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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 808
LANDSCAPE CONTRACTORS BOARD

FILED

03/28/2024 10:58 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Updates scope of license to include tree work for all license phases.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 04/26/2024 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

A public rulemaking hearing may be requested in writing by 10 or more people, or by a group with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

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NEED FOR THE RULE(S)

Updates scope of license to include tree work for all license phases.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

ORS 701.005(5)(e)

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

The rule amendment does not affect racial equity.

FISCAL AND ECONOMIC IMPACT:

There is no fiscal impact.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

There is no cost associated to other agencies, this affects approximately 1500 small businesses, there are no reporting or other costs required.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Several Board members are small business owners.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

The Board acts as its own Rule Advisory Committee.

RULES PROPOSED:

808-003-0040, 808-003-0501

AMEND: 808-003-0040

RULE SUMMARY: Update scope of license to include tree work for all license phases.

CHANGES TO RULE:

808-003-0040

Scope of License and Subcontracting ¶

(1) Scope of License. A licensed landscape contracting business may only advertise for or perform those phases of landscaping work for which its owners or employees hold a valid landscape construction professional license.¶

(2) The landscaping work a licensed landscape contracting business advertises for or performs shall be limited to the following:¶

(a) For an all phase license holder, all areas of landscaping work as defined in OAR 808-002-050, including removal of trees, pruning of trees, removal of tree limbs or stumps or to engage in tree or limb guying as provided in ORS 701.005(5)(e), plus the installation of backflow prevention assemblies unless, in lieu of Backflow Prevention, the landscape construction professional contractor has signed an agreement with the Board prior to April 30, 1996 stating that the landscape construction professional will not perform Backflow Prevention work;¶

(b) For an irrigation, no backflow, limited license holder, irrigation functions, including, but not limited to, including removal of trees, pruning of trees, removal of tree limbs or stumps or to engage in tree or limb guying as provided in ORS 701.005(5)(e), the preparation of plans and drawings for landscape irrigation systems and the maintenance of irrigation systems with the use of compressed air;¶

(c) For a sod and seed limited license holder, including removal of trees, pruning of trees, removal of tree limbs or stumps or to engage in tree or limb guying as provided in ORS 701.005(5)(e), grass seed planting or sod laying;¶

(d) For a tree limited license holder, install new or transplant trees, including the removal of trees, pruning of trees, removal of tree limbs or stumps or to engage in tree or limb guying as provided in ORS 701.005(5)(e);¶

(e) For a planting limited license holder, plan or install lawns, shrubs, vines, trees or nursery stock and perform grading and drainage services for the installation of lawns, shrubs, vines, trees or nursery stock, including the removal of trees, pruning of trees, removal of tree limbs or stumps or to engage in tree or limb guying as provided in ORS 701.005(5)(e). This also includes the preparation of the property on which the vegetation is to be installed as defined in OAR 808-002-0500. A planting limited license holder cannot perform low voltage work.¶

(f) For a standard limited license holder, all areas of landscaping work as defined in OAR 808-002-050, including removal of trees, pruning of trees, removal of tree limbs or stumps or to engage in tree or limb guying as provided in ORS 701.005(5)(e), except irrigation functions and the installation of backflow assemblies;¶

(g) For an irrigation plus backflow license holder, including removal of trees, pruning of trees, removal of tree limbs or stumps or to engage in tree or limb guying as provided in ORS 701.005(5)(e), irrigation functions, including, but not limited to, the preparation of plans and drawings for landscape irrigation systems, the maintenance of irrigation systems with the use of compressed air and the installation of backflow assemblies.¶

(h) For a probationary All Phase Plus Backflow license holder, all areas of landscaping work as defined in OAR 808-002-050, including removal of trees, pruning of trees, removal of tree limbs or stumps or to engage in tree or limb guying as provided in ORS 701.005(5)(e), plus the installation of backflow prevention assemblies. All landscaping work on any given landscape job as defined in OAR 808-002-0495 must not exceed a total contract amount of \$15,000.¶

(i) For a modified limited license holder, work as stated in OAR 808-003-0501 and OAR 808-003-0502, including the removal of trees, pruning of trees, removal of tree limbs or stumps or to engage in tree or limb guying as provided in ORS 701.005(5)(e). ¶

(j) For an arborist limited license holder, work as stated in OAR 808-003-0511, including the removal of trees, pruning of trees, removal of tree limbs or stumps or to engage in tree or limb guying as provided in ORS 701.005(5)(e).¶

(3) Landscaping Work Exceeding Licensee's Scope. A landscape contracting business may bid on a job or enter into a contract that includes one or more phases of landscaping work for which it is not licensed if that landscape contracting business:¶

(a) Upgrades the landscape contracting business license phase by employing a landscape construction professional

licensed for that phase of landscaping work and notifies the board of this change in license prior to performing this landscaping work. A modified license holder must comply with OAR 808-003-0503 in lieu of this provision; or

(b) Subcontracts the landscaping work that is outside the phase of the license to another licensed landscape contracting business licensed for that phase of landscaping work.

