

# Minutes

## Bend Planning Commission

Monday, June 10, 2024, 5:30 P.M. Regular Meeting



COMMUNITY  
DEVELOPMENT

The hybrid meeting started at 5:32 P.M., in-person and online.

The public was invited to watch online at: [www.bendoregon.gov/planningcommission](http://www.bendoregon.gov/planningcommission)

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### 1. ROLL CALL:

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

**Commissioners Present:** All Commissioners were present.

**Staff Present:** Pauline Hardie, Renee Brooke, Ian Leitheiser, Dan Denning and Lori Faha

### 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.

### 2. LEGISLATIVE PUBLIC HEARING:

#### 2.1. [PLTEXT20230178](#): BDC Tree Regulations

Proposed text amendments to the Bend Development Code (BDC) relating to tree preservation and street tree and planter strip landscaping requirements.

Staff: Pauline Hardie, Senior Planner, [phardie@bendoregon.gov](mailto:phardie@bendoregon.gov)

Chair Clinton convened the hearing at 5:34 PM.

Senior Planner Hardie gave her [presentation](#). She provided the background on the timing of the draft amendments and the scope of work for these changes that came from the City Council's 2022-23 and 2023-2025 Environmental and Climate goals and to address community concerns regarding loss of trees during development. The Tree Regulation Update Advisory Committee (TRUAC) was created by Council to look at updates to tree preservation

standards while limiting barriers to build needed housing. Staff Members Lori Faha and Dan Denning are available to answer questions about the proposed amendments to prohibit turf in the planter strips and related code updates.

Ms. Hardie highlighted the Code sections to be revised for consistency throughout the Bend Municipal Code, defined Regulated Trees and Priority Trees and which development projects would require tree preservation, qualify for exceptions or would be exempt. She explained the new application submittal requirements (inventory tables, tree preservation site plan, calculations for preservation and/or replacement), and outlined the three preservation options for the clear and objective path. For projects where it is not feasible to meet the clear and objective tree preservation standards, there is a discretionary approval track with mitigation (tree replacement and/or payment in lieu of preservation). The regulations also provide incentives for tree preservation beyond the minimum standards.

Ms. Hardie outlined the expanded street tree requirements for residential development where sidewalks exist or sidewalks will be required, removal of the tree list from the Bend Development Code and adding an expanded list of trees as an appendix to the City Standards and Specifications. The updated landscaping requirements prohibit turf in the landscape strip and provides a list of plant species for planter strip landscaping as Appendix E to the Standards and Specifications.

Ms. Hardie outlined the number of TRUAC meetings and public outreach for the proposed BDC amendments.

Commissioners Winters asked if the specific tree preservation standards and incentives contained in the Southeast Area Plan (SEAP) would be going away.

Senior Planner Hardie and Planning Manager Renee Brooke explained that the SEAP standards would be amended in order to keep the preservation standards the same across the City. There are more incentives proposed City-wide, but the current height incentive in SEAP is not included.

Commissioner Gordhammer asked about trees straddling property lines (boundary trees) not being included in tree preservation calculations.

City staff explained that boundary trees are not part of the tree inventory and City Attorney Leitheiser stated that State law says a boundary tree that touches more than one piece of property is shared in terms of responsibility, so we are not giving one property owner more authority than another.

Commissioner Clinton suggested adding a definition of Boundary Tree into the Code.

Commissioner Winters asked if the Boundary tree cannot be removed even if both owners consent. Staff responded that the tree can be removed if all responsible parties agree.

Commissioner Johannsen inquired about inconsistent arborist language (certified arborist/qualified professional) in the code and concerns with tree health evaluations, how frequently the street tree list would be updated, when would mitigation be re-evaluated and how the required 3-year tree survival requirement would be monitored. She asked about the use of bark dust on the landscaping as a fire hazard.

City Staff stated a qualified professional or surveyor can prepare the inventory, but the health evaluation for poor/very poor tree health designation must be done by an ISA arborist. City Staff member Dan Denning stated the tree list was developed with experts. Planner Hardie added that moving the street tree list out of the Development Code makes it easier to update regularly. City Staff stated that it will take several years for projects to go through the development process under the new codes and there is a commitment to City Council for tracking options chosen by developers but gave no specific timing for reporting. The three-year monitoring period will start at the date of the Certificate of Occupancy or recording the Final Plat, and that staff typically discovers tree/landscaping death when the owner seeks future permits or when reported to the city by the public. City Staff Denning stated that composted mulch retains moisture and does not radiate heat as rock would and wanted to provide options while keeping Firewise policies in mind.

