



# MEMORANDUM CITY OF TUALATIN

**TO:** Honorable Mayor and Members of the City Council  
**FROM:** Sherilyn Lombos, City Manager *SL*  
**DATE:** October 10, 2008  
**SUBJECT:** Work Session for October 13, 2008

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**Work Session will begin at 5:00 p.m.**

The following items are up for consideration at work session:

- 1) **5:00 p.m. (30 min) – Fence Standards Review.** In May and June 2007, the City Council held work sessions regarding fence standards and ultimately adopted an ordinance in July 2007. At that time, there were some additional policy questions raised regarding requiring fences along freeway frontages and requiring more stringent vision clearance standards. Council asked staff to return in the future to discuss both of those issues. Attached is a memo and power point that will be used at the work session to facilitate the discussion.

**Action requested:** Direction from Council whether to pursue additional fence standard policies.

- 2) **5:30 p.m. (15 min) – 80% Density Rule Discussion.** Metro's requirement to build 80% of the required density has been lifted and staff is proposing to change the code to reflect that change. The public hearing is scheduled for October 27<sup>th</sup>; staff would like an opportunity to describe what this means and take questions from Council. Attached is a memo and powerpoint from Doug that he will use on Monday night to facilitate the discussion.

**Action requested:** No specific direction is requested.

- 3) **5:45 p.m. (30 min) – Code Enforcement Policy Discussion.** The Community Services Officer has been on-board for a year now. Tonight staff would like to update the Council on code enforcement activities that have taken place and then have Council spend some time understanding and discussing the approach we currently take and if changes should be made to that approach. Attached is a memo and power point presentation that the Police Chief will use to facilitate the discussion.

**Action requested:** Direction from the Council on our code enforcement approach and code enforcement program expectations and priorities.

- 4) **6:15 p.m. (30 min) – Entertainment Ordinances Discussion.** Three ordinances have been drafted that address live performances and entertainment. Attached are the ordinances. The City Attorney along with staff from Beery, Elsner, Hammond and the city attorneys from several surrounding cities have reviewed the ordinances and provided a brief analysis. That analysis is also attached.

**Action requested:** Direction from Council regarding the pursuit of entertainment ordinances.

- 5) **6:45 p.m. (10 min) – Council agenda review & Council communications.**

**Action requested:** Council review the agenda for the October 13<sup>th</sup> City Council and Development Commission meetings.

Other items of interest:

Food for Monday night: We will be enjoying food from Greek Cuisina.

Presentations for Monday night: Attached are powerpoint presentations for the Council meeting.

Upcoming Council Meetings & Work Sessions: Attached is a three-month look ahead for upcoming Council meetings and work sessions. If you have any questions, please let me know.

Dates to Note: Attached is the updated community calendar for the next three months. Some dates you may want to note:

- **October 16, Thursday, 5:30pm:** special study session (5:30 – 7pm, Central Urban Renewal District; 7pm – 8:30pm, Train Noise Mitigation). The meeting will be held in the Training Room at the Operations Facility on Herman Road.

- **October 25, Saturday, 10:00am:** 5<sup>th</sup> Annual West Coast Giant Pumpkin Regatta at the Lake of the Commons.
- **November 21 – 22, Friday – Saturday:** City Council Goal Setting Retreat

As always, if you need anything from your staff, please feel free to let me know.

**Attachments:**

- A. Fence Standards Memo and Presentation
- B. Code Enforcement Policy Memo & Presentation
- C. 80% Density Requirement Memo & Presentation
- D. Entertainment Ordinances and Analysis Memos
- E. Powerpoint presentations for Monday night
  - a. Volunteer Program Update
  - b. Pumpkin Regatta Preview
  - c. YAC Update
  - d. Heritage Center Patio Project Update
- F. Upcoming meeting and work session items (October – December)
- G. Tualatin Calendar of Events (October – December)



# MEMORANDUM CITY OF TUALATIN

**TO:** Honorable Mayor and Members of the City Council

**THROUGH:** Sherilyn Lombos, City Manager 

**FROM:** Doug Rux, Community Development Director   
Cindy Hahn, Assistant Planner 

**DATE:** October 13, 2008

**SUBJECT:** FENCE STANDARDS – PHASE II

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## **BACKGROUND:**

PTA-06-09, adopted by Ordinance 1244-07 on July 23, 2007, amended the Tualatin Development Code (TDC) to establish standards for fences in access-restricted rear yards and side yards adjacent to minor and major arterial and collector streets and expressways, where property is located in the Low Density Residential (RL) or Medium Low Density Residential (RML) Planning Districts, and the property is the subject of a partition or subdivision application or developed with a single-family dwelling.

TMC-07-01, adopted by Ordinance 1243-07 on July 7, 2007, amended the Tualatin Municipal Code (TMC) to establish derelict fences as a public nuisance, and to define what conditions constitute a derelict fence.

During Council deliberations on PTA-06-09 on July 9, 2007, additional policy considerations were raised. The City Manager suggested the issues be tabled for 6-12 months then revisited by Council. The purpose of this Work Session is to give further consideration to the issues raised during the July 9, 2007 deliberations.

## **POLICY CONSIDERATIONS:**

Issues raised during Council deliberations included the following:

- Fences along I-205 and I-5: Whether properties in the RL and RML Planning Districts that have back or side yards along I-205 or I-5 should be required to construct a fence along the property freeway frontage that meets the minimum requirements of the Fence Standards (TDC 34.330) and if so to which properties within the Districts the standard should apply.
- Vision Clearance Areas: Whether the City's Vision Clearance Area requirements should be reviewed for adequacy and if so whether any proposed plan text

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amendment should address only intersection sight distance or also address front yard fence height gradation.

- **Minimum Materials Standards:** Whether properties that do not meet the minimum requirements of the Fence Standards (TDC 34.330) should be required to have a fence and if so whether the minimum fence standard should require specific materials or address fence design and construction detail.

**OUTCOMES:**

Response from Council on the identified discussion points and direction on future steps needed to address the issues raised to Council's satisfaction.

- Attachments:**
- A. PowerPoint Presentation: Fence Standards – Phase II
  - B. TDC 34.330 Fence Standards, 34.340 Fence Design, and Figures 34-1 and 34-2
  - C. TDC 73.400(16) Vision Clearance Area and Figure 73-2
  - D. Email from Dennis Lively dated June 25, 2007, regarding Fence Regulation Opportunity with accompanying handout of City of Milwaukie Clear Vision Areas and Fences

# Fence Standards – Phase II



City Council Work Session  
October 13, 2008

## Background

- At the July 2007 Public Hearing on PTA-06-09, Fence Standards in RL and RML Planning Districts Adjacent to Arterials, Collectors, and Expressways, Council raised three issues to be revisited at a future Work Session:
  - Fences along I-205 & I-5
  - Vision Clearance Areas
  - Minimum Materials Standards
- The purpose of this Work Session is to review these Policy Considerations and determine future steps needed to address them to Council's satisfaction.

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Council Work Session

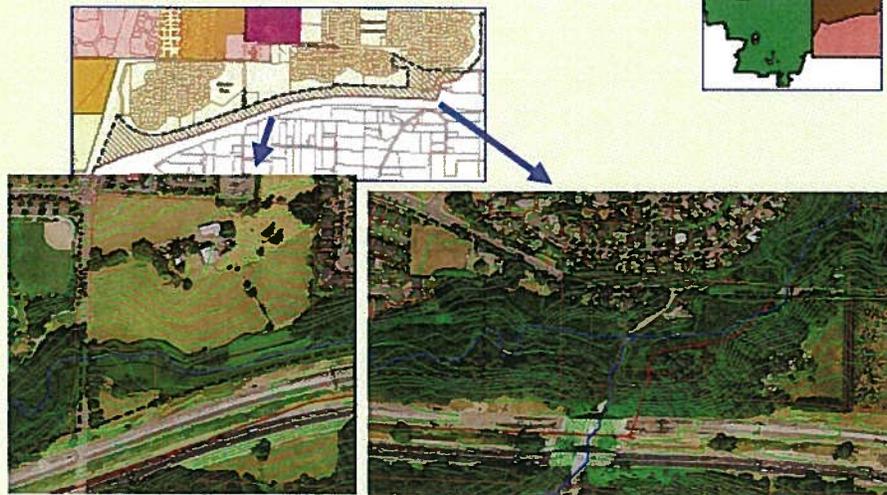
## Policy Consideration: Fences Along I-205 and I-5

- Lands along I-205 and I-5 are in RL and RML Planning Districts
- Some already developed properties with freeway “frontage” do not have fenced backyards
- Undeveloped lands, once annexed and developed, will present potential for views into residential backyards if the yards are not fenced
- The Fence Standards (TDC 34.330) address minimum requirements for fences in RL and RML Planning Districts along major and minor arterials, major and minor collectors, and expressways, but not along freeways such as I-205 and I-5

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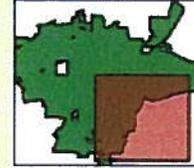
## North Side of I-205



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## West Side of I-5



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## Discussion Points:

- Should properties in the RL and RML Planning Districts that have back or side yards along I-205 and I-5 be required to meet the minimum requirements of the Fence Standards (TDC 34.330)?
- If yes, should the requirements be applied only to property that is the subject of a subdivision or partition?
- Or should the requirements be applied as well to replacement of an existing fence or construction of a new fence where property is not the subject of a subdivision or partition application and is developed with a single-family dwelling?

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## Policy Consideration: Vision Clearance Area

- At the July 2007 Public Hearing on PTA-06-09, an email from Dennis Lively was read, which introduced the topic of intersection sight distance and provided the City of Milwaukie Clear Vision and Fence Requirements as an example Tualatin should consider in review of its Vision Clearance Area regulations.
- Tualatin has Vision Clearance Area regulations that apply to all properties within the City, however, the regulations are not as prescriptive as those contained in the Milwaukie code.

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## Tualatin Vision Clearance Area Provisions

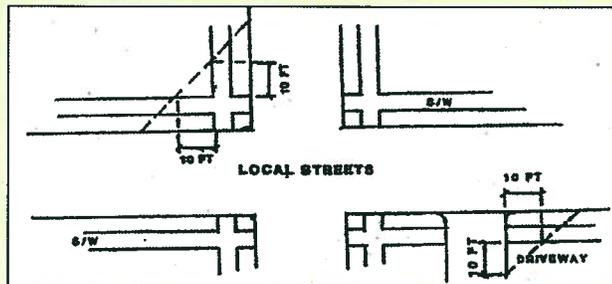
- Per TDC Section 73.400(1) of the Community Design Standards, the Vision Clearance Area applies to vehicular and pedestrian ingress and egress from all private property to the public streets and is a continuing requirement for the use of any structure or parcel of real property in the City.
- TDC Section 73.400(16) Vision Clearance Area addresses
  - (a) Local Streets
  - (b) Collector Streets
  - (c) Vertical Height Restrictions

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## Local Streets

- Vision Clearance Area applies to all local street intersections, local street and driveway intersections, and local street or driveway and railroad intersections
- "... triangular area formed by the right-of-way lines along such lots and a straight line joining the right-of-way lines at points which are 10 feet from the intersection point of the right-of-way lines, as measured along such lines ..."

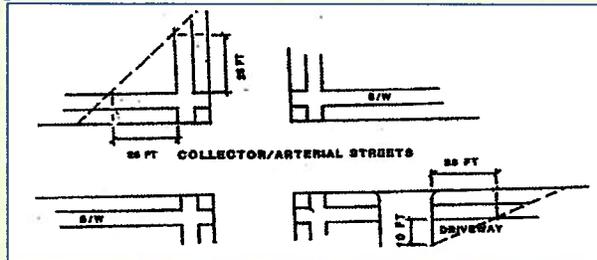


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## Collector Streets

- Vision Clearance Area applies to all collector/arterial street intersections, collector/arterial street and local street intersections, and collector/arterial street and railroad intersections
- "... triangular area formed by the right-of-way lines along such lots and a straight line joining the right-of-way lines at points which are 25 feet from the intersection point of the right-of-way lines, as measured along such lines. Where a driveway intersects with a collector/arterial street, the distance measured along the driveway line for the triangular area shall be 10 feet ..."

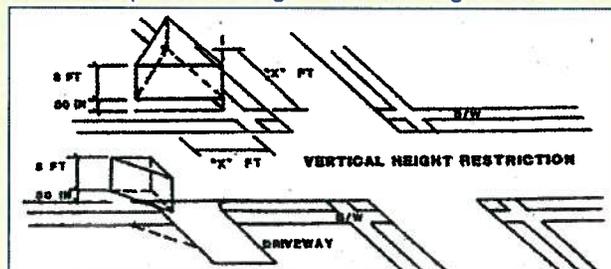


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## Vertical Height Restriction

- Applies to vehicular parking, hedges, plantings, fences, wall structures, temporary or permanent physical obstructions
- Not permitted between **30 inches and 8 feet** above the established height of the curb in the vision clearance area
- Exceptions: Items associated with utilities or publicly owned structures such as poles and signs and existing street trees



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## Guiding Concept = Simplicity

- Keep Tualatin's Vision Clearance Area standards:
  - Simple and user friendly
  - Independent of other variables such as topography, stopping distance, speed limit of road, etc.
  - Universally applicable based on the type of roads at the intersection or the type of road being entered (from a driveway)
  - Easy enough that anyone could figure them out without needing assistance from an engineer or other "expert"

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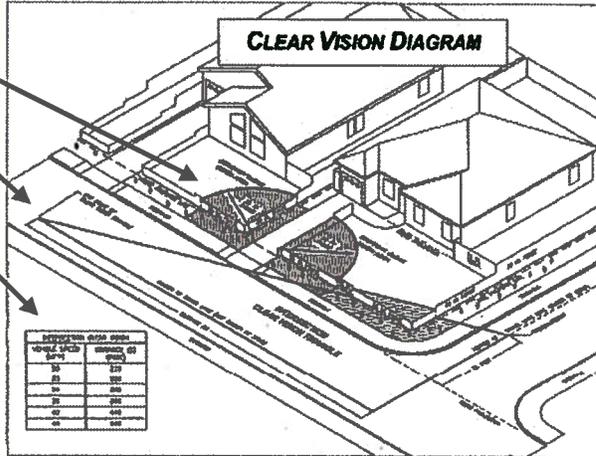
# Milwaukie Clear Vision Areas

20 ft radius

Center of travel lane (not center of road)

Vehicle speed & stopping distance

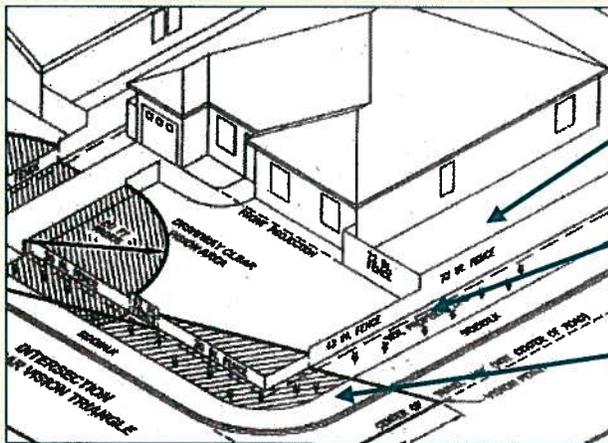
Based on AASHTO "Green Book" (2001) Intersection Sight Distance & Intersection Control



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# Milwaukie Fence Heights



72" in side and rear yard

42" in front yard outside Clear Vision Area

30" within Clear Vision Area (may exceed if "obstruction" does not obscure sight by more than 10% [such as chain link fence])

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## Clear Vision Area Comparison

Stopped at marked stop line



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Pulled forward, but behind curb line

Council Work Session

Tualatin  
Milwaukie

## Stop Sign Rules

Stopped at marked stop line



Pulled forward, but behind curb line



- Oregon Driver's Manual, which implements ORS 811.260, states that you must:
  - Stop at the marked stop line or crosswalk on the pavement, if there is one.
  - Stop before the unmarked crossing area, if there is not stop line or crosswalk.
- If there are no pedestrians, pull forward until you can see traffic coming from your left and right, but before you get into the intersection.
- You may cautiously drive through the intersection or enter the intersection and make your turn, after looking both ways for oncoming traffic.
- Yield right of way to traffic (including people walking or riding bikes) in the intersection).

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## Discussion Points:

- Should the City's Vision Clearance Area requirements [TDC 73.400(16)] be reviewed for adequacy?
- If yes, should the vision clearance area requirements of jurisdictions other than Milwaukie be reviewed for comparison and a recommendation brought to Council for a proposed plan text amendment to address any identified inadequacies in Tualatin's existing regulations?
- Should the amendment address only intersection sight distance?
- Or should the issue of front yard fence height gradation (as in Milwaukie's code) also be addressed?

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## Policy Consideration: Minimum Material Standards

- At the July 2007 Public Hearing on PTA-06-09, Council raised the issue of minimum standards for fences on properties that fall outside the requirements of the Fence Standards of TDC 34.330
- The limited durability and aesthetic of typical wood fencing and the undesirability of wire or chain-link fencing were briefly discussed, and Council questioned whether a minimum material, wood treatment, construction design, or similar standard should be considered

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# Application of Fence Standards

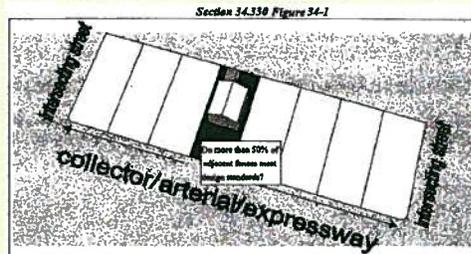
- Masonry Fence Standards of TDC 34.330 must be met:
  - Along access-restricted property line(s) or lot line(s) abutting major and minor arterials, major and minor collectors, and expressways
    - On single property subject to a subdivision or partition, if the property line(s) or lot line(s) is **>60 feet**
    - On single property not subject to subdivision or partition if an existing fence that **meets the masonry fence standard** is replaced or repaired
    - On single property not subject to subdivision or partition if **>50%** of fences on **both sides** between nearest intersecting streets meet the masonry fence standard
      - If **60% or more** of existing fence that does not meet masonry fence standard is replaced
      - A **new fence** is constructed

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# Locations Where No Fence is Required or “Anything Goes”

- On property subject to a subdivision or partition, if property line or lot line is **60 feet or less**
- On single property not subject to a subdivision or partition if **<50%** of fences on **both sides** between the nearest intersecting streets meet the masonry fence standard



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## Property Owner Solutions



Rail + Hedge



No Fence



Privacy



Picket

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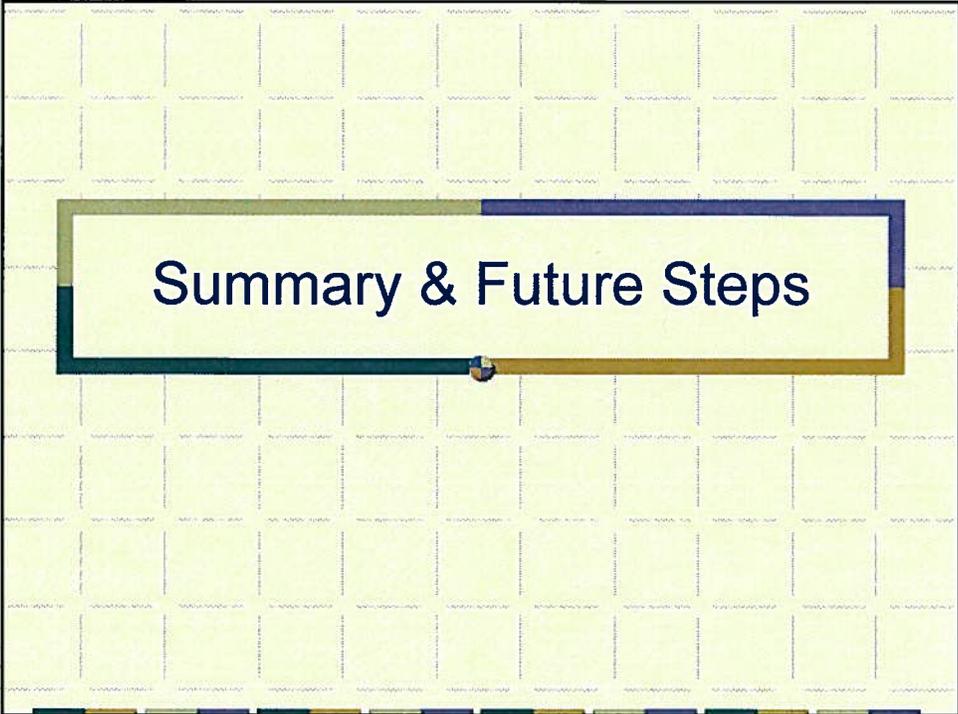
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## Discussion Points

- Should properties that do not meet the Masonry Fence Standard (TDC 34.330) in the RL and RML Planning Districts be subject to a minimum fence standard that requires construction of a fence when the rear or side yard of their property abuts a major or minor arterial, major or minor collector, or expressway?
- If yes, should the standard require specific materials be used in fence construction and that other materials be prohibited?
- In addition to materials, should the standard address fence design or construction detail?

