
8-3 Division J. Article 3.

TREE PRESERVATION AND PROTECTION

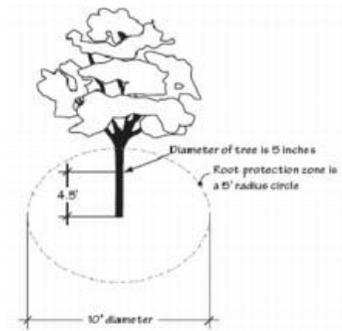
8-3J.300 DESCRIPTION AND PURPOSE

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.

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- 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 deciduous tree 28” in diameter or larger or any conifer tree 32” or larger which are not hazardous trees as defined above. Exception: Japanese Maple and Dogwood trees with a diameter greater than 1” are considered heritage. Deciduous and Conifer trees may include but are not limited to the following:

Deciduous

Black, White, Red and Burr Oak

Beech

Sycamore or Planetree

Zelcova

Maple

Ash

Dogwood

Madrone

Conifer

Douglas Fir

Redwood

Blue Atlas Cedar

Bald Cypress

Monterey Cypress

Ponderosa Pine

Sequoia

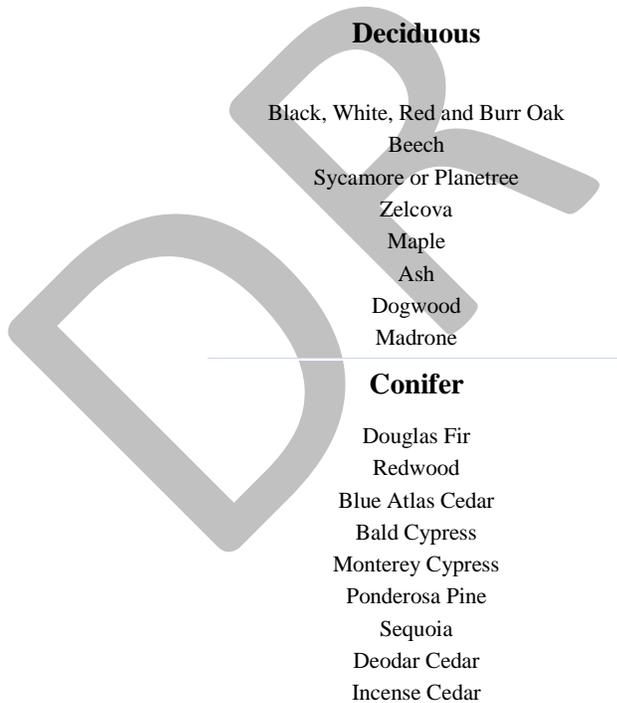
Deodar Cedar

Incense Cedar

- 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:

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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 deciduous tree 28" in diameter or larger or any conifer tree 32" or larger which are not hazardous trees as defined above. Exception: Japanese Maple and Dogwood trees with a diameter greater than 8" are considered significant. Deciduous and Conifer trees may include but are not limited to the following:



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- 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.

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- 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.

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2. The request is for removal of a single tree 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 if funds are available.**

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.

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- 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 Community Development Director 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 Community Development Director 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 in accordance with Section 8-3J360 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

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- 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

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- 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 definition of a significant tree, 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 floodplain, parks, and greenway zone (OFPG) may not be counted towards required mitigation.

Commented [ZM1]: Compare with significant tree sizes

Big leaf maple	2 – 8" 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

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 Community Development Director 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 Community Development Director.
- C. Inspection and approval of all required tree protection measures by the Community Development Director 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.
- E. All required mitigation shall be completed within one (1) year of the removal o

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.

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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.

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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 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. 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 and shall also require a Right-of-Way permit. 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 public 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 PLANTING NOTIFICATION

The City may plant trees on any public right-of-way, park, or other public property. The City will notify private property owners 24 hours 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 the following trees if the tree’s future critical root zone (CRZ) at maturity (CRZ is defined in Section 8-3J.310) is within the public right-of-way: 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 along collector and arterial streets.
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 where the CRZ is within 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 or a hazard.
 - 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 neglects to perform any duty required by this section and 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.

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 Commission. 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). 15 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 private property the following trees if the tree’s future critical root zone (CRZ) at maturity (CRZ is defined in Section 8-3J.310) is within the public right-of-way: 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.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. **In the case that a proposed building is directly adjacent to the required setbacks, a fence or wall is not an appropriate buffer and a Section (b) below shall be required.**
 - 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 objects 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.

