

Minutes

Bend Planning Commission

Monday, June 03, 2024, 5:30 P.M. Regular Meeting



The hybrid meeting started at 5:30 P.M., in-person and online.

The public was invited to watch online at: www.bendoregon.gov/planningcommission

1. ROLL CALL:

- Margo Clinton – Chair
- Sue Gordhammer – Vice Chair
- Bob Gressens
- Suzanne Johannsen
- Nathan Nelson
- Jeff Payne
- Scott Winters

Commissioners Present: All Commissioners were present except for Chair Margo Clinton. Commissioners Jeff Payne and Scott Winters joined the meeting virtually.

Staff Present: Ian Leitheiser, City Attorney; Colin Stephens, CEDD Director; Renee Brooke, Planning Manager; Pauline Hardie, Senior Planner

2. VISITORS:

The Chair opened the floor for comments on non-agenda items. Attendees were encouraged to fill out a speaker slip and approach the podium, or raise their hand online, to provide comments.

No public comment was given.

3. TREE CODE UPDATE WORK SESSION: PLTEXT20230178

Senior Planner Pauline Hardie gave a [presentation](#) on the legislative text amendments to the Bend Development Code related to tree preservation, street trees, and planter strip landscaping requirements, highlighting that these requirements aim to support the City Council's environmental and climate goals. She discussed the process undertaken by the Tree Regulation Update Advisory Committee (TRUAC), which was established in May 2023. The committee, comprising 15 community members, including arborists, developers, and representatives from various community organizations, held nine meetings to review and develop recommendations for the tree code amendments.

A significant focus of the amendments was to ensure consistency across different codes related to tree preservation in Bend. The amendments are designed to align the Bend Municipal Code (Title 16), Bend Development Code (Chapter 3.2), and the City's

Standards and Specifications (Chapter 12), all of which address tree preservation in various contexts.

The key amendments to Bend Development Code Chapter 3.2 include new preservation requirements for larger trees, with flexibility in how these requirements can be met. This includes a discretionary review path for developers who cannot meet the standard requirements, with mitigation options allowing for either on-site tree replacement, payment in lieu of preservation, or a combination of both approaches. The payment in lieu is proposed at \$600 per replacement tree.

The minimum site size subject to the new code is one acre, with specific requirements for tree inventory, preservation, and mitigation based on tree size. Developers may be allowed to use various incentives, including reductions in setbacks, lot coverage, and other development standards, when they preserve more than 20 percent of the Priority Trees on-site or when more than 25 percent of the total DBH of all Regulated Trees is preserved on-site.

Additionally, new requirements for street trees and water-efficient planter strip landscaping were introduced.

To conclude the presentation, Hardie outlined the next steps in the process. The Planning Commission will hold a public hearing on the amendments Monday, June 10th, followed by a City Council hearing on June 20th. The second reading by the City Council is scheduled for July 17th, with most of the code updates expected to take effect on August 16th. Specific requirements for water-efficient landscaping in planter strips will become effective on November 1st.

Commissioner Jeff Payne expressed concern regarding the allowance of street trees, such as Ponderosa Pines, within the clear vision corner. In response, staff assured that there are specific site and angle distance requirements, including height restrictions, to ensure safety.

Commissioner Johannsen questioned the impact of construction on the root protection zone for preserved trees and raised concerns about the determination of dead or dying trees, given the dry, desert landscape. This could lead to more trees being classified as "unsavable" and thus increasing the risk of tree loss. Staff members reassured the commission that the development code includes provisions to prevent root disturbance, such as a protective fence line, and emphasized the use of ISA-certified arborists, who adhere to a strict code of ethics and provide supporting documentation before making the determination that a tree is dead or diseased. Johannsen also inquired about the city's capability to map the urban canopy, to which Hardie responded that she is exploring this option.

Commissioner Nelson questioned the \$600 fee in lieu of trees, seeking clarification on its calculation and clarified that the fee represents a per-tree replacement. Hardie explained that the fee was based on the combined costs of staff time for purchasing, planting, irrigating, and maintaining the tree, which is approximately \$600, adding that

the funds collected would contribute to expanding the city's urban tree canopy. Nelson expressed support for this idea.

Nelson inquired about the evaluation process post-implementation. Staff noted that the impact might not be fully understood for years due to the time required for development and permitting processes, noting that potential adjustments may need to be made based on feedback and observed usage of the tree preservation and mitigation options.