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## Summary & Future Steps

process to ensure compliance with Subsections 1-6 and 8-12 of this section.

(13) When the accessory dwelling unit is proposed to be created and if no enlargement of the existing single family dwelling is proposed, the owner of the single family dwelling within which the accessory dwelling unit is to be located shall notify the Planning Director by letter that an accessory dwelling unit is proposed. The letter shall state the owners name and mailing address, address of the accessory dwelling unit, the gross square footage of the single family dwelling and the gross square footage of the accessory dwelling unit.. [Ord. 963-96 §4, passed June 24, 1996; Ord. 1026-99 §16, passed Aug.

9, 1999.] Ord. 585-82 repealed by 592-83 §3, passed Dec. 13, 1982.

**Section 34.320 Purpose.**

The purpose of fence standards in the RL and RML Planning Districts for access-restricted lot lines and property lines that abut collector, arterial, and expressway streets is to implement the community design objectives of TDC 10.020. [Added, Ord. 1244-07 §1, 7/23/07.]

**Section 34.330 Fence Standards.**

The following standards are minimum requirements for fences in a RL (Low Density Residential) or a RML (Medium Low Density Residential) Planning District, where an access-restricted lot line or property line abuts a public street classified as a major arterial, minor arterial, major collector, minor collector, or expressway by the Tualatin Functional Classification Plan.

(1) Subdivision or Partition of Property in a RL or RML Planning District.

Where property is the subject of a subdivision or partition application, and has an access-restricted property line(s) or lot line(s) that abuts a major arterial, minor arterial, major collector, minor collector, or expressway right-of-way for a distance greater than 60 feet, a masonry fence shall be installed along the arterial/ collector/expressway frontage, in conformance with design standards set forth in TDC 34.340 and the fence standards set forth below:

(a) Required fencing shall be installed along the entire length of the access-restricted

property line(s) or lot line(s) abutting the arterial/collector/expressway right-of-way, except as provided in TDC 34.330(3), prior to issuance of any building permit on any parcel or lot created by the partition or subdivision.

(b) Except as provided in TDC 34.330(3), required fencing shall be located outside of the public right-of-way, and as close as physically possible to, approximately parallel with, either the property line or lot line abutting the arterial/collector/expressway right-of-way, or the ultimate right-of-way line, whichever is located furthest from the centerline of the street right-of-way.

(i) As approved by the City Engineer, the location of the ultimate right-of-way line shall be one-half of the right-of-way width specified in Chapter 11 and Chapter 75 of the Tualatin Development Code for the appropriate classification of street, measured at right angles from the centerline of the actual street improvement, or measured at right angles from the centerline of the right-of-way, whichever method is determined most appropriate by the City Engineer.

(ii) If an owner is granted a variance from TDC 34.330(1)(b) standards, which results in a fence being located within the ultimate right-of-way area, the property owner shall execute a removal agreement, subject to City Council approval. The removal agreement shall provide that, after notice by the City, the property owner shall remove any structure, or portion thereof, that extends into the ultimate right-of-way, at no expense to the City. In case of default in that obligation, the City may cause such removal at the expense of the owner with all costs incurred to become a lien against such land or premises. The agreement shall also provide that the owner of the affected premises shall not be entitled to any damages or compensation in consequence of the City's exercise of its rights under the agreement. This provision shall not be construed as denying the owner of such property the right to just compensation for

the unimproved value of any land taken for the widening of any street.

(c) Required fencing shall be installed such that stormwater drainage patterns and flow rates are not altered in a manner detrimental to property or persons.

(2) Replacement of Existing Fence, or Construction of New Fence in a RL or RML Planning District.

Where property is not the subject of a subdivision or partition application, and is developed with a single-family dwelling, and has an access-restricted property line or lot line that abuts a major arterial, minor arterial, major collector, minor collector, or expressway right-of-way, the following fence standards apply:

(a) Replacement of An Existing Fence That Does Not Meet the Masonry Fence Standard.

Where an existing fence that does not meet the masonry fence standard set forth in TDC 34.340 is located approximately parallel with, and within ten feet of, an access-restricted property line or lot line that abuts an arterial/collector/ expressway right-of-way, AND more than 50 percent of fences that are constructed approximately parallel with, and within ten feet of, access-restricted property lines or lot lines that abut the same right-of-way line, in the interval between the nearest intersecting streets located on both sides of the subject property (See Figure 34-1 for illustration), meet the masonry fence standard, then at the time that 60 percent or more of the length of the fence is removed, the entire length of the fence located along the arterial/collector/expressway frontage shall be removed and replaced with a fence that meets the masonry fence design standards set forth in TDC 34.340.

(i) Installation of required replacement fencing shall be complete within six months from the date that 60 percent or more of the length of the fence is removed;

(ii) Required fencing shall be located outside of the public right-of-way, and as close as physically possible to, approximately parallel with, the property line or lot line abutting the ar-

terial/collector/expressway right-of-way, except as provided in TDC 34.330(3);

(iii) Required fencing shall be installed such that stormwater drainage patterns and flow rates are not altered in a manner detrimental to property or persons.

(b) Replacement or Repair of An Existing Fence That Meets the Masonry Fence Standard.

Where an existing fence that meets the masonry fence standard set forth in TDC 34.340 is located approximately parallel with, and within ten feet of, an arterial/collector/expressway right-of-way, then at the time that any portion of the access-restricted property line or lot line that abuts an fence is removed, the fence shall be repaired or replaced in conformance with the masonry design standards set forth in TDC 34.340.

(i) Repair or replacement shall be complete within six months from the date that any portion of the fence is removed;

(ii) Required fencing shall be located outside of the public right-of-way, and as close as physically possible to, approximately parallel with, the property line or lot line abutting the arterial/collector/expressway right-of-way, except as provided in TDC 34.330(3);

(iii) Required fencing shall be installed such that stormwater drainage patterns and flow rates are not altered in a manner detrimental to property or persons.

(c) Construction of New Fence.

Where no existing fence is located approximately parallel with, and within ten feet of, an access-restricted property line or lot line that abuts an arterial/collector/expressway right-of-way, AND more than 50 percent of fences that are constructed approximately parallel with, and within ten feet of, access-restricted property lines or lot lines that abut the same right-of-way line, in the interval between the nearest intersecting streets located on both sides of the subject property (See Figure 34-1 for illustration), meet the masonry fence standard, then any new fence that is constructed approximately parallel with, and within ten feet of, the access-restricted property line or lot line abutting the arte

rial/collector/expressway right-of-way shall be in conformance with the required design standards set forth in TDC 34.340.

(i) Required fencing shall be located outside of the public right-of-way, and as close as physically possible to, approximately parallel with, the property line abutting the arterial/collector right-of-way, except as provided in TDC 34.330(3);

(ii) Required fencing shall be installed such that stormwater drainage patterns and flow rates are not altered in a manner detrimental to property or persons.

(3) Exceptions to Fence Location or Configuration:

(a) Where the City Engineer determines that vehicular access is to be provided from the arterial/collector/expressway to a parcel or lot abutting the arterial/collector/expressway, the fence shall not be required along the arterial/collector/expressway frontage of that particular parcel or lot.

(b) Where the City Engineer determines that an opening or passage through the fence must be provided, the fence shall include such required opening.

(c) All vision clearance requirements set forth in TDC 73.400(16) shall be met.

(d) The City Engineer may require an alternate location or configuration of the fence alignment to accommodate stormwater facilities, easements, or other requirements. [Added, Ord.

1244-07 §2, 7/23/07.]

### Section 34.340 Fence Design.

(1) Masonry Fence Design. (See Figure 34-2 for illustration)

(a) Material and Color. All components of fence visible from the public vantage point shall be constructed of stone, brick, stone-look or brick-look cast masonry or stone-look or brick-look cast vinyl or composite material. The color of the fence shall be that of natural stones, red clay brick, neutral brown-tones, or gray earth-tones.

(b) Finished Face. Fence shall be constructed such that the finished side of the fence faces the public right-of-way, and any structural

components (metal brackets, etc.) are not visible from the public vantage point.

(c) Slopes. Fences constructed on slopes shall be installed using a stair-step method, whereby each fence panel steps up or down the slope and remains level (zero-slope) rather than parallel to the grade of the underlying terrain.

(d) Height. Height of fence panels shall be six feet, measured from the underlying ground surface directly beneath the fence panels to the top edge of the cornice cap.

(i) For fences constructed on slopes, the height of fence measured at the up-slope end of each fence panel shall be six feet.

(ii) Pilasters, excluding pilaster caps, shall be no shorter than the shorter of the attached fence panels, including the cornice cap, and shall not extend more than six inches higher than the highest attached fence panel, including the cornice cap.

(iii) Height of pilaster caps shall be no greater than six inches, measured from the top of the underlying pilaster to the highest point on the cap.

(e) Ground Clearance. There shall be no ground clearance or gap visible between the bottom of the fence panels and the underlying ground surface. Where a pre-cast panel system is used, any gaps that result beneath panels shall be filled in with earth, rock, evergreen vegetation, or similar material. This provision does not prohibit the use of stormwater drainage holes.

(f) Pilasters. The horizontal run of fence must be broken up by pilasters, which shall be set at approximately regular intervals, no more than twenty feet apart on center. Pilasters shall be installed perpendicular to a zero-slope plane.

(g) Panels. Panels shall be 100 percent solid and opaque. The finished face shall have the appearance of a stacked or mortared stone wall or brick wall.

(h) Cornice. A cornice cap shall be installed on top of each of the fence panels. Cornice caps shall be masonry or brick in appearance, and shall match or closely compliment the colors and materials used to construct the fence panels and pilasters.

(i) Pilaster Caps. Decorative caps shall be installed on top of all pilasters such that the cap completely covers the surface area of the pilaster end. Caps shall be masonry or brick in appearance, and shall match or closely complement the colors and materials used to construct the fence panels and pilasters. Illuminated pilaster caps are allowed, provided the lighting element is an integral internal component of the cap (i.e., no exposed light bulb) and the light is low-voltage or solar powered. Caps shall be no taller than six inches, measured from the surface of the pilaster end to the highest point on the pilaster cap.

(2) Variance Prohibited.

(a) Development unable to meet one or more of the design standards set forth in TDC 34.340(1) may alternatively submit application for Architectural Review.

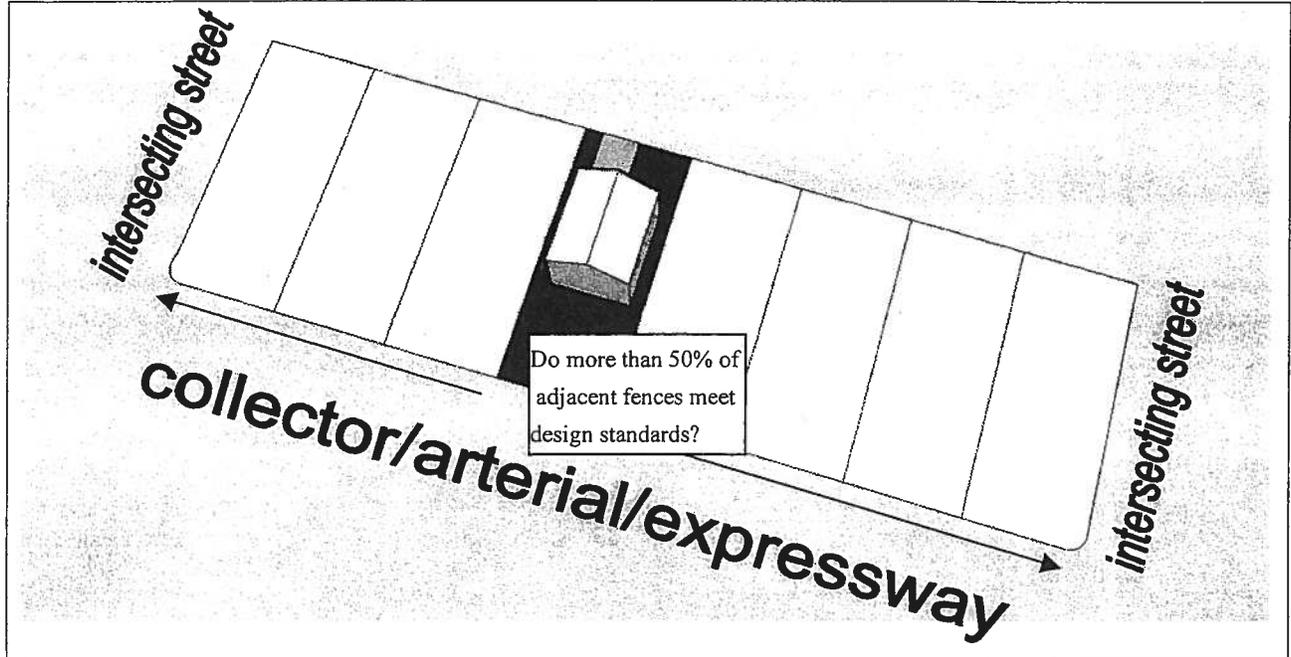
(b) Application for Architectural Review shall be made pursuant to application procedures set forth in TDC 31.071. Approval or denial shall be based upon the criteria set forth in TDC 73.050, including objectives and standards set forth in TDC 73.210 and 73.220. [Added, Ord.

1244-07 §3, 7/23/07.]

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# Tualatin Development Code

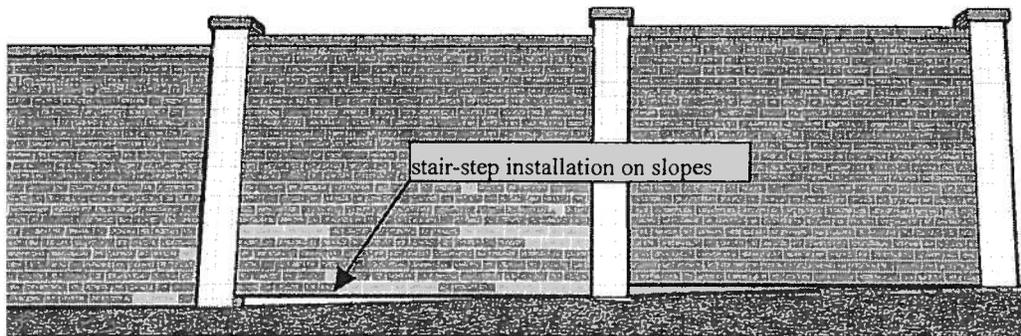
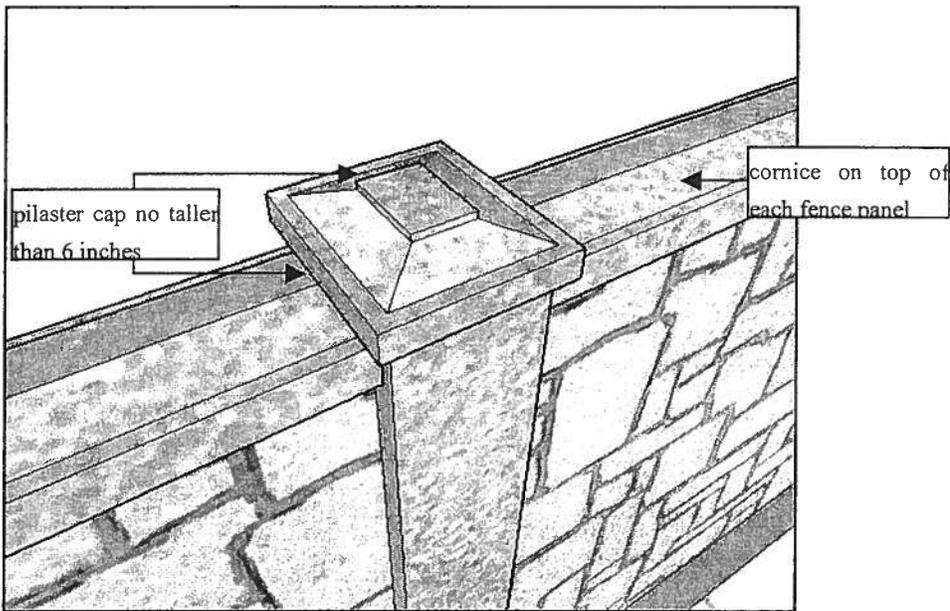
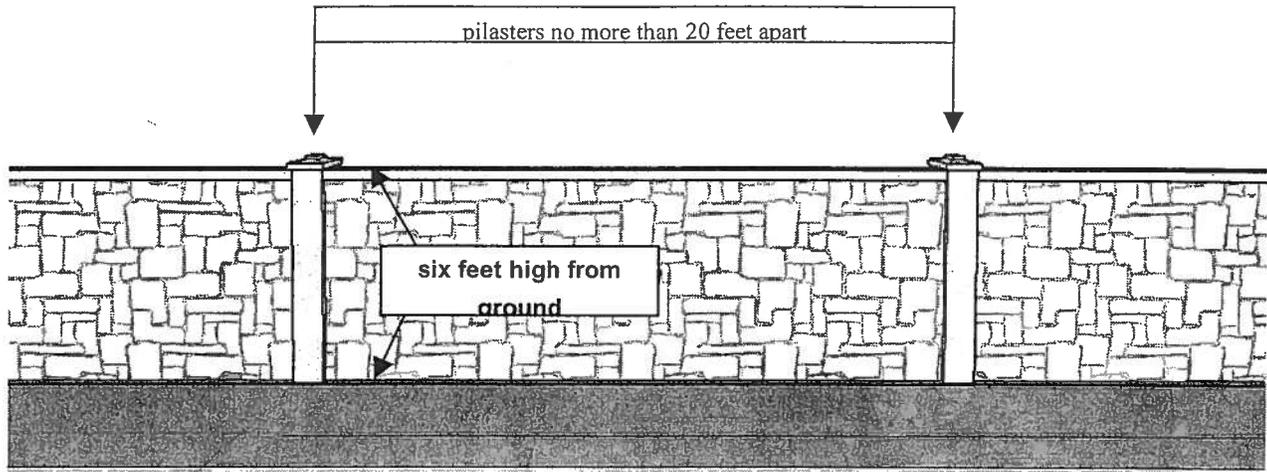
Section 34.330 Figure 34-1



# Tualatin Development Code

## Section 34.340 Figure 34-2

### Masonry Fence Design Type



## Tualatin Development Code

drives shall not be less than 16 feet for multi-family residential, commercial, or industrial uses.

### (14) Maximum Driveway Widths and Other Requirements.

(a) Unless otherwise provided in this chapter, maximum driveway widths shall not exceed 40 feet.

(b) Except for townhouse lots, no driveways shall be constructed within 5 feet of an adjacent property line, except when two adjacent property owners elect to provide joint access to their respective properties, as provided by Subsection (2).

(c) There shall be a minimum distance of 40 feet between any two adjacent driveways on a single property unless a lesser distance is approved by the City Engineer.

(15) Distance between Driveways and Intersections. Except for single-family dwellings, the minimum distance between driveways and intersections shall be as provided below. Distances listed shall be measured from the stop bar at the intersection.

(a) At the intersection of collector or arterial streets, driveways shall be located a minimum of 150 feet from the intersection.

(b) At the intersection of two local streets, driveways shall be located a minimum of 30 feet from the intersection.

(c) If the subject property is not of sufficient width to allow for the separation between driveway and intersection as provided, the driveway shall be constructed as far from the intersection as possible, while still maintaining the 5-foot setback between the driveway and property line as required by TDC 73.400(14)(b).

(d) When considering a public facilities plan that has been submitted as part of an Architectural Review plan in accordance with TDC 31.071(6), the City Engineer may approve the location of a driveway closer than 150 feet from the intersection of collector or arterial streets, based on written findings of fact in support of the decision. The written approval shall be incorporated into the decision of the City Engineer for the utility facilities portion of the Architectural Review

plan under the process set forth in TDC 31.071 through 31.077.

