MEMORANDUM

To: Landscape Contractors Board
From: Elizabeth Boxall, Administrator
Date: August 26, 2020
Subject: Arborist License Phase Proposal

Background
In early 2020, the board discussed an issue regarding many CCB licensees, including certified arborists with the International Society of Arboriculture (ISA), who believe their CCB license allows them to plant trees. From this discussion the board decided to issue letters of concern to certified arborists licensed with the CCB who are reported as performing planting, which is outside the scope of a CCB license (unless working under exemption in ORS 671.540(1)(h)).

Recently, LCB staff and two board members met with Pacific Northwest ISA and CCB representatives to discuss the issue. It was agreed that education about the current licensing process and jurisdiction is needed. LCB and CCB staff plan to collaborate on efforts to add clarity to messaging in these areas.

To minimize barriers ISA certified arborists to become licensed, the group identified a potential next step to create a new license phase through rule-making. Below are the relevant statutes followed by the proposal.

CCB Jurisdiction
CCB has jurisdiction over the removal, trimming, pruning, stump grinding, and guyng of trees. There is an exemption for LCB licensees to also perform this work (ORS 701.005(5)(e)). The CCB statute does not reference planting, therefore, CCB licensees cannot plant trees.

701.005 Definitions. As used in this chapter:
(1) “Board” means the Construction Contractors Board.
* * * * *
(5) “Contractor” means any of the following:
* * * * *
(e) A person except a landscape contracting business, nurseryman, gardener or person engaged in the commercial harvest of forest products, that is engaged as an independent contractor to remove trees, prune trees, remove tree limbs or stumps or to engage in tree or limb guyng.

LCB Jurisdiction
LCB has jurisdiction over the planting of trees (ORS 671.520(1)(a) and (b); OAR 808-002-0500(1) and OAR 808-002-0455(1)(a)). LCB licensees can also perform other tree work pursuant to the exemption above, but the LCB does not have jurisdiction over unlicensed businesses performing this work.
671.520 Definitions for ORS 671.510 to 671.760. As used in ORS 671.510 to 671.760, unless the context requires otherwise:

(1) “Landscape construction professional” means an individual who for compensation or with the intent to be compensated performs or supervises activities requiring the art, ability, experience, knowledge, science and skill to:
   (a) Plan or install lawns, shrubs, vines, trees or nursery stock;
   (b) Prepare property on which lawns, shrubs, vines, trees or nursery stock is to be installed;

Proposal
Create a new license phase for arborists certified with the ISA through rule-making that allows for the following:

Scope of work
- Tree planting, removal, trimming, pruning, stump grinding, and guying. Other planting would not be allowed.
- Design, grading, and drainage for trees only. The ISA exam outline can be found at https://www.isa-arbor.com/Portals/0/Assets/PDF/Certification-Applications/Cert-Exam-Outline-CA.pdf or by clicking here.
- Existing LCB planting only phased licensees with an ISA certification could convert to an arborist license.
- An LCB arborist license could be added to other phases of licenses, except the modified license. (Example: irrigation + arborist) if appropriate exams are passed. Adding the arborist designation to planting, standard, or all-phase would not change the scope of work allowed, but would provide added recognition.

Qualification
- Must be certified with ISA to obtain an LCB arborist license.
- ISA certifications currently qualify a person to sit for an LCB exam.

Examination
- Laws, Rules, and Business Practices exam section must be passed.

Other Details
- All insurance, bonding, workers compensation, continuing education, and other requirements remain the same as other license phases.
- Creating an arborist license phase does not give LCB jurisdiction over tree work performed by the unlicensed, only those licensed with the LCB. Reports of unlicensed tree work would continue to be referred to CCB.
- In addition to the new phase, LCB would explore the option of adding a link to the LCB website which connects the public to the ISA website for additional information on the certification.

Board Action
1. Direct staff to draft rules based on the proposal above as-is.
2. Direct staff to draft rules based on a modification of the above proposal.
3. No action/staff direction.