Nelson addressed TRUAC about balancing tree preservation with housing development needs. Geoff Harris, Chair of the Tree Regulation Update Advisory Committee, described the committee's diverse discussions, which led to a deeper understanding of various perspectives, resulting in a balanced recommendation despite some disagreements.

Commissioner Scott Winters inquired about the responsibility for trees in areas added to Bend's urban growth boundary but not yet annexed. He expressed concern that developers might remove trees before these areas officially become part of the city. CEDD Director Colin Stephens explained that these areas are governed by a Joint Management Agreement between the City of Bend and Deschutes County. This agreement allows the city to apply its regulations, including tree preservation rules, even before annexation.

Commissioner Winters expressed a preference for environmental updates to the code, such as addressing species selection and water consumption, rather than just tree preservation. Harris mentioned that TRUAC discussed species like Junipers, noting their high-water consumption despite being drought resistant. Planning Manager Renee Brooke added that TRUAC chose not to mandate specific tree species for replacement to allow flexibility for developers. Dan Denning, Water Conservation Manager, stated that water usage was considered for the planter strip landscaping and street trees and that educational outreach is still the primary action to improve water efficiency.

Vice Chair Sue Gordhammer expressed disappointment regarding the requirement that preserved trees are only expected to be maintained for a minimum of three years by the property owner. She felt this timeframe was too short and asked about the rationale behind the three-year period. Additionally, she inquired whether there was any consideration for a process that would require additional approval to remove a tree that was part of the approved preservation plan.

Hardie responded by explaining that the three-year requirement was a compromise based on examples from various cities. City Attorney Ian Leitheiser explained that extending the timeframe was unrealistic, especially for subsequent property owners who may be unaware of the original land use conditions. He explained that some cities have tree removal permit programs, but such a program was not included in the scope of this project.

Commissioner Bob Gressens expressed concern that developers might exploit the code by choosing the minimal mitigation option of clear-cutting and paying a fee, rather than

preserving trees. Staff acknowledged that the code's effectiveness would need to be evaluated over time, with the possibility of future amendments if necessary. Commissioners agreed that while the code was a significant improvement, the risk of developers not acting in good faith remained a concern that would need to be monitored.

Harris shared several insights from the committee's discussions—that land use regulations in Oregon can sometimes force developers to focus on density to justify expanding the urban growth boundary, and the importance of considering factors such as engineering standards, wildfire risk, and zoning districts in future discussions.

Commissioner Nelson addressed the recent recommendations from the State's Housing Production Advisory Council (HPAC), which proposed a 10-year moratorium for preserving trees smaller than 48 inches in diameter. He asked how Bend's Tree Code would be affected if these recommendations were adopted. Leitheiser responded that while these recommendations are not yet law, if they were adopted, Bend would need to revise its Tree Code significantly. This would involve either adjusting the existing code or potentially suspending it, depending on the legislative requirements and timelines. This HPAC recommendation reflects ongoing aggressive considerations around housing development and noted that any necessary changes would depend on future legislative actions.

The meeting concluded with a reminder that a public hearing on the tree code proposal would be held the following Monday, June 10th, encouraging public participation.

4. APPROVAL OF MINUTES:

The Planning Commission approved the April 8, 2024 meeting minutes.

5. COMMUNICATIONS:

5.1. Reports From Planning Commissioners

Planning Commissioners expressed their gratitude for the efforts of staff and TRUAC in striking a reasonable balance with the code development. Vice Chair Sue Gordhammer made an announcement that she would be stepping down from the Planning Commission due to relocating out of the area.

5.2. Report From Planning Manager

Renee Brooke, Planning Manager, provided a reminder about the upcoming meeting on June 10th, where the tree code update will be the sole topic on the agenda. She mentioned that the agenda, staff transmittal memo, and draft findings are available online. Additionally, the latest version of the development code, along with revised slides, will be uploaded, with a revision date noted.

Brooke acknowledged that Commissioner Nelson had volunteered to represent the Planning Commission at the City Council meeting on Wednesday evening, where he will present the Commission's recommendations on two items discussed at the last Commission meeting. Commissioner Nelson mentioned that he had prepared a transcript to read out during the meeting, which had been forwarded to the Commission members. He noted that a small correction had been made, and he felt prepared for the presentation.

5.3. Report From Community and Economic Development Director

There were no reports from Colin Stephens, CEDD Director.

5.4. Report From City Attorney

There were no reports from Ian Leitheiser, Assistant City Attorney.

The meeting was adjourned at 7:22 p.m.

Minutes submitted by Maggie St. Onge