### (16) Vision Clearance Area.

(a) Local Streets - A vision clearance area for all local street intersections, local street and driveway intersections, and local street or driveway and railroad intersections shall be that triangular area formed by the right-of-way lines along such lots and a straight line joining the right-of-way lines at points which are 10 feet from the intersection point of the right-of-way lines, as measured along such lines (see Figure 73-2 for illustration).

(b) Collector Streets - A vision clearance area for all collector/arterial street intersections, collector/arterial street and local street intersections, and collector/arterial street and railroad intersections shall be that triangular area formed by the right-of-way lines along such lots and a straight line joining the right-of-way lines at points which are 25 feet from the intersection point of the right-of-way lines, as measured along such lines. Where a driveway intersects with a collector/arterial street, the distance measured along the driveway line for the triangular area shall be 10 feet (see Figure 73-2 for illustration).

(c) Vertical Height Restriction - Except for items associated with utilities or publicly owned structures such as poles and signs and existing street trees, no vehicular parking, hedge, planting, fence, wall structure, or temporary or permanent physical obstruction shall be permitted between 30 inches and 8 feet above the established height of the curb in the clear vision area (see Figure 73-2 for illustration). [Amended by Ord. 895-93 §3, passed May 24, 1993; Ord. 945-95 §, passed May 8, 1995; Ord. 1025-99 §7, passed July 26, 1999; Ord. 1026-99 §97, passed Aug. 9, 1999.] (Ord. 1103-02, Amended, 03/25/2002; Ord. 1096-02, Amended, 01/28/2002)

### **Section 73.410 Streets. [Reserved for Street Tree Plan.]**

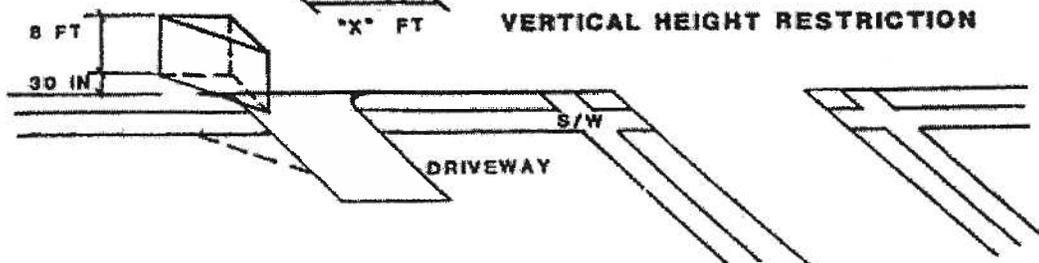
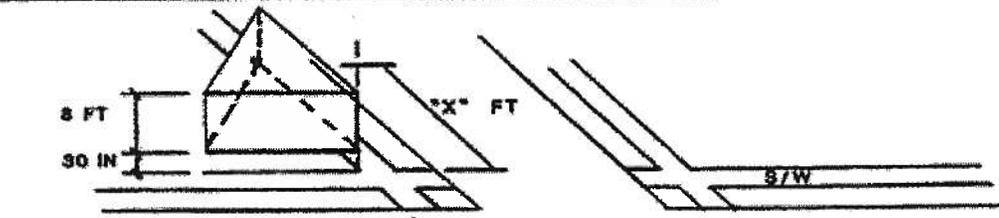
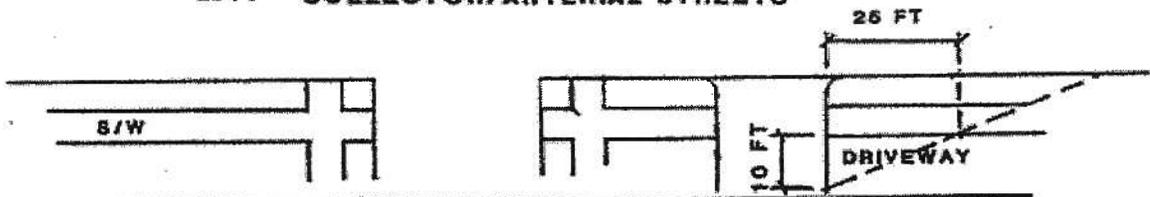
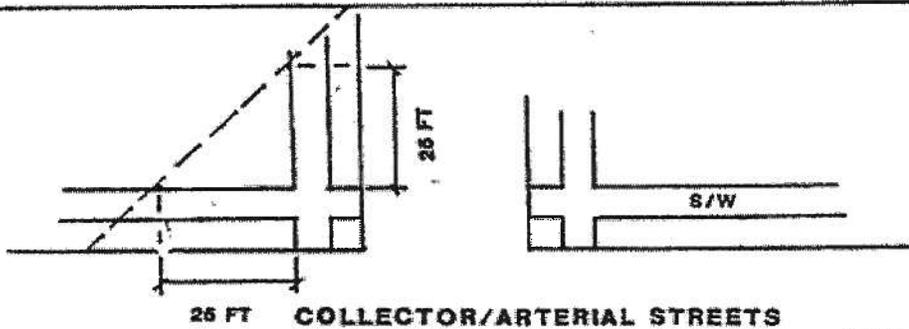
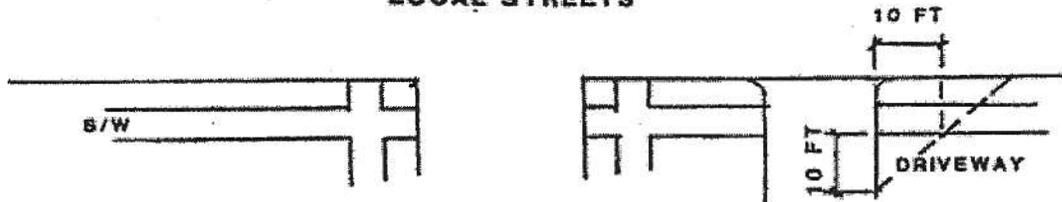
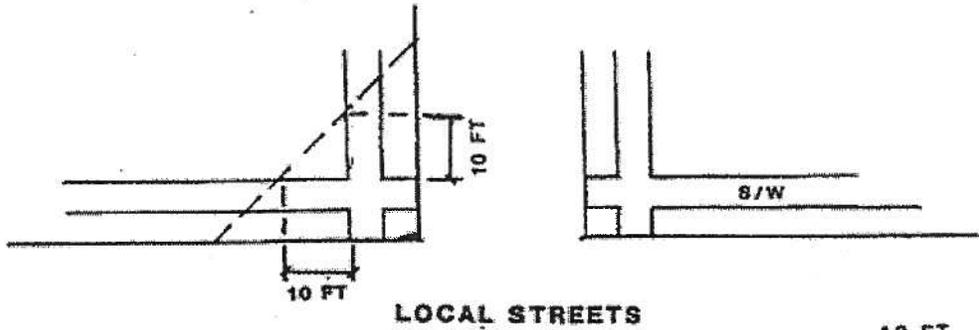
### **Section 73.450 Wireless Communication Facility and Wireless Communication Facility Attached Site Design.**

Purpose. The purpose of wireless communication facility and attached facility design objectives

# Tualatin Development Code

Figure 73-2

## VISION CLEARANCE AREA



**MELISSA HARDY***Item E-1**Submitted for the record  
at the July 9, 2007 Council  
meeting.*

**From:** twolivelys@comcast.net  
**Sent:** Monday, June 25, 2007 9:36 AM  
**To:** MELISSA HARDY  
**Cc:** Lou Ogden; Doug Rux; Mike McKillip; SHERILYN LOMBOS  
**Subject:** Fence Regulation Opportunity

I would very much like staff to consider the on-going fence regulation change as a real opportunity to add an important safety item to city code so we address safety problems as well as esthetic considerations. I think it is a chance to address function at the same time as we address looks! Many locations in the City of Tualatin suffer from intersection sight distances that don't meet any design standard for safety, yet every time I ask about one, I am told that staff can't do anything about it because they have no "power" to do so. While I think they could use their public safety powers now, I would agree they could simplify the system with a simple Clear Vision code provision (now required by development code for commercial builders) as adopted by many other area cities. Please look at the City of Milwaukie PDF file Clear Vision and Fence Requirements, I have attached, as it clearly provides for much increased safety. If the council needs to have photos and locations for ten or twenty locations where we have existing sight safety violations (some built into recent City projects) then I will volunteer to obtain them for their hearing.

Public safety is the number one reason government exists and national design standards suggest we can do a better job than we are currently doing. I hope you will consider this an opportunity to improve our regulations in this area, rather than just a chance to "make it look better".

Dennis Lively

Attachment D  
Email from Dennis Lively dated  
6/25/07

7/3/2007



COMMUNITY DEVELOPMENT DEPT.  
6101 SE JOHNSON CREEK BLVD.  
MILWAUKIE, OREGON 97206

PHONE: (503) 786-7630 – Planning  
(503) 786-7606 – Engineering  
FAX: (503) 774-8236

For General Information

# Clear Vision Areas and Fences

Property owners are responsible for maintaining clear vision areas and fences in conformance with City regulations. Because fence regulations often overlap with clear vision areas, the regulations for both fence and clear vision areas are presented together in this handout. It is strongly recommended that citizens contact the Planning and/or Engineering Department if they have questions regarding fences or clear vision areas.

As a general guideline, fences will meet fence and clear vision regulations if they are:

- Under 30" tall, measured from curb or street height, in front yards and side yards adjacent to the street.
- Under 72" tall in rear yards and side yards not adjacent to the street.
- Placed entirely within property boundaries.

## CLEAR VISION AREAS

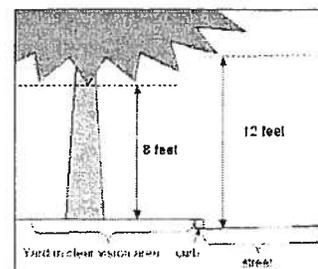
Clear vision areas are required by the Milwaukie Municipal Code to ensure that persons traveling in the City have unobstructed views at street and driveway intersections.

### Where Clear Vision Areas Exist

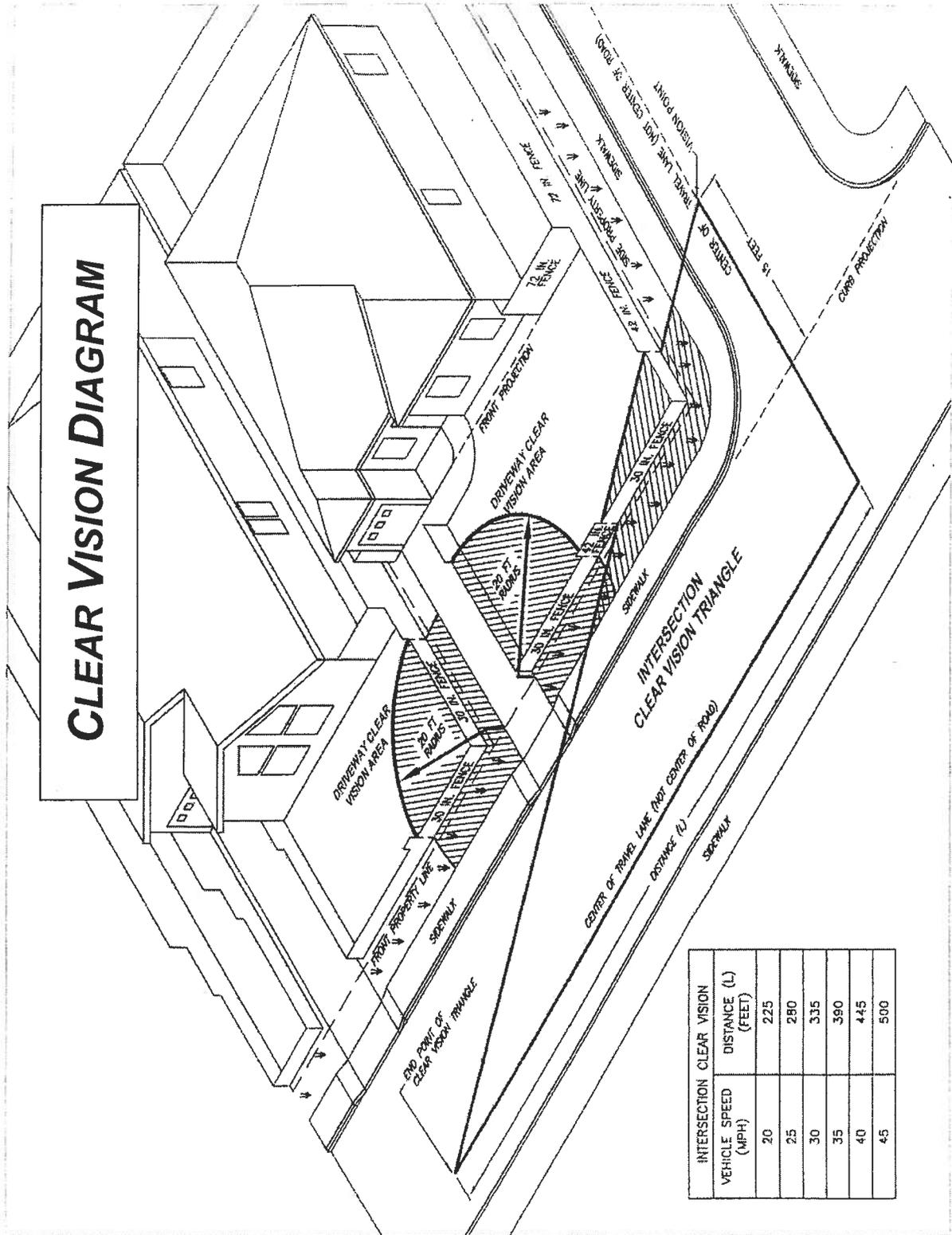
1. **Street intersections:** The clear vision area is defined in the Clear Vision Diagram on the next page.
2. **Driveways:** Defined by a 20' radius from the point where the driveway meets the lot line. See the Clear Vision Diagram on the next page.

### Regulations for Clear Vision Areas

1. **Fences, shrubs, walls, and other landscaping are limited to 30" measured from top of curb or 36" above street level if no curb exists.** The only exceptions to this regulation are:
  - Fences may exceed the maximum clear vision height if they do not obscure sight by more than 10% (such as a chain-link fence). Fences are subject to height restrictions of 42" in front yards and 72" in side yards, and cannot exceed these heights even if they do not obscure sight by more than 10% (see Fence Regulations below).
  - Vegetation may exceed the maximum clear vision height if it does not obscure sight by more than 10%.
2. **Trees and poles may be allowed in the clear vision area, provided they allow continuous view of vehicles approaching the intersection.** Branches and foliage of trees must be removed to a height of at least 8' above the ground. Trees that overhang a street must be clear of branches and foliage to a height of at least 12' above the street.



*Tree pruning over streets and in clear vision areas*



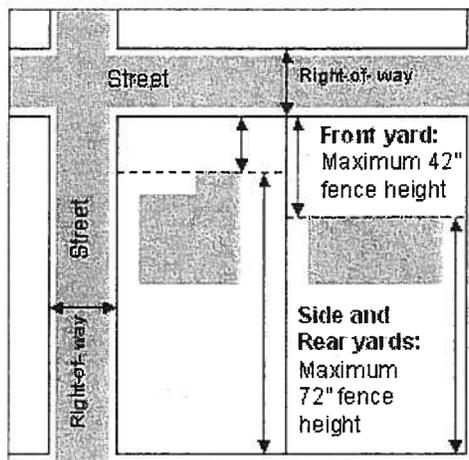
## FENCE REGULATIONS

The Milwaukie Municipal Code has fence regulations to protect the residential character of neighborhoods and to ensure that fences do not pose safety hazards.

### Height

Fence heights are regulated by the location of the fence on the property (see the Clear Vision Diagram and the graphic below). In residential zones, and for residential uses in all zones, fence heights are limited to the following:

- 42" in the front yard,\* defined as the area between the front lot line and the nearest point of the main building.
- 72" in side and rear yards, defined as the area anywhere behind the front yard.



Maximum fence heights  
allowed on residential lots

Fence heights are measured from the highest ground level within a 1' horizontal distance from the fence. ***In clear vision areas, clear vision standards apply for fences over 30" above curb height or 36" above street level if no curb exists. (Fences over these heights must not obscure sight by more than 10%; e.g., chain-link.)***

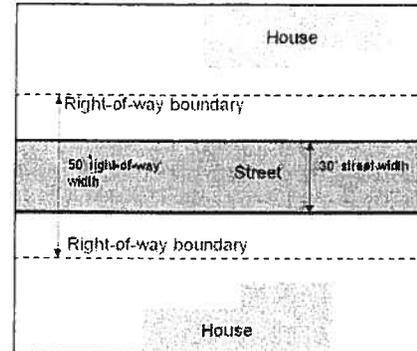
\* Flag lots have different fence height standards. Please contact the Planning Department at 503-786-7630 for these regulations.

## Location

Fences are not allowed to encroach upon adjoining properties or the public right-of-way. In most areas of Milwaukie, the right-of-way is wider than the width of the streets and sidewalk. The Engineering Department (503-786-7606) can assist in determining the right-of-way boundary.

Disputes about fence encroachment across property lines are a civil matter between property owners and are not mediated by the City. The City recommends placing fences at least 6" away from a known property line, identified by property pins.

Existing fence lines are not an accurate indicator of property lines. If a known property line cannot be found, the City recommends constructing a new fence well within the apparent property boundary or hiring a surveyor to locate the property line.



*Sample street and right-of-way width diagram*

## Materials

In residential zones and residential uses in all zones, no electrified, barbed, or razor-wire fencing is permitted.

This handout is a general guide and may not contain all necessary information. Please contact the Planning Department (503-786-7630) or Engineering Department (503-786-7606) if you have questions.

Revised 5/22/07



# MEMORANDUM CITY OF TUALATIN

**TO:** Honorable Mayor and Members of the City Council

**THROUGH:** Sherilyn Lombos, City Manager 

**FROM:** Kent Barker, Chief of Police  
Crystal Reynolds, Community Services Officer

**DATE:** October 13, 2008

**SUBJECT:** Community Services Officer Update and Discussion

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## **POLICY CONSIDERATIONS:**

Our Community Services Officer was hired in November 2007, was trained, and began solo-status enforcement in January 2008. Staff will provide an update of what has been accomplished and will seek input from Council.