Commissioner Nelson inquired about using in lieu fees to offset affordable housing costs for planting trees and about exempting affordable housing from tree preservation. Planning Manager Brooke stated TRUAC looked at pros and cons of exempting affordable housing. It is something that Planning Commission could consider recommending to City Council.

Chair Clinton asked how the 6-inch size was chosen, raised the issues of junipers, clarification of root protection zones and if invasive species are counted towards preserved trees. Planning Manager Brooke that tree size was a major consideration of TRUAC; regulating 6 inches or greater put more trees into the denominator and offered more flexibility for developers to comply. Junipers were greatly debated by TRUAC, but are proposed to be protected, and in some areas they are the only trees present. Encroachments to the root protection zone is allowed up to 25% of the area based on arborist direction to City staff. Invasive species are not treated differently.

Chair Clinton opened the public testimony portion of the hearing. Testimony was provided by the following persons:

Karon Johnson - Submitted four pages of materials; concerned that the code creates a loophole to eliminate the requirement to preserve any trees; 5% floor needs to be removed from the code.

Geoff Harris – testifying as a citizen; allow for wildfire standards incorporated in the code; concerned with 3-year limit for tree survival; industrial land should be excluded.

Roberta Silverman, Southern Crossing Neighborhood land use chair preservation standards inefficient to preserve more trees; recommend 25% Priority tree and 30% total DBH; incentives to developers who do a tree inventory before they design their project and preserve their trees – example fast track approval.

John Heylan - proposed tree code is a mistake and weaponization to prevent more housing.

Morgan Greenwood, COBA and TRUAC – need to compare code to Firewise community plan and wildfire standards. Change both preserved trees and on-site mitigation trees to increase housing production, by increasing Regulated trees to 10” and Priority trees up to 28”.

Chad Bettsworth, Empire Construction - concern with applying tree preservation standards hindering development on industrial/commercial sites; juniper trees present issues with site plan design; remove industrial and commercial zoned lands from preservation standards and junipers from regulated species list.

Anna Bozisch, Pahlisch Homes - proposed tree code will result in increased costs that will be passed onto the housing prices; code does not address existing or proposed master plans – recommend exempting approved Master Plans; need to do mass grading over multiple phases to meet required density.

Kirk Schueler, Brooks Resources - concern with the staff report and findings not addressing Comprehensive Plan Chapter 6, Policy 6-8 (economic); policy 10-18 (wildfire) findings do not address the policy, Policies 11-1 and 11-3 are omitted; remember juniper trees are not allowed in city ROW.

Cory Harlan, Central Oregon Landwatch and TRUAC – tree code recommendations are a step in the right direction; City to monitor the implementation for 3 years and adjust as necessary, create urban forestry program and hire an arborist on staff; review ROW standards; provide funding for expanding the tree canopy.

Caroline Casey, Save Bend Green Space – 3 years for tree preservation is too low, should be minimum 15 years; require that trees in open space areas be preserved in perpetuity; increase preservation to 25% Priority trees and 30% total DBH; fund city staff and resources to monitor these regulations.

Sherri Wheeler – provided exhibits to the Commission. The proposed \$600 fee in-lieu is not high enough, example of a jurisdiction charging per inch for a \$2,400 fee. Wants no exemptions.

Donna Owens – reduce the applicable site size from one acre to one-half

acre; review fines and fees so there is an incentive to preserve existing trees, especially priority and native trees. Place a priority on native trees (junipers). Consider tree equity for community.

### **Commissioner follow-up questions:**

Chair Clinton asked staff if they had anything to add. Senior Planner Hardie responded that she is working with the Fire Department on the wildland/urban interface requirements and hopes to have some information to bring back during the Council meeting. Planning Manager Brooke pointed out that there is a pathway in the proposed code that trees can be removed if found necessary by the Fire Official. The Fire Department is updating the Wildland Urban Interface Plan so there may be more information to integrate.

Planning Manager Brooke clarified that the \$600 in lieu fee is based on estimated costs to purchase, plant and maintain a tree and is not intended to be a penalty. Senior Planner Hardie added that the proposed fee is comparable to other cities we studied. Council will be considering adopting this fee.

