements below:
 - a. Plants. 90% of the plant material must be drought tolerant or considered low water use plants (based on the Water-Wise Landscaping Website, WUCOLS).
 - b. Plant Coverage. At completion, xeriscape areas must contain enough plants to create at least 50% living plant cover at maturity. Xeriscape areas may NOT include any live lawn (grass) or invasive plant species as defined by the Oregon Department of Agriculture noxious weed list.
 - c. Efficient Irrigation Components. If a watering system is used, all sprinkler heads in the xeriscape areas must be low volume (drip, micro-spray, bubblers, or low precipitation rotating nozzles).
 - d. Prevent Overspray. The xeriscape area shall not be irrigated or over sprayed by other required non-xeriscape areas.
 - e. Permeable Surfaces and Treatments. In residential areas, no concrete, plastic sheeting or other impermeable surfaces shall be used in an identified xeriscape area.
 - f. Mulch. Exposed soil must be completely covered by a layer of mulch. Common mulching materials include wood chips, decomposed granite, river rock, and bark. If weed barrier is used beneath the mulch, it must be manufactured to be permeable to air and water.
 - g. Living Groundcover. Qualifies as mulch provided the plants are installed at a density to assure 100% plant coverage at maturity.

C. Approval Criteria. After examination of the design plan, City Staff shall approve or approved with conditions if the following requirements have been met:

1. Submittal requirements of Section 8-3J.426(B) have been met;
2. A pre-inspection of the site has been conducted by City Staff to determine the feasibility of the plan.

D. Inspection Process. All projects shall have a final inspection to ensure that all proposed xeriscaping has been completed in accordance with the approved plan. Certificate of Occupancy shall be issued once final inspection and approval has been granted.