## **ISSUES TO BE DISCUSSED:**

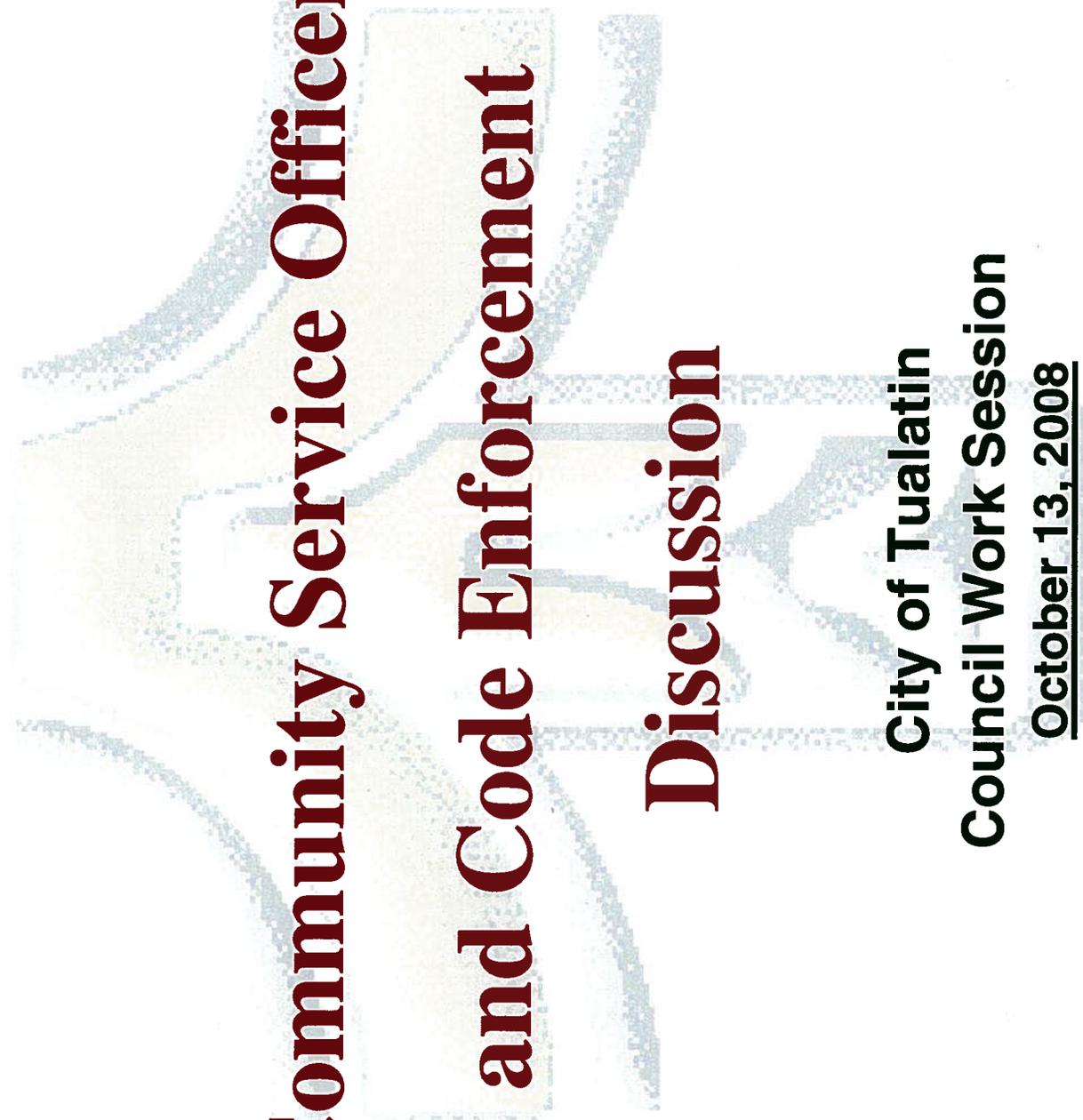
A PowerPoint Presentation will be given to show the following:

- Reason we hired the Community Services Officer
- Statistical Information
- Present challenges the CSO has faced the past nine months
- Seek feedback and direction from council

## **DESIRED OUTCOMES:**

1. Have a constructive discussion on what direction the Council would want the staff to take. Should we stay status quo or modify the duties and expectations?
2. Establish Council priorities and expectations
3. Allow CSO to listen to the discussion and understand the challenges faced by our Decision-Makers

**Attachments:** A. PowerPoint Presentation



# **Community Service Officer and Code Enforcement Discussion**

**City of Tualatin  
Council Work Session  
October 13, 2008**



# Community Services Officer

---

## What Do We Want to Accomplish Tonight?

- **Discuss Why We Hired the CSO**
- **Show Statistical Information**
- **Present challenges the CSO has faced**
- **Generate discussion for Council to determine if direction should be modified or stay status quo**



# Community Services Officer

## What Has Been Our Goal for the CSO?

### 1/2 Time Code Enforcement

To Enforce City Codes and enhance the livability of our community (Clean things up)

Strive for Voluntary Compliance

Consolidate, Manage, and Coordinate Code Enforcement efforts with assistance from other departments as needed.

### 1/2 Time Police Assist

Assist and handle Police Calls For Service that do not require a “Sworn” officer to handle

Relieve workload from patrol officers to free-up patrol time



# Code Enforcement Prior to 2008

## Who Handled Code Compliance Issues?

**City Manager's Office (Jim Jacks):** Signs, Misc.

**Operations:** Trees, Noxious Vegetation, Rubbish, Junk, Signs, Graffiti, Sidewalk Issues, Carcass removal, Reverse Frontage

**Engineering:** Street Lights, Traffic Signals, Building Codes

**Planning:** Noise, Public Health, Attractive Nuicances, Tracking & Management of Code Violations

**Police:** Graffiti, Littering, Discharge of Weapons, Noise, Barking Dogs, Hazards, Parking, Public Nudity, Public Urination/Defecation, Open Containers, etc.

**Washington County:** Dogs at large



# **Code Enforcement Prior to 2008**

## **Challenges of Enforcement:**

- **No specific department managed or controlled**
- **Lack of consistent enforcement by various depts.**
- **Generally Enforcement was “Complaint Driven”**
- **City Employees have enforced codes in the past by self-initiation in the field (parking violations, signs in public right-of-way, hazards, etc.)**
- **Anonymous complaints ignored by some departments and addressed by other departments depending on the type of complaint received**



# Code Enforcement Stats

Separate from Police Calls For Service	TOTAL 2007	TOTAL *2008*	Monthly Breakdown													
			Jan-April	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec					
6-1-070 Offensive Littering		3		3												
6-1-140 Discharge of Weapons		3			2	1										
6-1-120 Noise	3	6		1	2					3						
6-3-010 Dog Control Issues		9		4	1											
6-4-050 Nuisances Affecting Public Health (Debris / Stagnant)	3	4		1	2											
6-4-060 Creating a Hazard																
6-4-090 Noxious Vegetation	37	113	25	26	24	15	3	20								
6-4-100 Scattering Rubbish		4				2	2									
6-4-140 Radio/TV Interference		1		1												
6-4-150 Junk	3	51	42		2			7								
6-4-155 Derelict Fences		5				1	4									
6-7-040 Smoking Outside Entrs.		2		2												
6-13 Rental Maint. Standards		4		-	-	-	-	4								
8-1-260 Storage on the Street	2	105	60	16	15	10	4									
9-5-050 Garage Sale Signs		10			8	2										
TDC 34 Home Occupations	2	7		3	1			3								
TDC 38 Signs (includes removal) StakeSigns/Banners/Prohibited	15	250	125	36	54	20	15	0								
<b>TOTALS</b>	65	577	252	77	94	70	37	47								
Total Citations Issued	N/A	1	0	1	0	0	0	0								

2007 Totals based on Information compiled by Planning Department

2008 Totals are January-September and based on Information compiled by Community Services Officer



# Police Calls Handled by CSO

2008 Police Calls for Services Handled by CSO

Call Types	Total 2008	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Abandoned Vehicles	36	5	1	3	7	2	2	7	4	5			
Area/Security Checks/Info	41	22	5	4	1	5	1	2	1				
Assist Person/Motorist	8	1		1		2	1	1	1	1			
Civil Service	4			1	3								
Cold Graffiti (New call Title as of May 08)	147					16	28	30	24	49			
Criminal Mischief	99	11	11	16	15	15	9	3	9	10			
Deliver Message	3					1	1	1					
Extra Patrol	3					1	1			1			
Follow Up	34	4	2	4	3	9	10		1	1			
Hazard	7	1	4				2						
Hit & Run Crashes	8		1	1		2	1		3				
Illegal Dumping	1				1								
Misc	9	2	2	4			1						
Self Initiated Calls	5		1				1						
Theft	12	1		1		3	1	5		1			
Traffic/Parking Complaints	29	9	2	2	5	5	2	3	1				
* Parking Warnings	85	2	15	10	10	10	22	5	5	6			
* Parking Citations	9	0	0	0	1	5	0	0	0	3			
<b>TOTALS</b>	<b>540</b>	<b>61</b>	<b>44</b>	<b>47</b>	<b>46</b>	<b>76</b>	<b>83</b>	<b>57</b>	<b>49</b>	<b>77</b>			



# Police Reports Written

2008 Police Reports Written by CSO

Types of Reports	Total 2008	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Abandoned	12	1			3	1		5		2			
Property - Losuround	6		1	1	1	1			1	1			
Criminal Mischief / Graffiti	267	10	10	18	23	37	35	45	42	47			
Hit and Run	5		1	1		1		1	1				
Offensive Littering	2			1	1								
Theft	10		2	2			1	4		1			
Information only	1							1					
<b>TOTALS</b>	<b>303</b>	<b>11</b>	<b>14</b>	<b>23</b>	<b>28</b>	<b>40</b>	<b>36</b>	<b>56</b>	<b>44</b>	<b>51</b>			



# Challenges For The CSO

## Complaint Driven or Self-Initiated?

Focus on Complaint v. Bigger Picture

## Work Ethic of Our CSO

Prove yourself & generate activity

Hard to ignore violations

Ownership

## Mixed Directions

Should I or shouldn't I? - Past Practice

## Vague Codes

Need to enforce codes as written or amend

See Examples on Next Slides



# Self Initiated Calls?

Separate from Police Calls For Service	TOTAL 2007	TOTAL *2008*	Jan-April	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
6-1-070 Offensive Littering		3	3								
6-1-140 Discharge of Weapons		3			2	1					
6-1-120 Noise	3	6	1		2		3				
6-3-010 Dog Control Issues		9	4		4	1					
6-4-050 Nuisances Affecting Public Health (Debris / Stagnant)	3	4			1	2					
6-4-060 Creating a Hazard											
6-4-090 Noxious Vegetation	37	113	2		15	3	20				
6-4-100 Scattering Rubbish		4					2				
6-4-140 Radio/TV Interference		1									
6-4-150 Junk	3	51	4				7				
6-4-155 Derelict Fences		5									
6-7-040 Smoking Outside Entrs.		2									
6-13 Rental Maint. Standards		4									
8-1-260 Storage on the Street	2	105	6								
9-5-050 Garage Sale Signs		10			16	15					
TDC 34 Home Occupations	2	7			8	1					
TDC 38 Signs (includes removal) StakeSigns/Banners/Prohibited	15	250	125	36	5	20	15	0			
<b>TOTALS</b>	<b>65</b>	<b>577</b>	<b>252</b>	<b>77</b>	<b>94</b>	<b>70</b>	<b>37</b>	<b>47</b>			
Total Citations Issued	N/A	1	0	1	0	0	0	0			

60%

40%

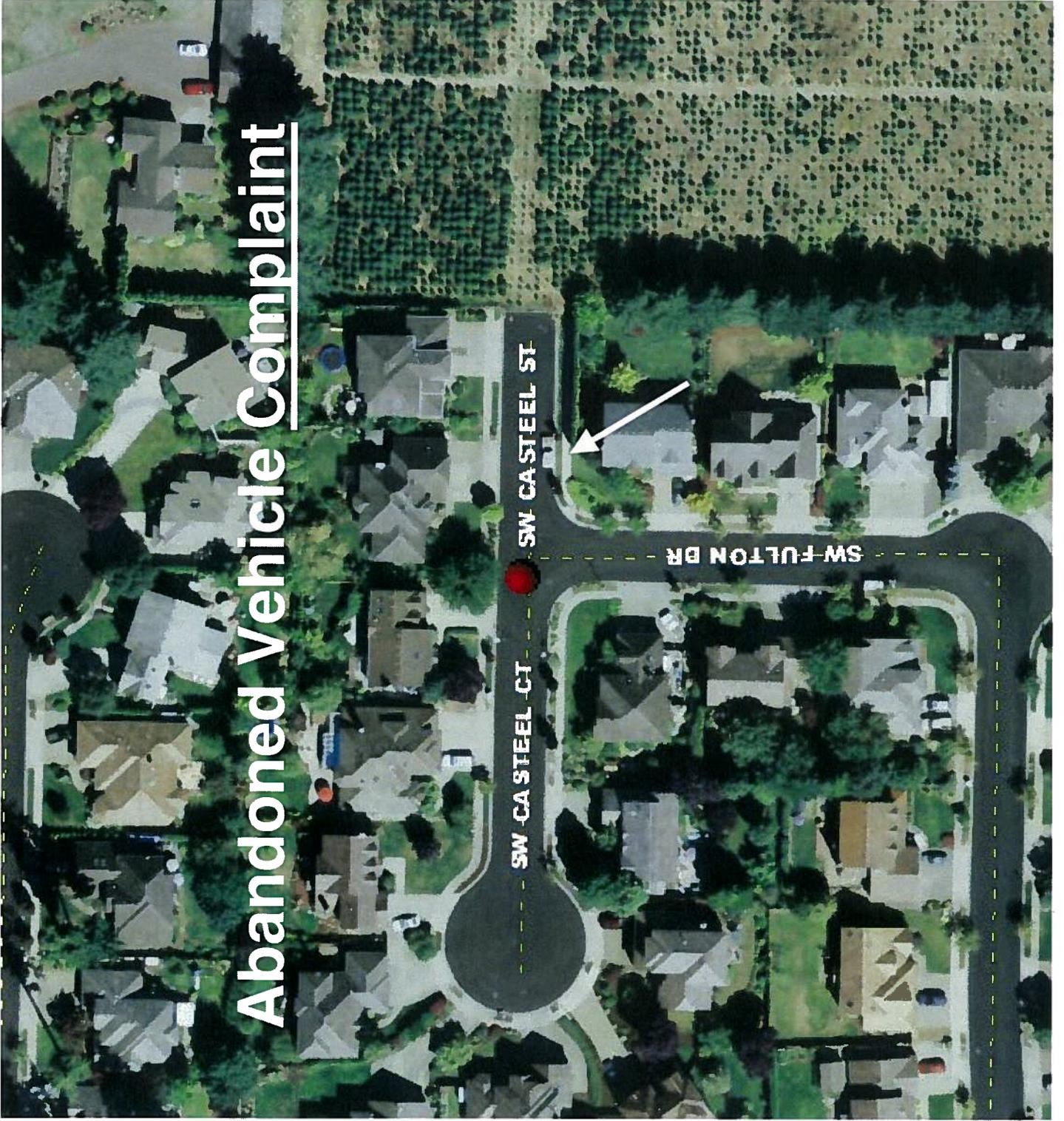
20%

10%

5%

2007 Totals based on Information compiled by Planning Department  
 2008 Totals are January-September and based on Information compiled by Community Services Officer

# Abandoned Vehicle Complaint





07.23.2008 14:41



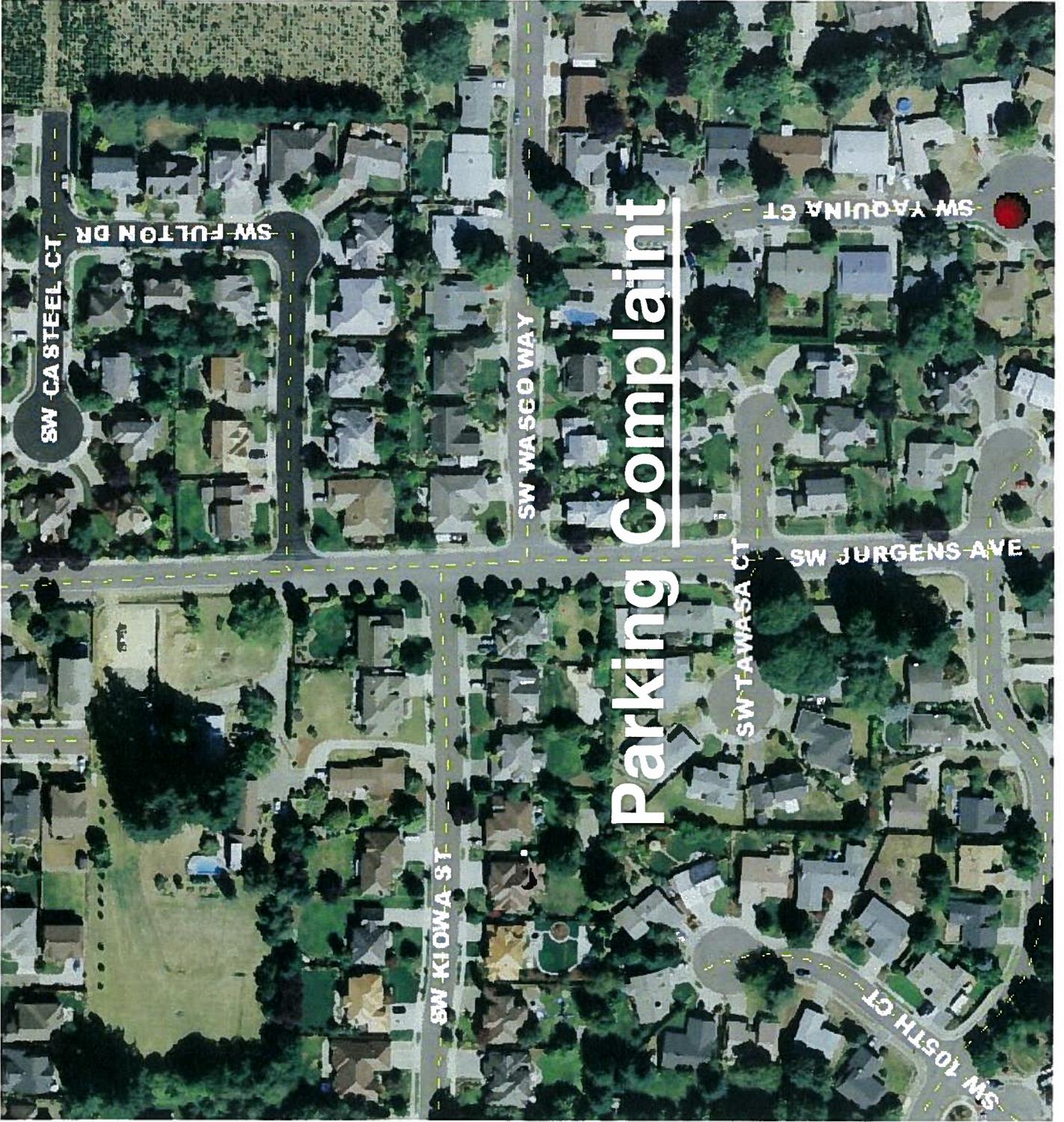
Taking a few steps back...

07.18.2008 11:39



Taking a few steps further back...





# Parking Complaint



Without Blinders On...

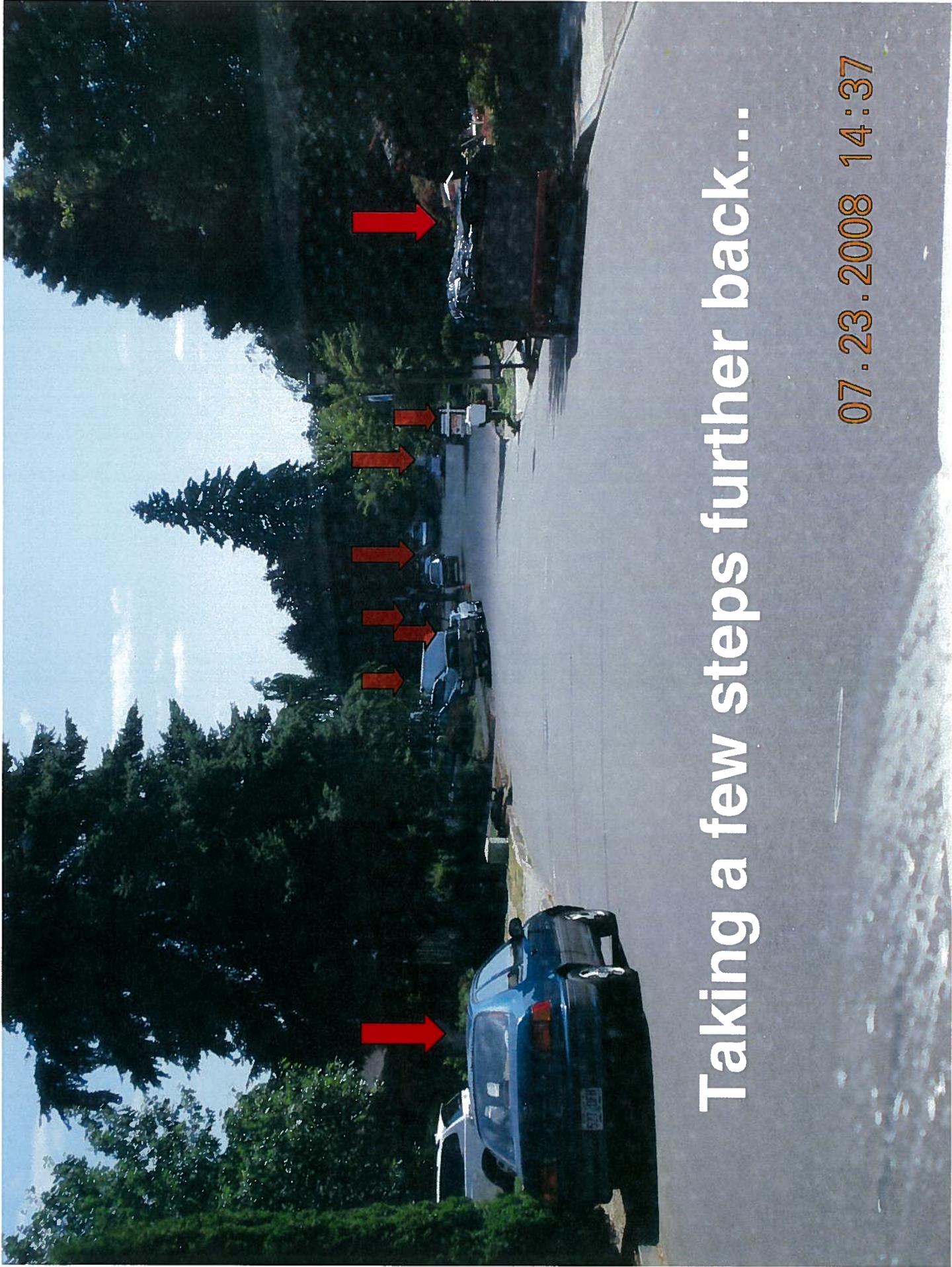
07.23.2008 14:38





Taking a few steps back...