Commissioner Gressens asked if there is risk if the fee exceeds the cost of replanting a tree and considered punitive. Assistant City Attorney Leitheiser stated whether it is considered a fee or an exaction, the City would need to be cautious to avoid bringing too many policy considerations into a development scenario in determining what we charge for fees.

Chair Clinton closed the Public Testimony at 7:09 pm

Commissioner Gressens asked if questions could be directed to staff during deliberations. Assistant City Attorney Leitheiser stated that back and forth with staff should happen before the body goes into deliberations.

Chair Clinton re-opened Public Testimony at 7:10 pm

Commission Gressens asked much of the city is zoned industrial or commercial and how meaningful it would be to exclude them from the preservation requirements. City staff was unable to answer that question as it was not in the scope of work.

Chair Clinton closed the Public Testimony at 7:12 pm and the Commissioners deliberated.

### **Deliberations:**

Commissioner Gordhammer: feels that the “flowchart” was flattened to allow options A through C and the code doesn’t reflect TRUAC’s intent to prioritize preserving priority trees first.

Commissioner Winters: feels like the fee in-lieu will be the standard; not a lot of flexibility in site planning with the density we are trying to develop; tree code doesn’t address more environmental factors (water usage, pollinators, shrubs

instead of trees).

Commissioners Gordhammer: need preservation of large trees as the first hurdle to go through and the code is not written that way.

Commissioner Gressens: The three options are not a flow of if-then-else; could we ask the developer why they couldn't preserve large trees? 5% is pretty close to clearcut.

Chair Clinton: a developer has to submit a burden of proof to state how the development complies or doesn't comply. The discretionary track requires response.

Commissioner Nelson: recommend regular evaluation points about how the tree code is being implemented.

Commissioner Payne: Hard to support the \$600 fee since the 2<sup>nd</sup> and 3<sup>rd</sup> tree is not as costly after the 1<sup>st</sup> tree is planted - consider a graduated fee scale; supports excluding commercial and industrial properties and approved master plans.

There was a discussion amongst the Commissioners and staff on Master Plans in terms of vesting (or not vesting) development expectations, and the fact that master plans can be adjusted.

Commissioner Winters: raised the increased building height incentive for preserving more trees. A discussion was had about rewarding a developer for keeping more trees.

Commissioners Gordhammer: support increase to 25% for Priority trees and 30% for total DBH onsite.

Commissioners discussed concerns that this could affect properties bordering forestlands. Purpose to avoid clear cutting and change could go too far. Supportive of current percentages and preferred to see how this plays out.

General discussion in favor of exempting Industrial land but mixed support for commercial land exemption.

Commissioner Nelson: Asked if there was support to exempt deed-restricted affordable housing. Commissioners discussed pros/cons.

Commissioner Gordhammer: Concerned that three years is not long enough to ensure protection of saved or planted trees; need to address a slow platting/developing process. Commissioners discussed tracking, timing and milestones.

Commissioner Gordhammer: suggested decreasing the applicable site size from one acre to ½ acre for. Commissioners discussed and most supported the one acre.

A list of topics was identified for voting:

1. Preserve height bonus in the Southeast Area Plan if minimum preservation standards are exceeded?

2. Exempt industrial (IG and IL) zone districts from preservation requirements?
3. Exempt commercial zone districts from preservation requirements?
4. Remove final plat as a milestone for preservation condition of approval?
5. Five years rather than three years for preservation condition of approval?
6. Reduce 1 acre to ½ acre?
7. Adjust the preservation percentages?
8. Exempt deed-restricted affordable housing projects with 30% or more units affordable in the project from preservation requirements?
9. Flow chart has been flattened – how to re-write code to justify stepping through the chart of options.
10. One year re-evaluation of the code?

Commissioner Johannsen moved to recommend that the City Council approve the Bend Development Code text amendments PLTEXT20230178 relating to tree preservation and street tree and planter strip landscaping requirements as presented in Exhibit A with the findings as recommended by staff in Exhibit B, with the amendments to be voted on by the Planning Commission. The motion was seconded by Commissioner Gordhammer.