(4) Landscaping Job Exceeding Licensee's Scope or Including Construction Contracting. A landscape contracting business may bid on a job or enter into a contract that, as part of the landscaping project, includes:

(a) Landscaping work for which the landscape contracting business is not licensed, and which is also within the scope of a construction contractor's license under ORS Chapter 701, if the landscape business subcontracts with a construction contractor licensed under ORS Chapter 701 to perform that work within the scope of the construction contractor's license; or

(b) Construction contracting work that is not included within the lawful scope of work of a landscape contracting business, including work of residential specialty contractors and commercial specialty contractors, and for which the landscape contracting business does not fall under a statutory exemption from appropriate licensure. This construction contracting work may be subcontracted only if the landscape contracting business subcontracts with a construction contractor licensed under ORS chapter 701 to perform work within the scope of the construction contractor's license, and if the construction contractor and its employees are properly licensed by the Department of Consumer and Business Services, Building Codes Division when required by law.

(5) Subcontracting.

(a) A landscape contracting business may subcontract, verbally or in writing as is appropriate for the value of the subcontract, with another licensed landscape contracting business to perform landscaping work, pursuant to subsection (3) of this rule. A landscape contracting business may not subcontract with the owner of the property, for the owner to provide services on or for the property, even if the owner of the property is a licensed landscape contracting business or licensed landscape contracting professional.

(b) A landscape contracting business may subcontract, verbally or in writing as is appropriate for the value of the subcontract, with a construction contractor licensed under ORS chapter 701 to perform construction contracting work pursuant to subsection (4) of this rule. A landscape contracting business may not subcontract with the owner of the property, for the owner to provide services on or for the property, even if the owner of the property is a licensed construction contractor.

(6) Subsection 3 through 5 of this rule do not allow a landscape contracting business to advertise or represent that the business is licensed to provide construction contractor services or specialty trade services regulated by the Department of Consumer and Business Services, Building Codes Division.

Statutory/Other Authority: ORS 670.310, ORS 671.670
Statutes/Other Implemented: ORS 447.060, 671.560, ORS 701.005

AMEND: 808-003-0501

RULE SUMMARY: Update the scope of work for modified license to include tree work.

CHANGES TO RULE:

808-003-0501

Scope of work for modified license

(1) Scope of work for a Modified License holder. A landscape contracting business with a Modified License phase may advertise for or perform the following work:¶

(a) plan or install lawns, shrubs, vines, trees or nursery stock. This also includes the preparation of the property on which the vegetation is to be installed as defined in OAR 808-002-0500;¶

(b) plan, install, maintain and repair fences, arbors, patios, landscape edging, driveways, walkways;¶

(c) plan, install, maintain and repair decks if no permit is required; and¶

(d) grading, when performed in conjunction with the work defined in subsection (1) of this rule. For purposes of the Modified License, grading means incidental to the construction of a landscape feature not to exceed five cubic yards.; and¶

(e) removal of trees, pruning of trees, removal of tree limbs or stumps or to engage in tree or limb guying as provided in ORS 701.005(5)(e).¶

(2) A landscape contracting business with a Modified License phase may only perform landscaping work as defined in subsection (1) of this rule. The defined landscaping must be completed without piercing the building envelope.¶

(3) Landscaping work as a Modified License holder does not include planning, installation, maintenance or repair of:¶

(a) grading, unless done in conjunction with the landscaping work as defined in subsection (1) of this rule;¶

(b) landscape drainage systems¶

(c) ornamental water features;¶

(d) landscape irrigation and irrigation design;¶

(e) backflow installation;¶

(f) low voltage wiring; and¶

(g) retaining walls.¶

(4) A landscape contracting business with a Modified License may not include in its advertising maintenance or repair of any of the work set forth in subsection 3(a) - (g) above.

Statutory/Other Authority: ORS 671.670, ORS 670.320

Statutes/Other Implemented: ORS 671.560, ORS 701.005