07.23.2008 14:38



Taking a few steps further back...

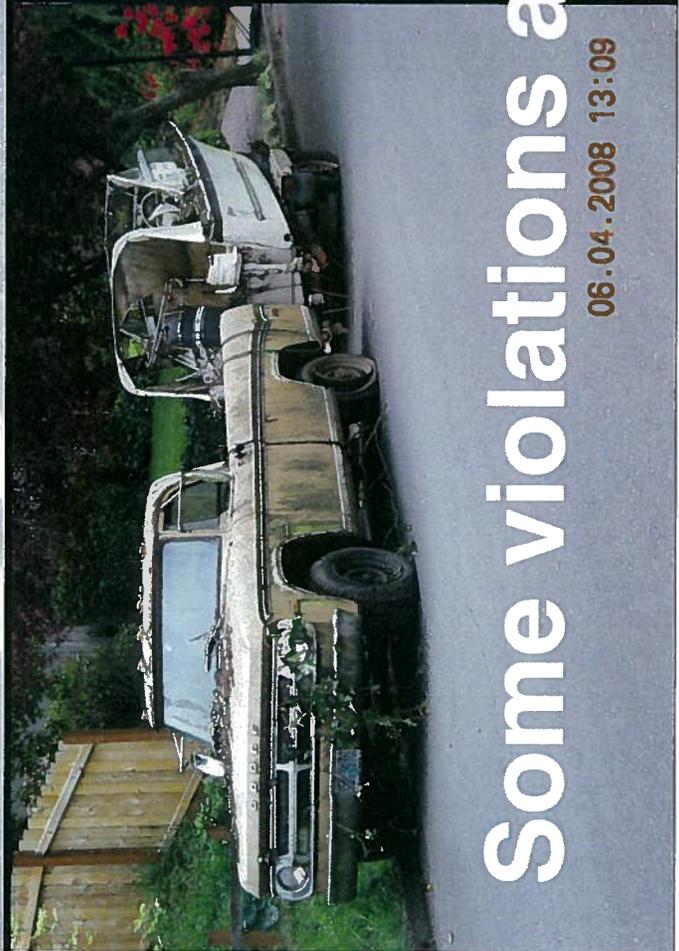
07.23.2008 14:37



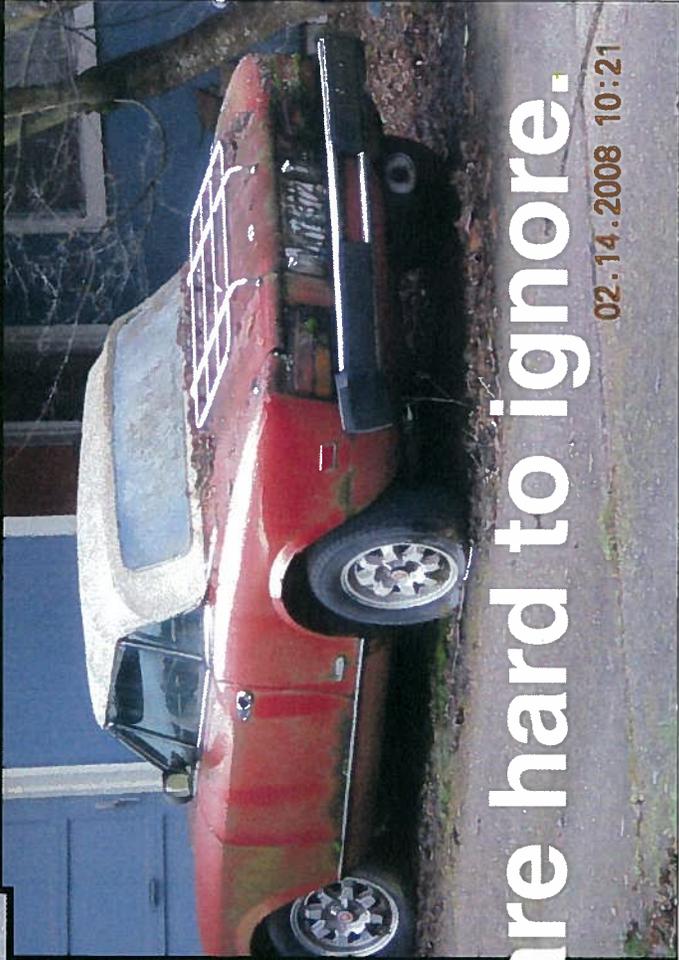
06.06.2008 14:42



03.25.2008 11:56



06.04.2008 13:09

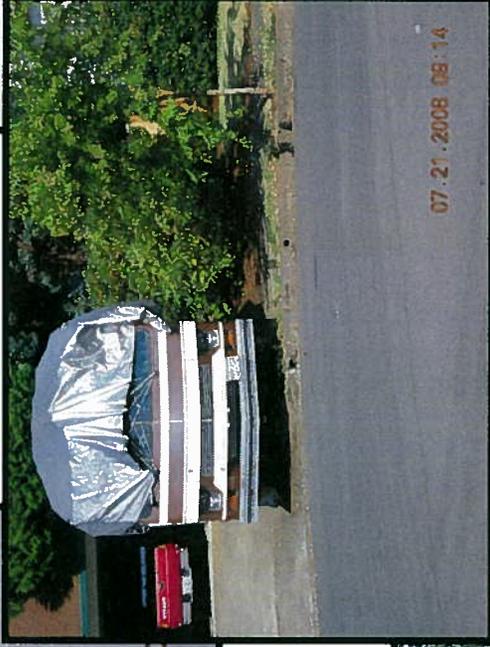
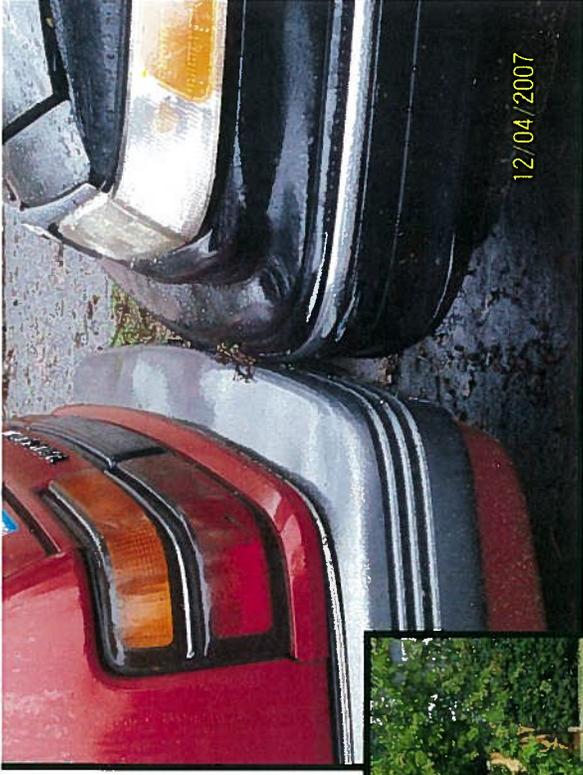


02.14.2008 10:21

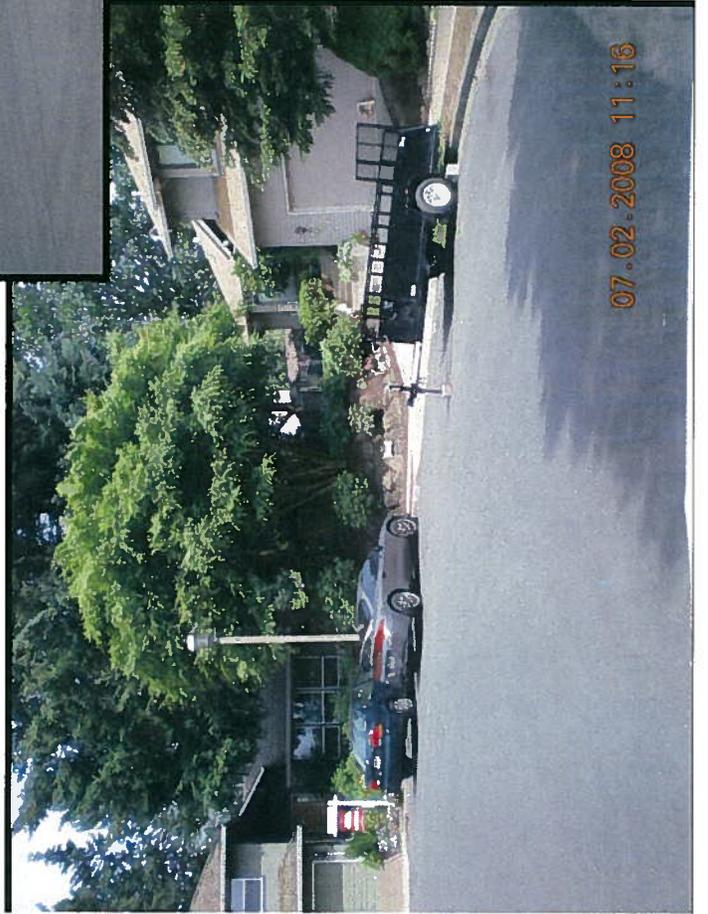
Some violations are hard to ignore.



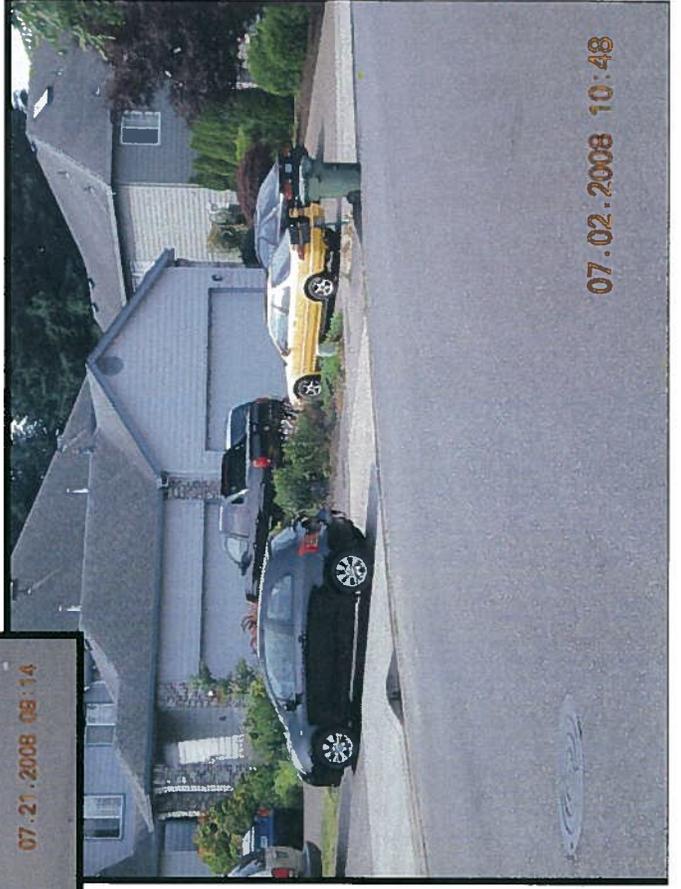
# Parking Issues



# Safety Concerns?



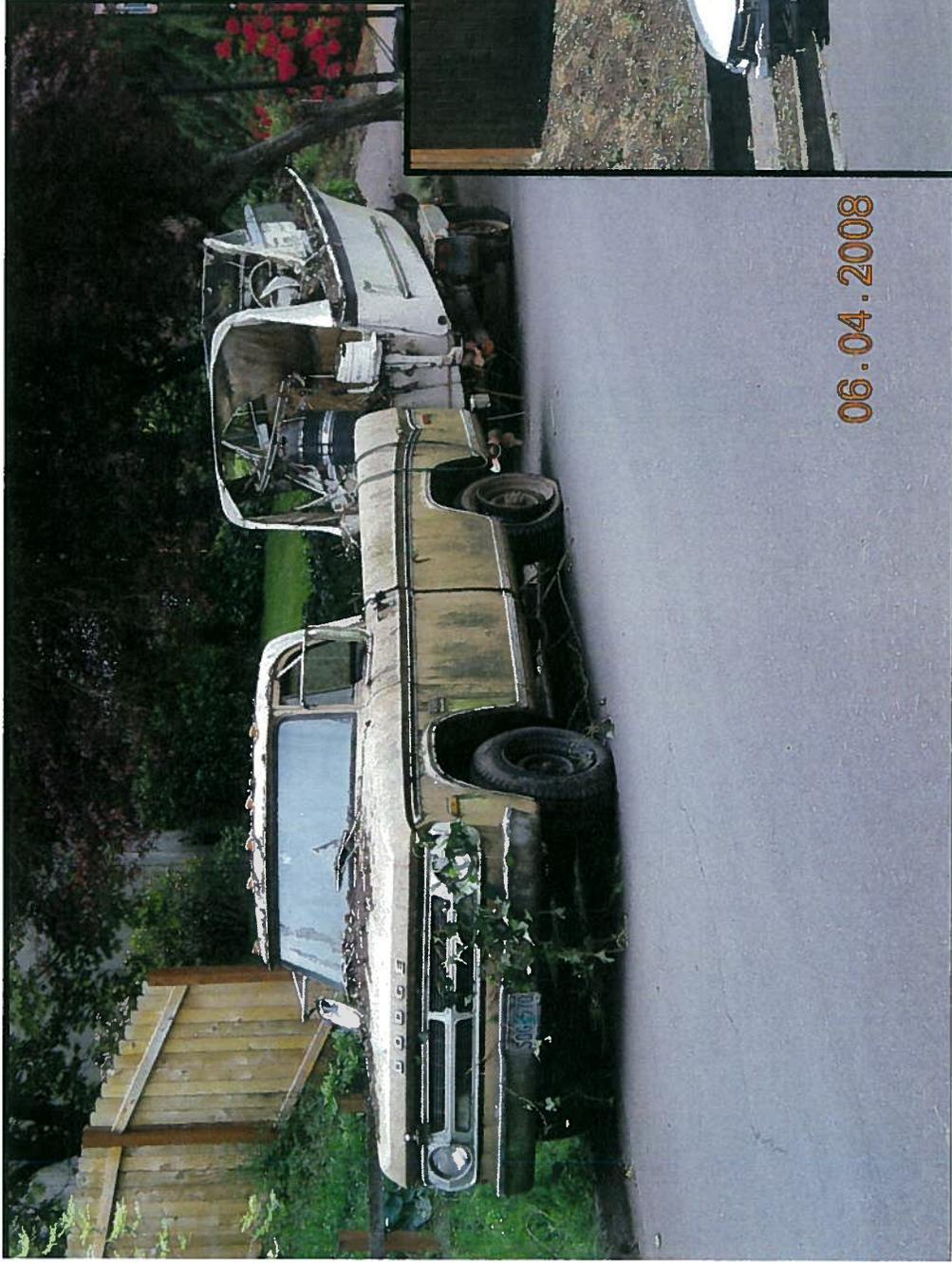
# City Liability?