- Commissioner Payne proposed a motion to amend to exclude affordable housing and industrial lands completely from the proposed code and to exclude regulated trees in commercial lands and approved master plans. **No second, motion failed.**
- Commissioner Payne proposed a motion to exclude affordable housing and industrial lands from tree preservation standards. Seconded by Commissioner Johannsen. **Motion withdrawn by Commissioner Payne.**
- Commissioner Payne proposed a motion that Council consider allowing a discretionary path for larger industrial land/buildings in the industrial zone districts. Seconded by Commissioner Nelson **Vote: Passed 7-0**
- Commissioner Winters made a motion to retain the tree preservation incentives in the SEAP to allow a 10-foot height increase above the underlying zone and in addition to the increase to the height allowance for affordable housing units for Site Plan Review applications when more than 50% of the trees with 24 inches DBH are preserved on sites 2 acres or greater. Seconded by Commissioner Payne. **Vote: Passed 7-0**
- Commissioner Johannsen made a motion on the tree preservation conditions of approval that we remove the date of the land division final plat approval, so that it reads that requirements must be preserved for a

minimum of three years from the building final inspection. Seconded by Commissioner Gordhammer.

**Vote: Passed 7-0**

- Commissioner Gordhammer made a motion to change the length of the condition of approval for preservation from 3 years to 5 years.  
**No Second, motion failed.**
- Commissioner Gordhammer moved to change the exempted acreage from one acre to one-half acre. Seconded by Commissioner Johannsen.  
**Vote: Failed; 1 (Gordhammer) -6**
- Commissioner Gordhammer moved to modify the minimum percentages from 20% of priority trees to 25% of priority trees and from 25% of regulated tree DBH to 30% of regulated tree DBH.  
**No Second, motion failed.**
- Commissioner Nelson moved to exempt any developments from tree preservation when 30% of the units are deed restricted affordable housing units. Seconded by Commissioner Johannsen.

Motion amended by Commissioner Nelson to read: a motion to exempt any developments with 30 or more units of deed restricted affordable housing units from tree preservation. Amended motion seconded by Commissioner Johannsen.

Motion amended by Commissioner Nelson to read: a motion to recommend that City Council consider exempting deed-restricted affordable housing developments from preservation standards.

**Vote: Passed: 7-0**

- Commissioner Johannsen moved to recommend to the Council that the code be drafted to incentivize preservation of Priority trees over Regulated trees or mitigation. Seconded by Commissioner Gordhammer  
**Vote: Passed 6-1 (Commissioner Nelson)**
- Commissioner Johannsen moved to recommend that Council direct staff to do an annual evaluation for at least the next five years on the impacts and use of the tree preservation code. Seconded by Commissioner Gordhammer  
**Vote: Passed: 7-0**
- Commissioner Payne moved to exclude approved Master Plans to date from the Regulated tree requirements. Priority Tree preservation requirements would apply.  
**Motion withdrawn by Commissioner Payne**



- Commissioner Nelson moved to recommend that all existing Master Plans are exempt from this tree code.  
**Motion withdrawn by Commissioner Nelson**
- Commissioner Payne moved to consider a sliding scale on the fee in-lieu of preservation considering economies of scale with planting multiple trees in one development.  
**No Second, motion failed.**

The motion to recommend that the City Council approve the Bend Development Code text amendments PLTEXT20230178 relating to tree preservation and street tree and planter strip landscaping requirements as presented in Exhibit A with the findings as recommended by staff in Exhibit B, and with the amendments above approved by the Planning Commission passed on a 6-1 vote, with Commissioner Winters dissenting.

Commissioner Suzanne Johannsen was nominated to bring the recommendation of the Commission to the City Council.

### **3. APPROVAL OF MINUTES:**

The Planning Commission approved the May 13, 2024 meeting minutes.

### **4. COMMUNICATIONS:**

#### **4.1. Reports From Planning Commissioners**

Commissioner Nelson attended the June 5th City Council meeting regarding the amendments to the Petrosa and Easton Master Plan. The primary concerns of the Commission on the timing of the Yeoman Road improvements in Petrosa were resolved and the Master Plan code was amended to specify the financial security will be in place before platting of Phase 6B.

#### **4.2. Report From Planning Manager**

Renee Brooke, Planning Manager, stated that an item is scheduled for the June 24<sup>th</sup> meeting for a Waterway Overlay Zone application. Chair Clinton cannot attend.

#### **4.3. Report From Community and Economic Development Director**

Colin Stephens, CEDD Director was not in attendance

#### **4.4. Report From City Attorney**

Ian Leitheiser, Assistant City Attorney, did not have anything to report

The meeting was adjourned at 9:53 p.m.

Minutes submitted by Cathleen Carr