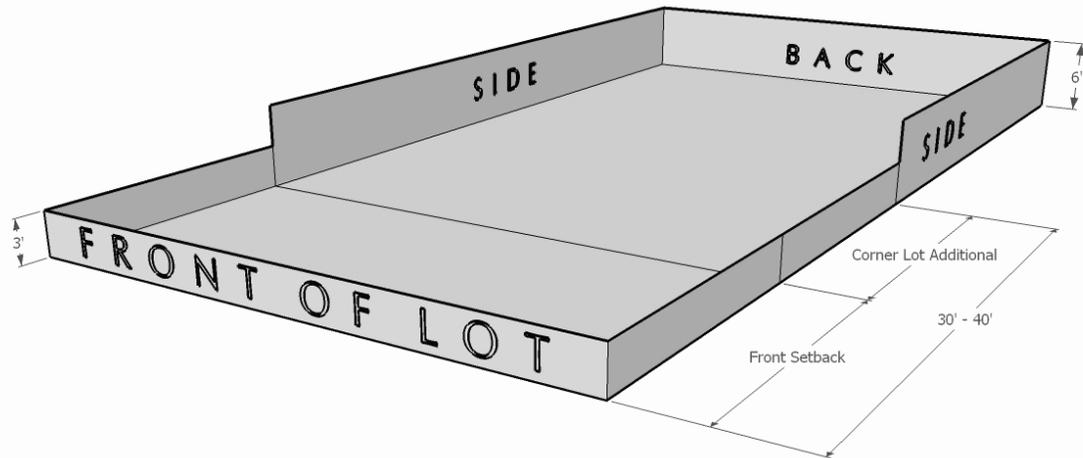
All fences and hedges are subject to the following standards:

- 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.

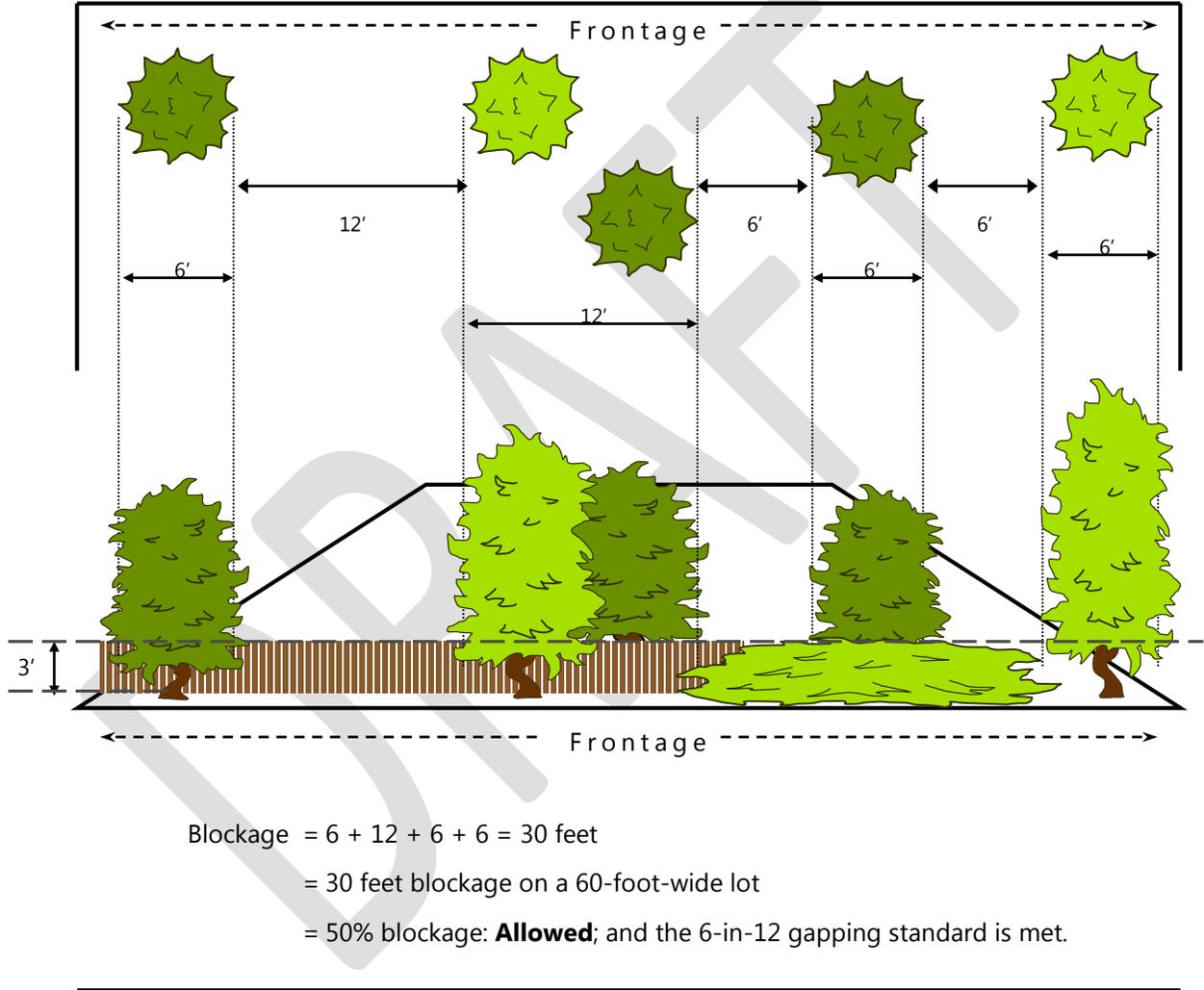
1. Generally, height is measured from the adjacent ground upward.
2. When fences are built on top of retaining walls, or one lot is markedly higher than an adjacent lot, height shall be measured from the highest adjacent grade, except that a fence or wall may not be higher than eight (8) feet above the 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 total blockage of the frontage is 50 percent or less *and* there are six-foot gaps for every 12 feet of grouping (see *Figure 3-2*). This allowance does not extend to the 'sight triangle' area in 350(D).

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



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 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 oversprayed 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.