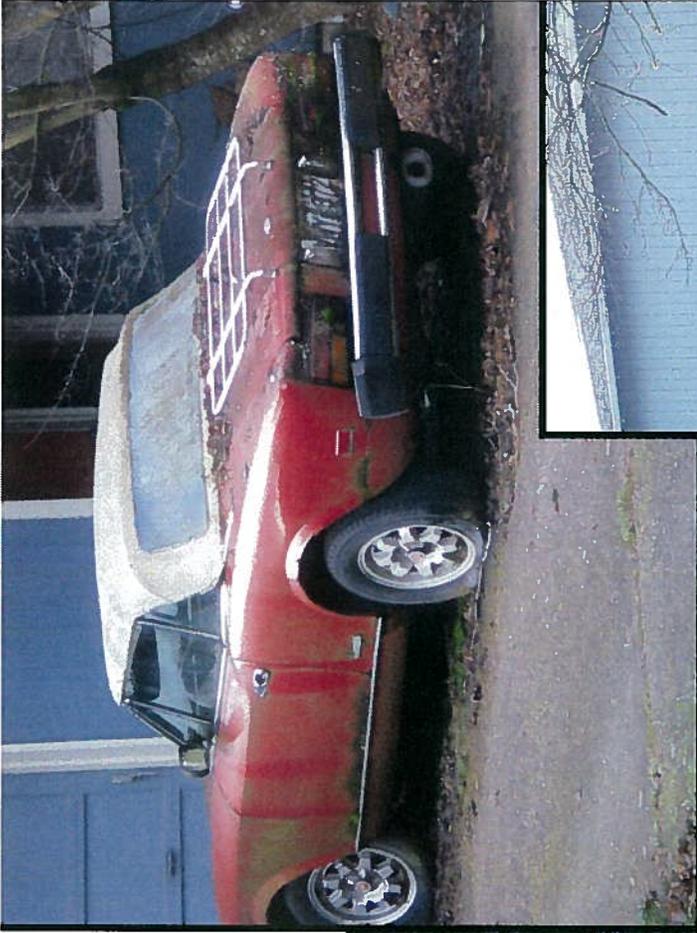
# Storage on the street



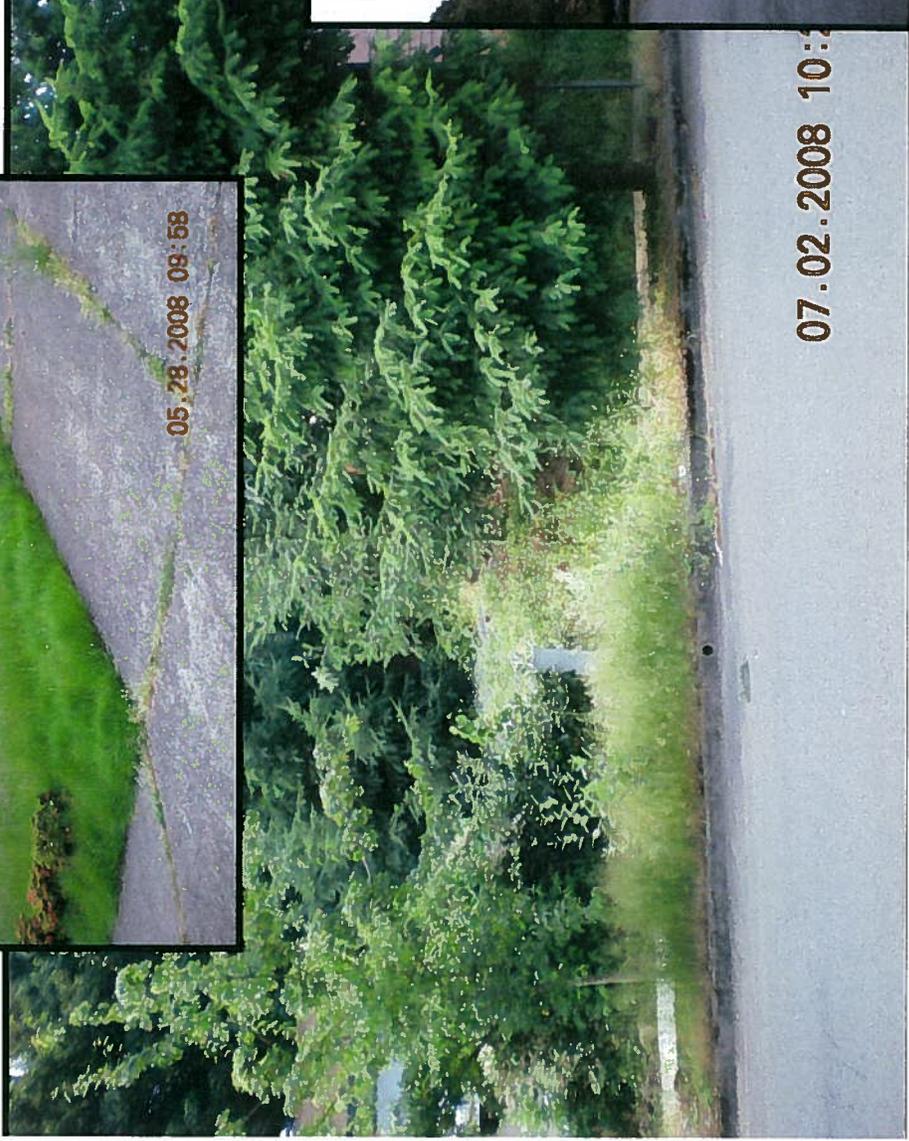
# Abandoned vehicles



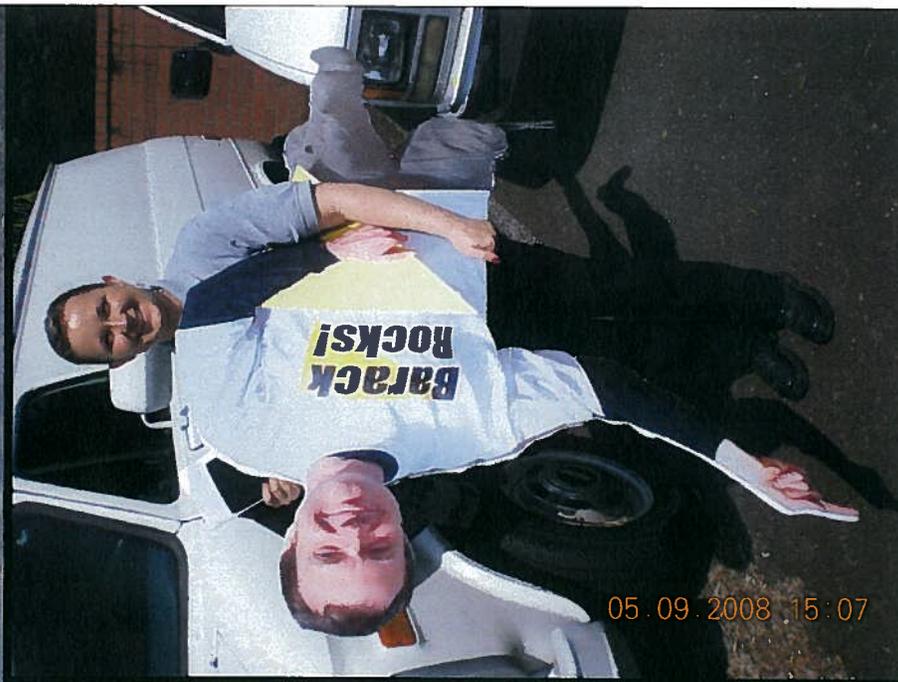
# Junk and debris



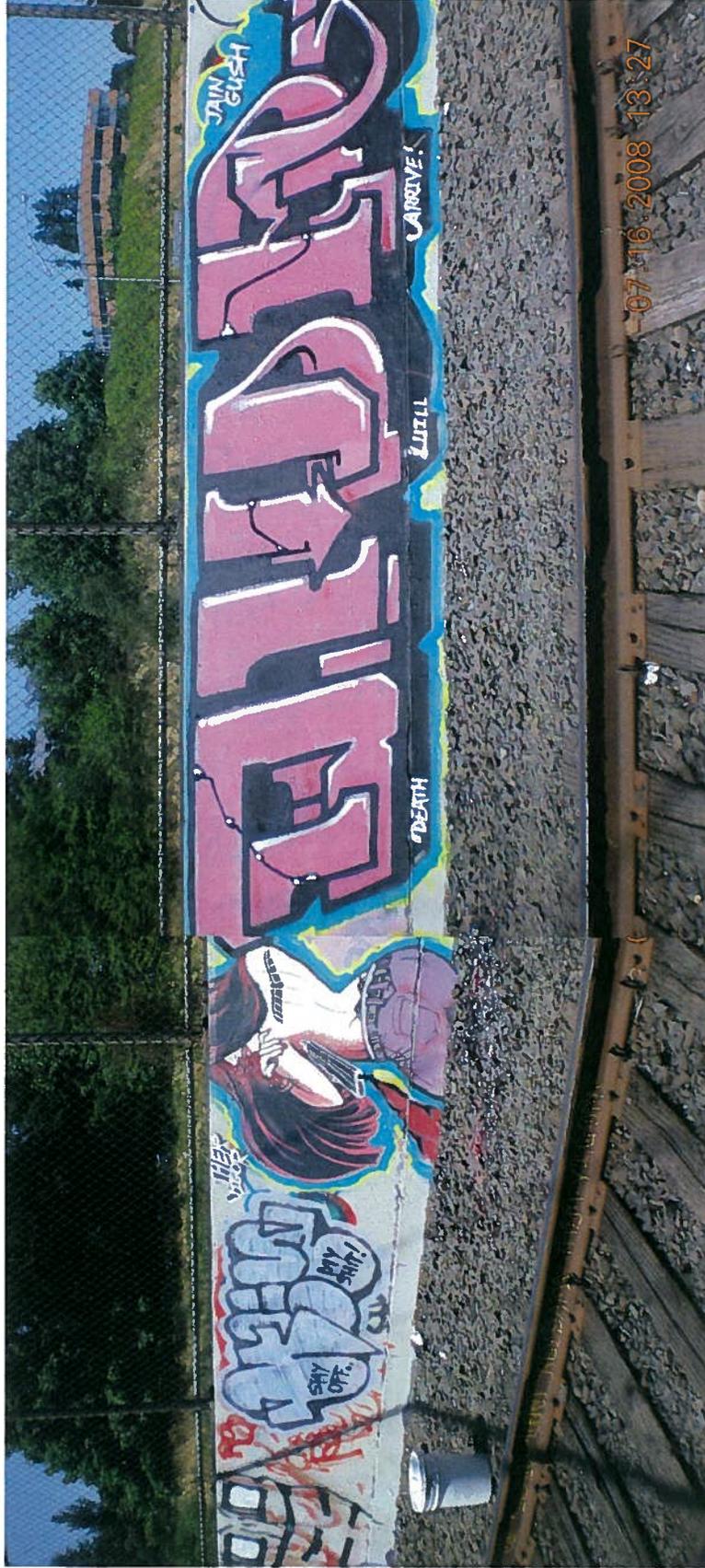
# Noxious Vegetation



Signs  
Signs  
Signs

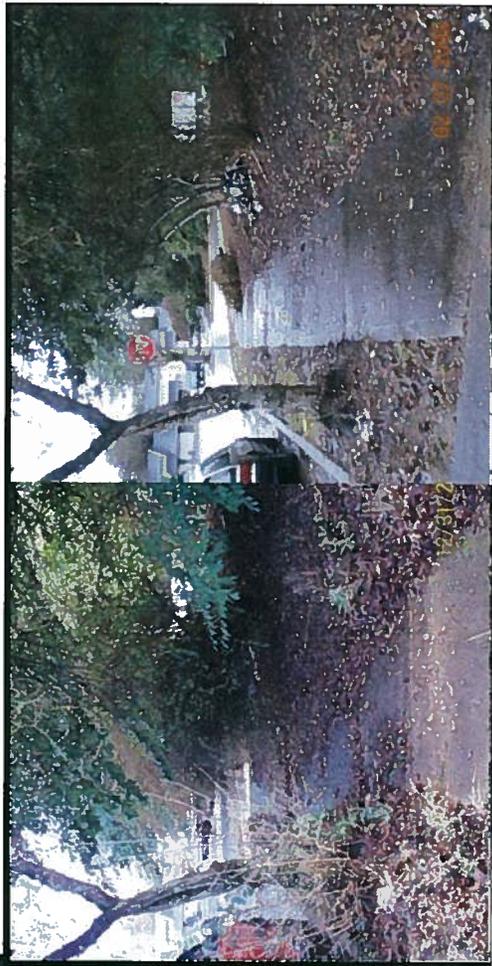
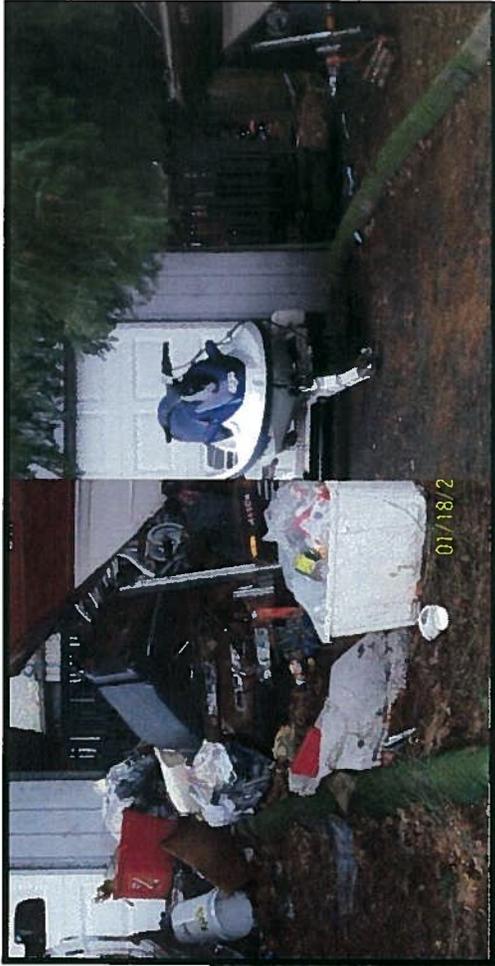


# Graffiti





# Before and After





## Discussion Time...



- **Are you satisfied with the current direction we're taking?**
- **What would you like to see modified?**
- **What are your priorities for Code Enforcement?**
- **Where do you see the Future of the CSO?**



## MEMORANDUM CITY OF TUALATIN

**TO:** Honorable Mayor and Members of the City Council

**THROUGH:** Sherilyn Lombos, City Manager *SL*

**FROM:** Doug Rux, Community Development Director *DR*  
Colin Cortes, Assistant Planner *C.C.*

**DATE:** October 13, 2008

**SUBJECT:** RESCINDMENT OF 80% MINIMUM DENSITY REQUIREMENT

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### **BACKGROUND:**

The matter at hand is a potential plan text amendment of the Tualatin Development Code (TDC) to rescind a requirement that new residential development build at least 80% of the maximum number of dwelling units (DUs) per acre permissible in a residential planning district. The City adopted the requirement in the late 1990s because Metro required local governments to adopt this requirement. In 2002, Metro removed this requirement from the Metro allowing local governments to pursue rescindment if they so chose.

The Community Developer Director initiated the amendment because the Council and a number of residents expressed through the Tualatin Tomorrow (TT) vision a desire for large-lot development within Tualatin. Strategy GHT 11 "Housing Choices and Types" is to "Develop a range of housing choices and types in Tualatin and promote a balanced community with a diversity of persons living, recreating, shopping and working within the city."

Staff mailed legal notices of the amendment for the scheduled 10/13/2008 public hearing along with Measure 56 notices to all owners of property within the City limits, a total of over 6,000.

### **POLICY CONSIDERATIONS:**

- Should the City remove the requirement to build residential development at 80% of the maximum allowed density for all designated residential planning districts (RL, RML, RMH, RH, and RH/HR)?
- The 80% rule is one of two main factors controlling density in Tualatin:

*Factor 1:* Low Density Residential (RL) Planning District – created for single-family housing – requires a minimum average lot size related to the maximum number of permissible DUs. This minimum average is 6,500 square feet (sq ft). The maximum

number of DUs in RL is 6.7 per acre. Taking the 43,560 sq ft in an acre and dividing it by 6.7 yields a number that is approximately 6,500 and illustrates that the requirement indirectly establishes a minimum density for single-family development.

*Factor 2:* In 1997 Tualatin had volunteered to Metro a target of 4,054 DUs for the city as a whole by the year 2017. The consequence of failing to achieve the target is as yet unknown. Preliminary data and analysis show with reasonable doubt that Tualatin may meet the target. (Refer to the tables in Attachments B and C for details.)

- Should Tualatin maintain a minimum lot size requirement of 6,500 square feet for single-family (SF) development in the Low Density Residential (RL) Planning District?
- Without the 80% density requirement would Tualatin meet its requirements under the Metro Functional Plan, Title 1, Table 1 in meeting the housing targets for the year 2017?
  - If residential development occurs at the maximums allowed by residential planning districts, the City would meet the Metro target
  - If residential development occurs at the minimums allowed by residential planning districts without the 80% rule, the City would fail to meet the Metro target
  - Tualatin may or may not reach the target without the 80% rule given additional factors such as the Town Center Plan, amendment of planning district development standards, some properties developing toward minimums and others toward maximums, and whether a few key properties are redeveloped or not (such as the Tualatin Country Club and golf course.)
  - Refer to Attachment B for tables showing scenarios. Attachment C is maps accompanying the tables.
- Lake Oswego, Sherwood, and Tigard have not rescinded the 80% rule.
  - The 80% rule guarantees that Tualatin will meet the Metro target because the two are related.
- The 80% rule guarantees that Tualatin will meet the Metro target because the two are related.
- Rescindment of the 80% might prevent Tualatin from meeting the Metro target.

#### **OUTCOMES:**

Upon Council direction, staff will prepare a plan text amendment (PTA) application with revised proposed language for the 10/27/2008 Council hearing.

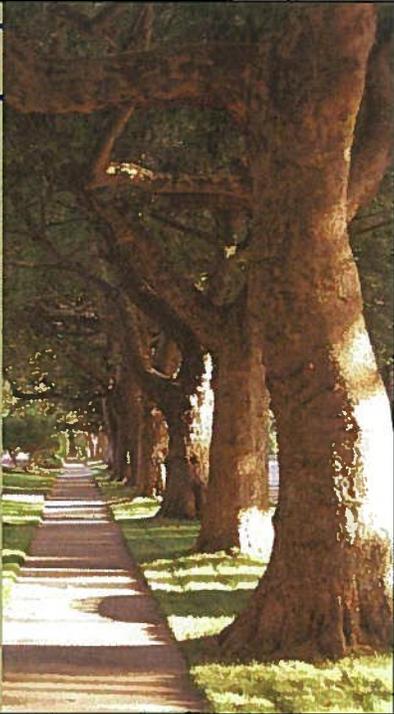
- Attachments:**
- A. Slide presentation
  - B. Tables relating to the Metro target
  - C. Maps relating to the tables
  - D. Proposed text amendment language



# Density

**The 80% Density Rule**

**City Council  
Work Session  
October 13, 2008**



# Council and Tualatin Tomorrow Goals

**Council Goal #3:**  
Highest quality physical design possible.

**Community Vision & Strategic Action Plan (June 2007):**

Strategy GHT 11 - Housing Choices and Types. Develop a range of housing choices and types in Tualatin, accommodating the needs of both traditional and non-traditional households, and promoting a balanced community with a diversity of persons living, recreating, shopping and working within the city.

Strategy GHT 14 - Mixed-Use in Town Center. Develop mixed-use in Tualatin Town Center, with amenities such as mixed-use development, financial and retail services, a non-commercial district with government and social services, civic and cultural features, and high-density housing.

Strategy GHT 18 - Urban Design Standards. Develop enhanced, flexible standards to promote ongoing community attractiveness in Tualatin and a cohesive urban design.

Slide #2



## Policy Considerations

- ◆ Should the City remove the 80% requirement for all five designated residential planning districts?
- ◆ The 80% rule is one of two main factors controlling density in Tualatin:
  1. Low Density Residential (RL) Planning District – the minimum average lot size for single-family (SF) development is 6,500 square feet (sq ft).
  2. In 1997 Tualatin had volunteered to Metro a target of 4,054 DUs for the city as a whole by 2017. The 80% assures reaching the target. The consequence of failing to achieve the target is unknown.
- ◆ Should Tualatin maintain a minimum average lot size requirement of 6,500 sq ft for SF development in RL?

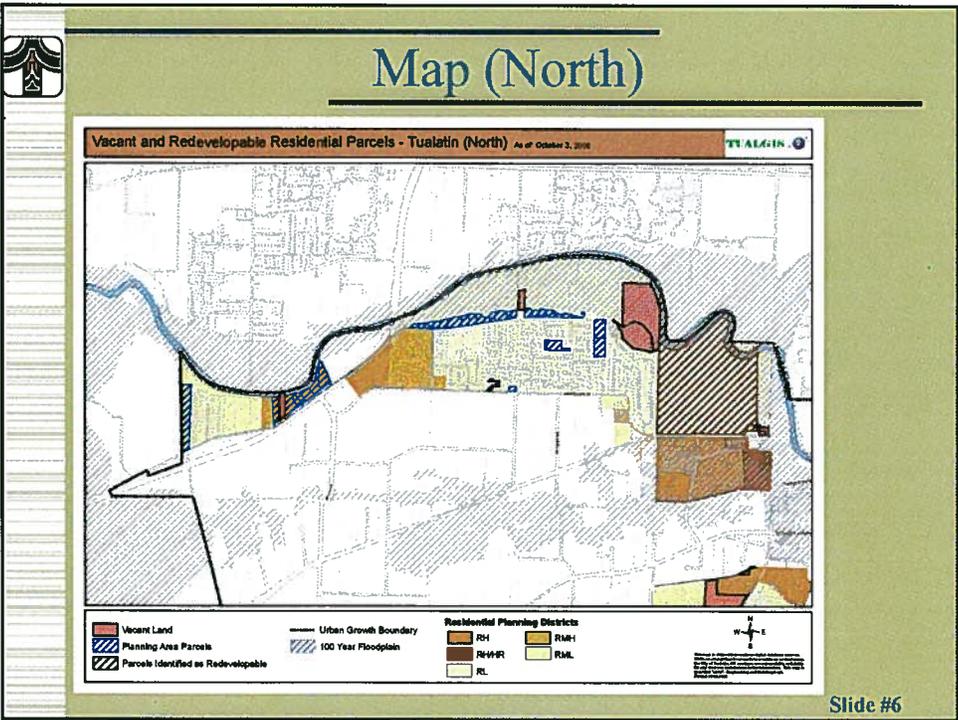
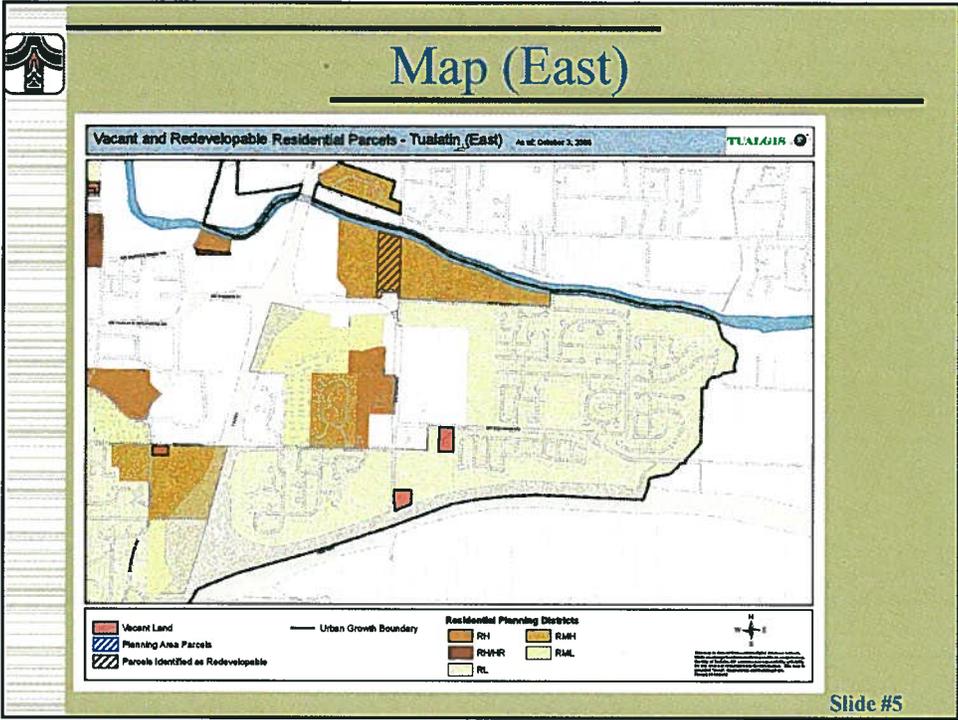
Slide #3



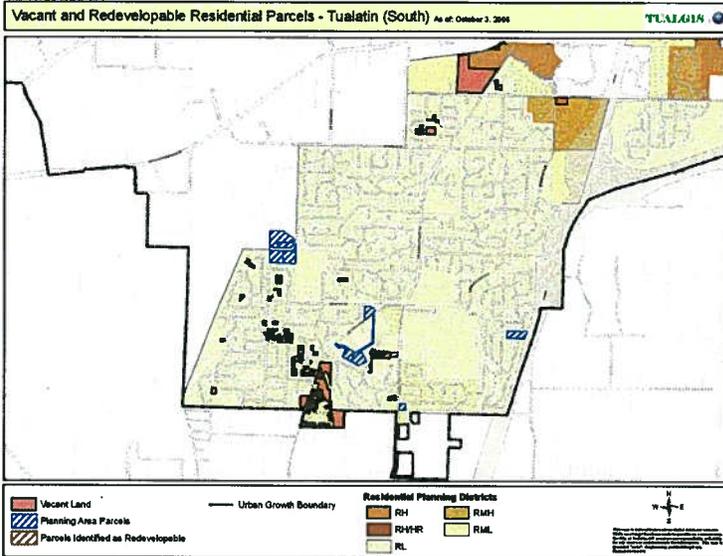
## Policy Considerations, cont.

- ◆ Without the 80% density requirement would Tualatin meet its requirements under the Metro Functional Plan, Title 1, Table 1 in meeting the housing targets for the year 2017?
  - If residential development occurs at the allowable maximums, the City would meet the Metro target
  - If residential development occurs at the allowable minimums without the 80% rule, the City would fail to meet the target
  - Tualatin may or may not reach the target without the 80% rule given additional factors such as the Town Center Plan, amendment of planning district development standards, some properties developing toward minimums and others toward maximums, and whether a few key properties are redeveloped (such as the Tualatin Country Club and golf course.)
- ◆ Lake Oswego, Sherwood, and Tigard have not rescinded the 80% rule.
  - The 80% rule guarantees that Tualatin will meet the Metro target because the two are related.

Slide #4

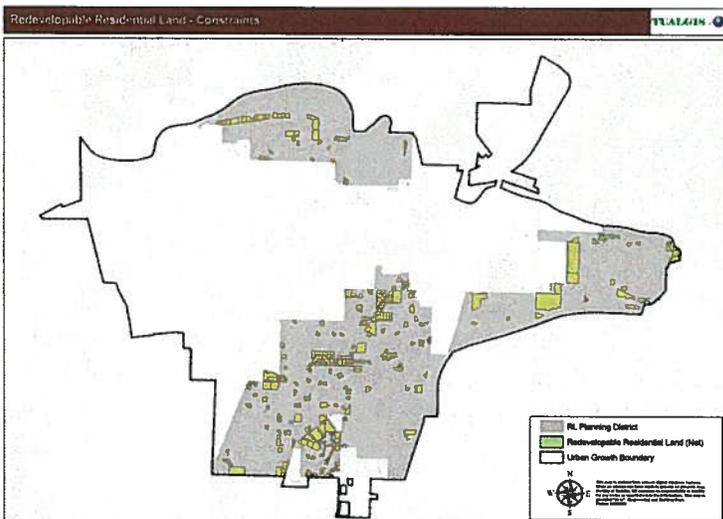


# Map (South)



Slide #7

# Map: Redevelopment Constraints



Slide #8



## Tables 1a & b: Vacant Residential

**Table 1a: Capacity on Vacant Residential Lands at 80% of Maximum Density**

Planning District	Acreage	Density Range	D.U. at the Low end of the range	D.U. at the High end of the range
RL	66.9	5.36-6.7	358	448
RML	44.9	8-10	359	449
RMH	1.0	12-15	12	15
RH	2.7	20-25	55	68
RH/HR (no vacant land)	0	26-30	0	0
<b>Total</b>	<b>115.5</b>		<b>784</b>	<b>980</b>

**Table 1b: Capacity on Vacant Residential Lands at Proposed Reduced Density Range**

Planning District	Acreage	Density Range	D.U. at the Low end of the range	D.U. at the High end of the range
RL	66.9	1-5	67	335
RML	44.85	6-10	269	449
RMH	1.0	11-15	11	16
RH	2.7	16-25	44	68
RH/HR (no vacant land)	0	26-30	0	0
<b>Total</b>	<b>115.5</b>		<b>391</b>	<b>867</b>

Slide #9



## Table 2a: The Metro Target

**Table 2a: The Metro Target**

Part A. Dwelling Unit Status as of July 31, 2007

Metro Target number of Dwelling Units (DUs) for 2017:	4,054	100%
Existing DUs counting toward target as of 2007:	2,517	62%
Remaining DUs to meet target:	-1,538	-38%

Part B. Getting to the Target - 80% of Maximum Density

Residential Land Category	Acreage	DU at Low end of Range	DU at High end of range
Vacant/ Undeveloped (from Table 1a)	115.46	784	980
RL Parcels 13,000 sq or more	131.84	707	883
Redevelopable with Tualatin Country Club (TCC)	113.0	772	964
Redevelopable without TCC*	11.55	228	285
Unincorporated and within the Planning Area**	61.86	492	615
Entitled/ At building permit stage***			130
Subtotal including TCC	422.2	2755	3572
Subtotal excluding TCC	320.71	2211	2893
Revised deficit including TCC		1,217	2,034
Revised deficit excluding TCC		673	1,355

\* The TCC alone constitutes over 91% of all redevelopable land.

\*\* Separate from vacant/undeveloped lands.

\*\*\* The Alexan at Bridgeport

Source: Community Development Department draft housing capacity study and vacant

Slide #10



## Table 2b: The Metro Target

**Table 2b. Getting to the Target- Proposed Reduced Densities**

Residential Land Category	Acreage	DU at Low end of Range	DU at High end of range
Vacant/ Undeveloped (from Table 1a)	115.46	391	866
RL Parcels 13,000 sq or more Redevelopable with Tualatin Country Club (TCC)	131.84	132	659
Redevelopable without TCC*	113.0	293	792
Unincorporated and within the Planning Area**	11.55	192	285
Entitled/ At building permit stage***	61.86	226	529
Subtotal including TCC	422.2	1042	2976
Subtotal excluding TCC	320.71	941	2469
Revised deficit including TCC		-496	1,438
Revised deficit excluding TCC		-597	931

\* The TCC alone constitutes over 91% of all redevelopable land.

\*\* Separate from vacant/undeveloped lands.

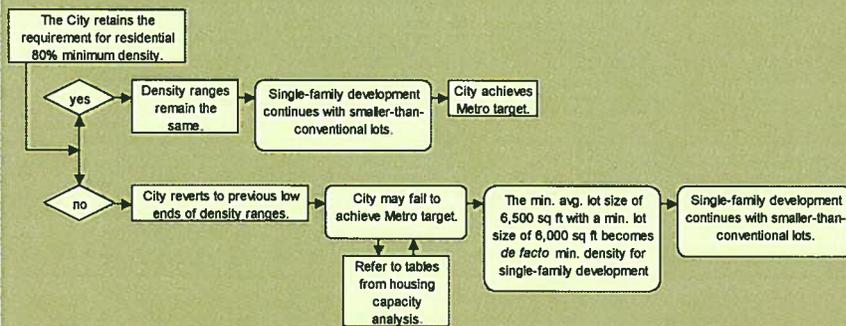
\*\*\* The Alexan at Bridgeport

Source: Community Development Department draft housing capacity study and vacant

Slide #11



## Policy Effects Flow Chart



Slide #12



## Questions and Discussion

- Context of the 80% rule
- Vision and goals
- Long-range plans
- Objectives of future development and redevelopment
- Reconciling regional planning and local desires
- Metro target and 6,500 sq ft lot size

Slide #13

**Table 1a: Capacity on Vacant Residential Lands at 80% of Maximum Density**

<b>Planning District</b>	<b>Acreage</b>	<b>Density Range</b>	<b>D.U. at the Low end of the range</b>	<b>D.U. at the High end of the range</b>
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Source: Community Development Department draft housing capacity study and vacant land

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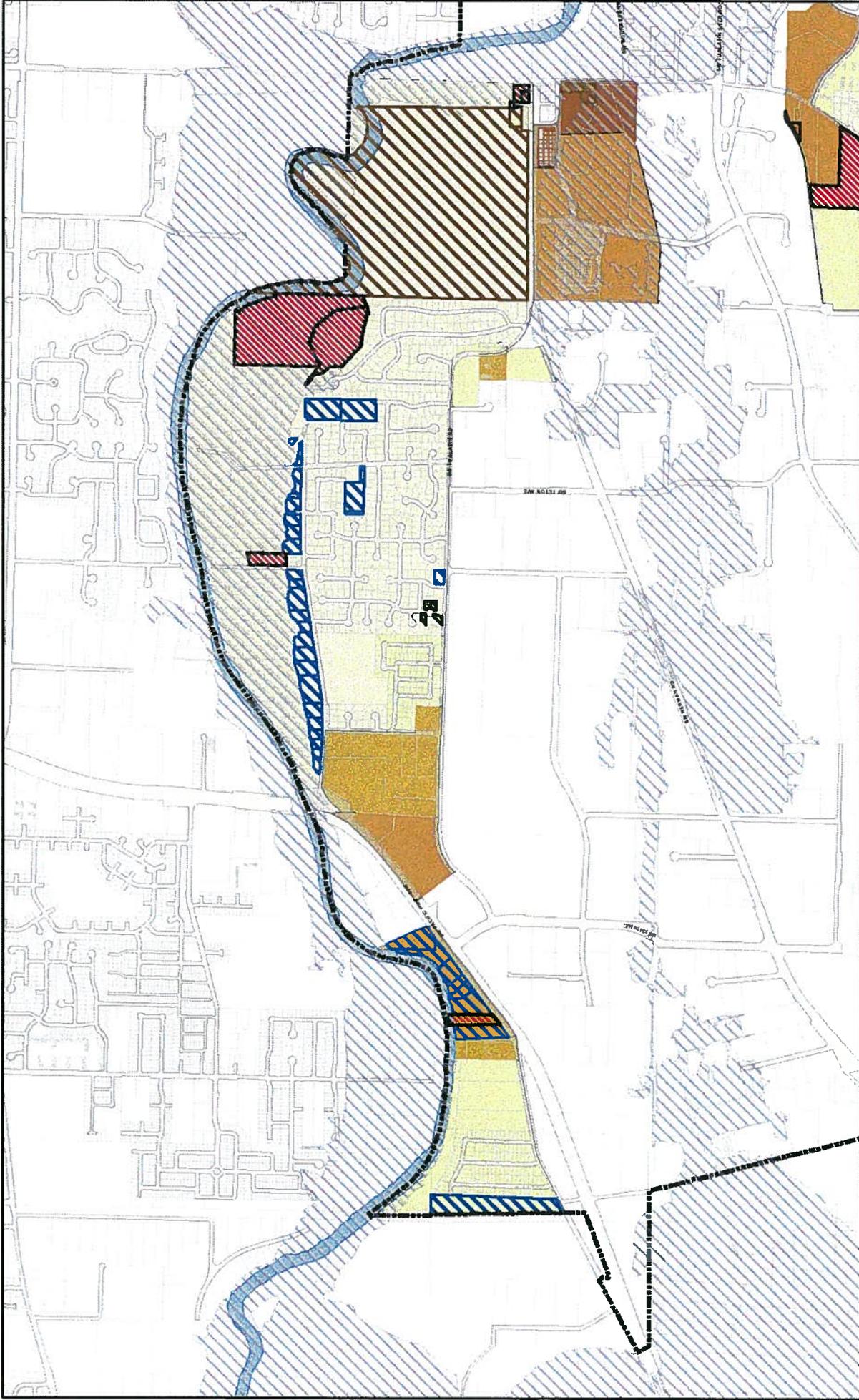
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\*\*\* The Alexan at Bridgeport

Source: Community Development Department draft housing capacity study and vacant land

# Vacant and Redevelopable Residential Parcels - Tualatin (North) As of: October 3, 2008



**Vacant Land**  **Urban Growth Boundary** 

**Planning Area Parcels**  **100 Year Floodplain** 

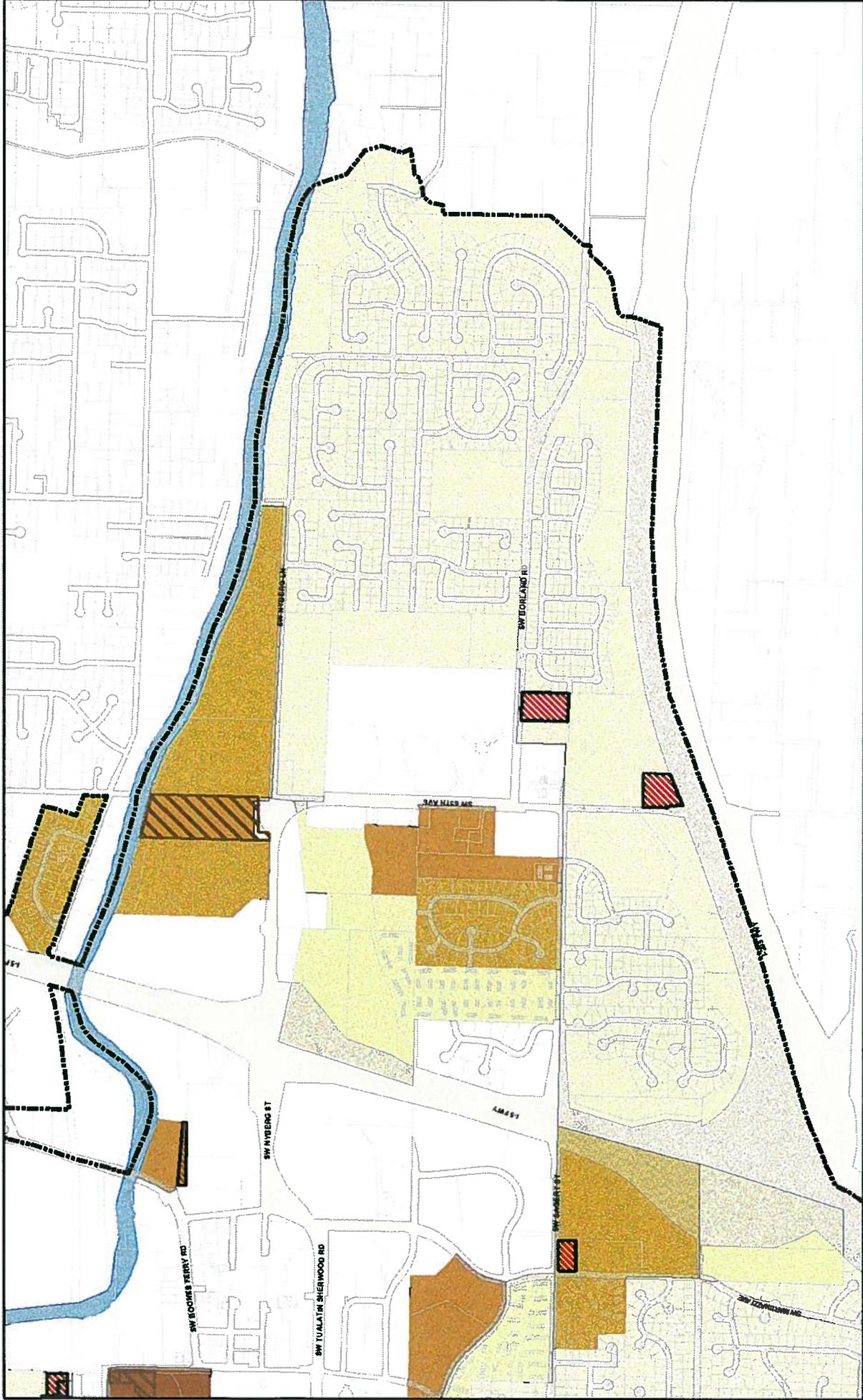
**Parcels Identified as Redevelopable**  **Residential Planning Districts**

 RH	 RH/HR	 RML
 RMH	 RL	



This map is derived from various digital databases and/or maps. While an attempt has been made to provide an accurate map, the City of Tualatin, OR, assumes no responsibility or liability for any errors or omissions. The map is provided "as is". Engineering and Planning Dept. Project 18922488

Vacant and Redevelopable Residential Parcels - Tualatin (East) As of October 3, 2008



**Vacant Land** [Red/Blue Hatched Box]

**Planning Area Parcels** [Blue/White Hatched Box]

**Parcels Identified as Redevelopable** [Yellow/White Hatched Box]

**Urban Growth Boundary** [Dashed Line]

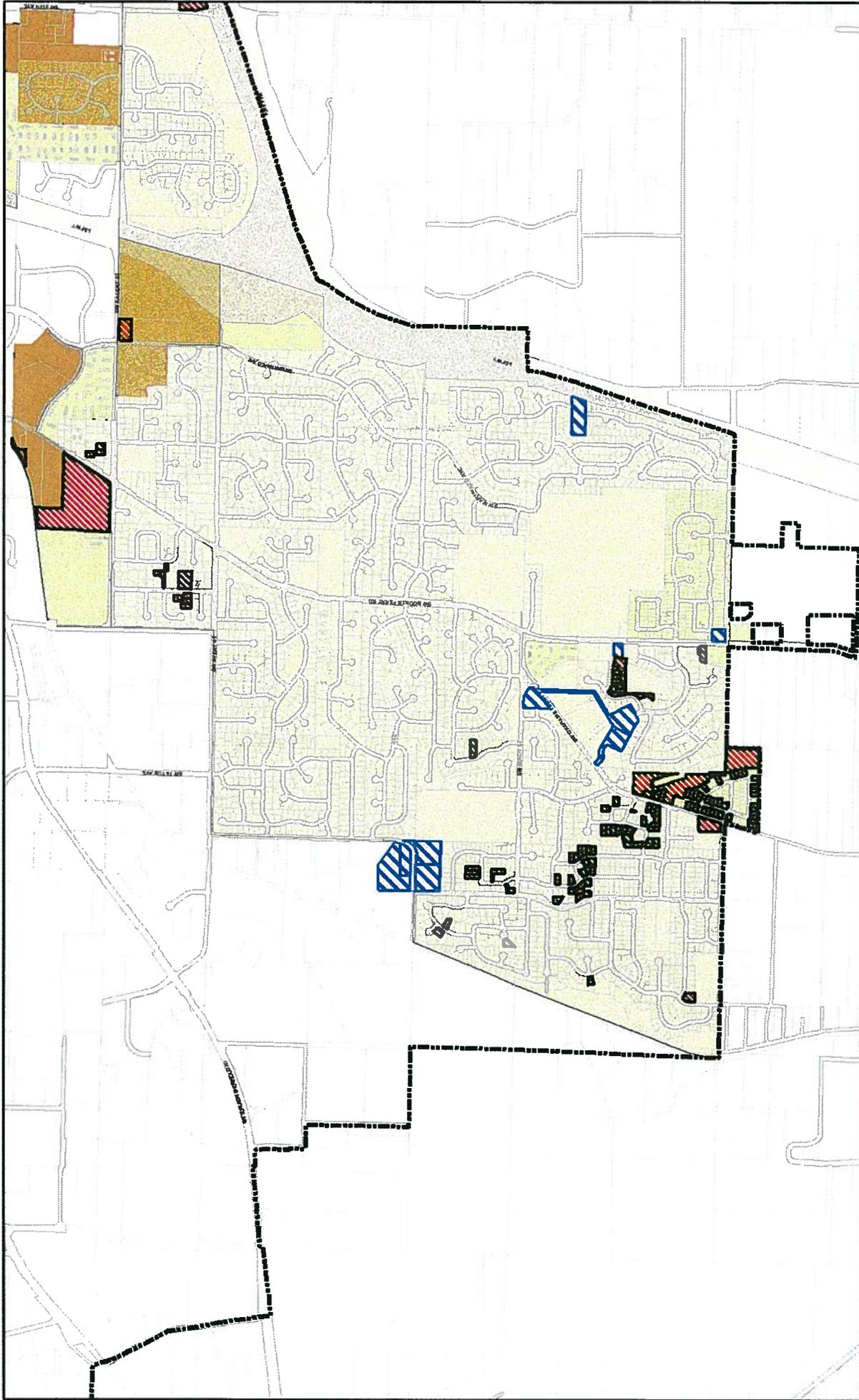
**Residential Planning Districts**

- RH** [Light Brown Box]
- RH/HR** [Dark Brown Box]
- RMH** [Yellowish-Brown Box]
- RML** [Light Yellow Box]
- RL** [Very Light Yellow Box]



This map is derived from various public digital database sources. While an attempt has been made to provide an accurate map, the City of Tualatin, OR assumes no responsibility for liability, damages, or other consequences arising from the use of this map. Printed 10/03/08

# Vacant and Redevelopable Residential Parcels - Tualatin (South) As of: October 3, 2008



**Vacant Land**

**Planning Area Parcels**

**Parcels Identified as Redevelopable**

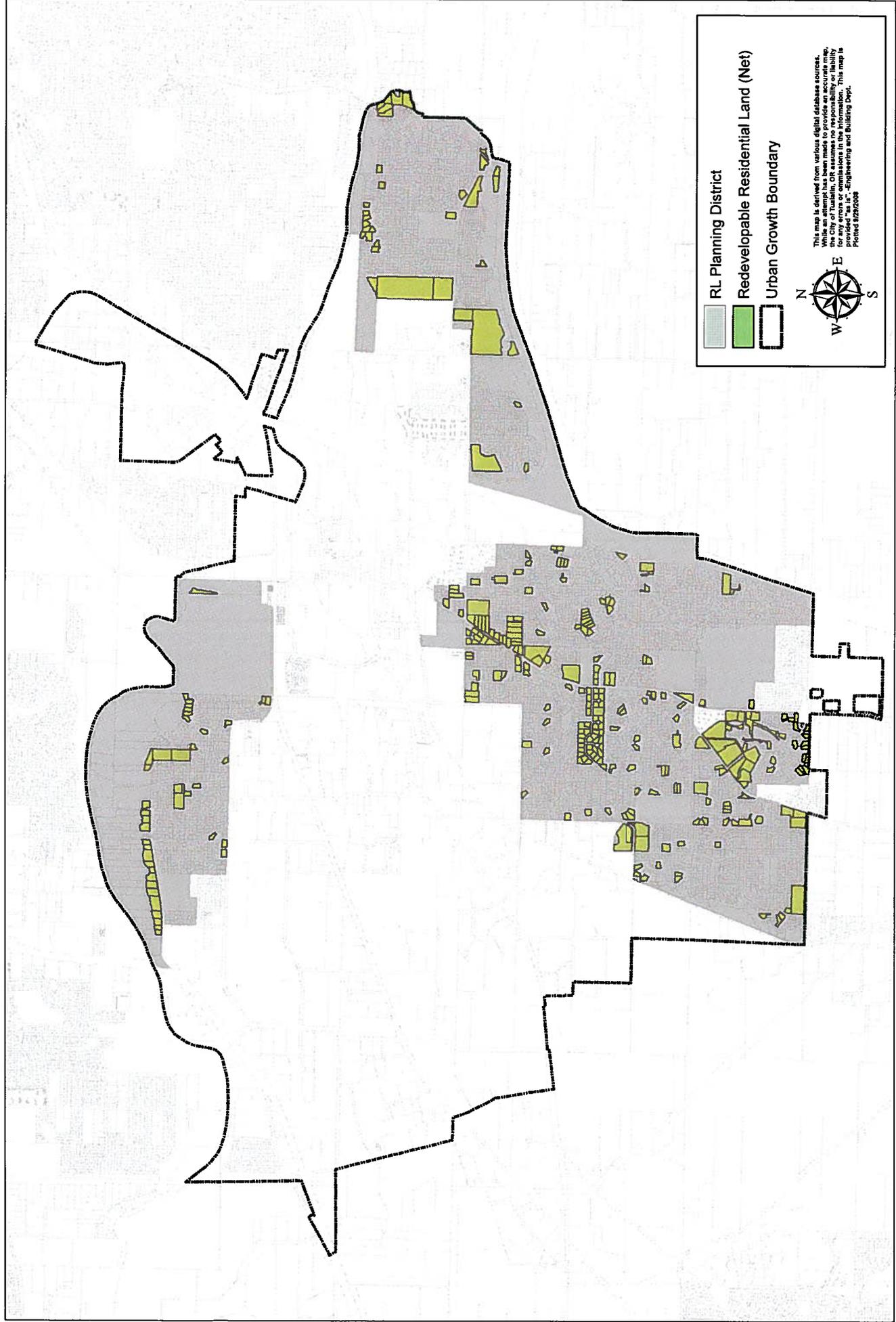
**Urban Growth Boundary**

**Residential Planning Districts**

	RH		RML
	RMH		RL
	RH/HR		

This map is derived from various digital databases owned by the City of Tualatin, OR. While an attempt has been made to provide an accurate map, the City of Tualatin, OR assumes no responsibility or liability for any errors or omissions. This map is printed on 11" x 17" Engineering and Building Paper. Printed 10/03/2008

# Redevelopable Residential Land - Constraints



## Attachment D

### PTA-08-05: Proposed Text Amendment Language

#### 5.040 Planning District Objectives.

This section describes the purpose of each residential planning district.

- (1) Low Density Residential Planning District (RL). To provide areas of the City suitable for single family dwellings and manufactured homes. Common-wall dwelling units and small-lot sub-divisions may be allowed by conditional use permit. ~~Residential development less than 80% of the allowed maximum density shall not be permitted.~~ Except for retirement housing and nursing and convalescent homes which shall not exceed 10 dwelling units per net acre and small-lot subdivisions and partitions and subdivisions affected by TDC 40.055, which shall not exceed 7.5 dwelling units per net acre, the maximum density of any residential use in this district shall not exceed 6.7 dwelling units per net acre. The raising of agricultural animals and the construction of agricultural structures may be allowed by conditional use permit in those portions of the District designated on the Plan Map.
- (2) Medium-Low Density Residential Planning District (RML). To provide areas of the City suitable for common-wall dwellings such as condominiums, townhouses, duplexes, triplexes, and other multi-family dwellings. ~~Residential development less than 80% of the allowed maximum density shall not be permitted.~~ Condominiums and small-lot subdivisions may be allowed by conditional use permit. Owner occupancy of dwelling units shall be encouraged. Parks for manufactured dwellings shall be allowed in those portions of the district designated on the Plan Map. Except for retirement housing and nursing and convalescent homes which shall not exceed 15 dwelling units per net acre and manufactured dwelling parks with single wide manufactured dwellings which shall not exceed 12 dwelling units per net acre, the maximum density of any residential use shall not exceed 10 dwelling units per net acre. The raising of agricultural animals and the construction of agricultural structures may be allowed by conditional use permit in those portions of the District designated on the Plan Map.
- (3) Medium-High Density Residential Planning District (RMH). To provide areas of the City suitable for townhouses, garden apartments and condominium developments. ~~Residential density less than 80% of the allowed maximum density shall not be permitted.~~ Except for retirement housing and nursing and convalescent homes which shall not exceed 22.5 dwelling units per net acre, the maximum density of any residential use shall not exceed 15 dwelling units per net acre. The raising of agricultural animals and the construction of agricultural structures may be allowed by conditional use permit in those portions of the district designated on the Plan Map.
- (4) High Density Residential Planning District (RH). To provide areas of the City suitable for townhouse, high density garden apartment and condominium development. ~~Residential density less than 80% of the allowed maximum density~~

- ~~shall not be permitted.~~ Except for retirement housing and nursing and convalescent homes which shall not exceed 37.5 dwelling units per net acre, the maximum density of any residential use shall not exceed 25 dwelling units per net acre.
- (5) High Density Residential/High Rise Planning District (RH-HR). To provide areas of the City suitable for high density apartment or condominium tower development to provide a maximum amount of preserved open space. ~~Residential density less than 80% of the allowed maximum density shall not be permitted.~~ Except for retirement housing and nursing and convalescent homes which shall not exceed 45 dwelling units per net acre, the maximum density of any residential use shall not exceed 30 dwelling units per net acre.

### **36.160 Subdivision Plan Approval.**

- ~~(7) A subdivision in the RL District for single family residential development or in the RML District for a small lot subdivision shall not be approved unless the number of lots meets the minimum 80 percent density requirement in the RL or RML Planning District.~~

### **36.162 Modifications to Subdivision Plan Approval.**

- (2) Immaterial modifications to a subdivision plan approval are changes which do not result in noncompliance with subdivision approval criteria, and include:
- (a) lot dimension changes;
  - (b) street location changes;
  - (c) lot pattern changes; and
  - ~~(d) density decreases provided the 80 percent minimum density requirement is met.~~
- (3) Immaterial modifications shall meet the following standards:
- (a) Accessways to adjacent streets or properties shall not be relocated more than 25 feet from the location approved on the subdivision plan. In addition, accessways shall not be relocated to a different adjacent property.
  - (b) Stub streets shall not be changed to non-through streets.
  - (c) Cul-de-sacs shall not be changed to stub streets.
  - ~~(d) Density decreases shall not exceed a 20 percent reduction in the total number of approved lots or dwelling units provided the 80 percent minimum density requirement is met. For an Expedited Subdivision Application, the density shall not be decreased to a density that would violate the density criterion for the Expedited Subdivision Application process nor violate the 80 percent minimum density requirement.~~

### **36.242 Modifications to Final Decision.**

- (4) If the proposed modifications are found to be immaterial and the partition plan as modified meets the conditions of the final decision, ~~the requirements of the TDG including the 80 percent minimum density requirement and other applicable~~

~~regulations~~, the City Engineer shall approve in writing the proposed modifications with or without conditions. The decision shall be filed and mailed as set forth in TDC 31.074 or in accordance with state law for Expedited Partition Plans:

- (5) A proposed modification that is determined to be material in nature or which results in a partition plan that no longer meets the conditions of the final decision or the requirements of the TDC ~~including the 80 percent minimum density requirement and other applicable regulations~~, shall require a new application in accordance with TDC 36.220:

### **Low Density Residential Planning District (RL)**

#### **40.015 Permitted Density.**

~~Except for lots created through the partition process for single family dwellings, housing density shall be at least 80% of the maximum density allowed.~~ Housing density shall not exceed 6.7 units per net acre, except as set forth below:

- (1) The maximum density for small-lot subdivisions, and partitions and subdivisions affected by TDC 40.055, shall not exceed 7.5 dwelling units per net acre.
- (2) The maximum density for nursing and convalescent homes and retirement housing in accordance with 34.170(2) shall not exceed 10 dwelling units per net acre. ~~The 80% minimum density shall be based on 6.7 dwelling units per net acre, not 10.~~

### **Medium Low Density Residential Planning District (RML)**

#### **41.015 Permitted Density.**

~~Housing density shall be at least 80% of the maximum density allowed.~~ Housing density shall not exceed 10 dwelling units per net acre, except as set forth below:

- (1) Where provided by TDC 41.150.
- (2) The maximum density for single-wide manufactured dwelling parks or parts of parks used for single-wide units shall not exceed 12 dwelling units per net acre. ~~The 80% minimum density shall be based on 10 dwelling units per net acre, not 12.~~
- (3) The maximum density for nursing and convalescent homes and retirement housing in accordance with 34.170(2) shall not exceed 15 dwelling units per net acre. ~~The 80% minimum density shall be based on 10 dwelling units per net acre, not 15.~~

### **Medium High Density Residential Planning District (RMH)**

#### **42.015 Permitted Density.**

~~Housing density shall be at least 80% of the maximum density allowed.~~ Housing density shall not exceed 15 dwelling units per net acre, except as set forth below:

- (1) Where provided by TDC 42.150.
- (2) The maximum density for nursing and convalescent homes and retirement housing in accordance with 34.170(2) shall not exceed 22.5 dwelling units per net acre. ~~The 80% minimum density shall be based on 15 dwelling units per net acre, not 22.5.~~

**High Density Residential Planning District (MH)****43.015 Purpose.**

~~Housing density shall be at least 80% of the maximum density allowed.~~ Housing density shall not exceed 25 dwelling units per net acre, except as set forth below:

- (1) Where provided by TDC 43.180.
- (2) The maximum density for nursing and convalescent homes and retirement housing in accordance with 34.170(2) shall not exceed 37.5 dwelling units per net acre. ~~The 80% minimum density shall be based on 25 dwelling units per net acre, not 37.5.~~

**High Density High Rise Planning District (RH-HR)****44.015 Permitted Density.**

~~Housing density shall be at least 80% of the maximum density allowed.~~ Housing density shall not exceed 30 dwelling units per net acre, except as set forth below:

- (1) Where provided by TDC 44.160.
- (2) The maximum density for nursing and convalescent homes and retirement housing in accordance with 34.170(2) shall not exceed 45 dwelling units per net acre. ~~The 80% minimum density shall be based on 25 dwelling units per net acre, not 37.5.~~



# MEMORANDUM CITY OF TUALATIN

**TO:** Mayor Ogden and City Councilors

**VIA:** Sherilyn Lombos, City Manager 

**FROM:** Brenda Braden, City Attorney

**DATE:** October 9, 2008

**SUBJECT:** Ordinance suggestion to create an alcohol-free zone where the Stars Cabaret proposes to locate

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In response to Council's concerns about Stars Cabaret locating to Tualatin and after discussions with Mayor Ogden, Ed Trompke, a Lake Oswego attorney, suggested three ordinances to consider. I have been asked to research each to advise the Council on the constitutionality and defensibility of the suggested ordinances. I have discussed each ordinance with a number of city attorneys including David Powell, Lake Oswego, Mike Kohlhoff, Wilsonville, Alan Rappleyea, Bill Scheiderich and Bill Kirby, all from Beaverton, and asked for any suggestions from the city attorneys in attendance at the League of Oregon Cities last Friday. In addition, Heather Martin of Beery, Elsner and Hammond has written a memorandum outlining her preliminary research on the proposals, which I am including with these memos.

This suggested ordinance would create an alcohol-free zone where Stars Cabaret proposes to locate. The first issue this proposed ordinance raises is the City's authority to create such a zone. The State, through the Oregon Liquor Control Commission, regulates who can and cannot serve alcohol, not the City. The City is allowed to make a favorable or unfavorable recommendation to the State when it decides whether to issue a liquor license to an establishment. ORS 471.166. However, even if the City's recommendation is unfavorable, the Oregon Liquor Control Commission may ignore that recommendation and issue a license. See ORS chapter 471. The City is allowed to adopt reasonable time, place and manner regulations of the nuisance aspects of establishments that serve alcohol (ORS 471.164) but I can find no authority for a city to prohibit a private business from serving alcohol in a particular zone, especially if the State has issued a liquor license.

If the City could overcome the first issue and did try to establish such a zone, both a practical and a legal problem arise. Practically, several other establishments in the immediate area serve alcohol, e.g., Players, Fuddruckers, Baja Fresh, and the current lessee of the space, Out of the Blues. If the zone were to include the larger area and allowed all businesses currently possessing a valid OLCC license to be "grandfathered" in, the immediate impact would be only the Stars location. In deciding whether such an ordinance would be upheld, a court would determine whether the ordinance was a pretext to keep the adult business out of the area. See City of Nyssa v. Dufloth, 339 Ore.330 (2005). To keep from impacting the other businesses in the area by drawing the zone more narrowly, the legal issue arises: spot zoning, which is not allowed under land use laws.

I spoke at length with Harry Auerbach, Senior Deputy City Attorney for Portland about Portland's ordinances creating drug-free and prostitution-free zones and the legal challenges to such ordinances. He first pointed out that Portland created a zone in which people that had been caught committing illegal acts, i.e., drug or prostitution crimes, were excluded from certain areas of the City for a period of time, not banned permanently. They did not use an otherwise legal activity, like selling or consuming alcohol inside a licensed establishment, as a basis for creating the zone. The suggested ordinance would create a zone that would prohibit activity that is legal under state law. Portland had to defend a number of lawsuits on its ordinances until the City decided to let the ordinances expire. Mr. Auerbach stated that it is likely Tualatin would face similar lawsuits if it passes this ordinance.



# MEMORANDUM CITY OF TUALATIN

**TO:** Mayor Ogden and City Councilors

**VIA:** Sherilyn Lombos, City Manager *cl*

**FROM:** Brenda Braden, City Attorney

**DATE:** October 9, 2008

**SUBJECT:** Ordinance suggestion to prohibit patrons from paying entertainers directly

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In response to Council's concerns about Stars Cabaret locating to Tualatin and after discussions with Mayor Ogden, Ed Trompke, a Lake Oswego attorney, suggested three ordinances to consider. I have been asked to research each to advise the Council on the constitutionality and defensibility of the suggested ordinances.

In my opinion, the third suggested ordinance has the best likelihood for being upheld. It would prohibit patrons from paying entertainers at live performances directly. It applies to all entertainers, musicians, comedians, dancers, storytellers, etc., so it does not single out adult entertainers to be treated differently. It does not keep an entertainer from being paid nor does it interfere with a patron's wish to pay an entertainer for performing. Although I found no cases on point, I do not believe a constitutional right is implicated. There are cases in the campaign finance area that have been found to unconstitutionally interfere with a donor's right to contribute to whomever he or she chooses, thereby restricting his or her freedom of expression. However, under this scenario, the donor's wish to contribute to a particular entertainer would not be impaired since the ordinance merely requires that the payment be made indirectly.

A practical issue for the Council to consider is the breadth of this ordinance. This would keep people from putting tips in a tip jar or case of a guitar player at a restaurant or bar, and from handing a tip to a magician that might be going table to table in a restaurant or performing at the Commons.

If there is no constitutional right implicated, the City may pass an ordinance to protect the public's health, safety and welfare. The City could find, for example, that by not directly paying an entertainer, the opportunity for fraud or crime is reduced, and

therefore, is in the public's welfare. Because this is uncharted territory, I cannot say with absolute certainty how a court would rule, but it is my opinion that the City would be likely to prevail if the ordinance were challenged.



# MEMORANDUM CITY OF TUALATIN

**TO:** Mayor Ogden and City Councilors

**VIA:** Sherilyn Lombos, City Manager 

**FROM:** Brenda Braden, City Attorney

**DATE:** October 9, 2008

**SUBJECT:** Ordinance suggestion to establish a requirement that all entertainers stay 4 feet away from patrons

---

In response to Council's concerns about Stars Cabaret locating to Tualatin and after discussions with Mayor Ogden, Ed Trompke, a Lake Oswego attorney, suggested three ordinances to consider. I have been asked to research each to advise the Council on the constitutionality and defensibility of the suggested ordinances.

The second of these ordinances is a requirement that all entertainers stay four feet away from patrons. "Entertainer" would include anyone who is performing live in front of an audience, such as storytellers, actors, clowns, singers, dancers, magicians, puppeteers, and comedians.

In City of Nyssa v. Dufloth, 339 Ore. 330 (2005), the Oregon Supreme Court struck down the City of Nyssa's ordinance that required entertainers (defined as "any person who provides live adult entertainment within an adult concession") to stay 4 feet away from the nearest patron. The Court discussed how the ordinance restricted a particular form of expression, i.e., adult entertainment. This proposed ordinance avoids the primary issue addressed by the Court in deciding the Nyssa ordinance was unconstitutional: it does not single out adult entertainers from all others. It is uniformly applicable to all entertainers. Thus, it does not limit a particular type of speech or expression.

However, there is another issue not directly addressed by the Court. It is raised by the Oregon Constitution Article I, Sec. 8, which provides:

MEMORANDUM: Suggested ordinance for 4 foot separation between patron and entertainer

Page 2 of 2

“No law shall be passed restraining the free expression of opinion, or restricting the right to speak, write, or print freely on any subject whatsoever; but every person shall be responsible for the abuse of this right.”

This section has been interpreted by the Oregon Supreme Court to include non-verbal expression as well as verbal, such as dancing, singing, painting, and other artistic expression. Although the suggested ordinance does not discriminate against one type of expression, it does arguably restrain free expression of all entertainers.

Free expression is a fundamental constitutional right under both the Oregon and United States constitutions. To limit or restrict a fundamental right, the government must have a compelling state interest to do so. This ordinance asserts that the proposed restriction is for public health reasons. In my opinion, the City would need to make specific findings that would support the conclusion that having entertainers closer than 4 feet to patrons creates health problems that somehow differ from having grocery clerks, office workers or school children closer than 4 feet from a person.

RESOLUTION No. \_\_\_\_\_

A RESOLUTION OF THE CITY OF TUALATIN CREATING AND ESTABLISHING AN ALCOHOL FREE ZONE.

WHEREAS the City of Tualatin is an incorporated city with a large and diverse population exceeding \_\_\_\_\_ in number;

WHEREAS the City of Tualatin has one or more areas of commercial, industrial and/or residential structures that appear to be in current or future need of redevelopment, and which are susceptible of uses that have undesired side-effects or consequences, including driving while under the influence, disorderly conduct, substance abuse, domestic abuse and prostitution, and the City does not have established procedures for protecting the public from such effects and consequences;

WHEREAS the City of Tualatin believes it is in the best interest of its citizens to enact regulations that provide protection to the public;

NOW THEREFORE BE IT RESOLVED by the Tualatin City Council as follows:

Section 1. Definitions. The following terms shall be defined as:

“**Alcohol Free Zone**” shall mean the area indicated on the attached map.

“**Business**” shall mean the carrying on of any activity with the goal of generating a profit.

Section 2 Alcohol Free Zone Established. Immediately upon the effective date of this Ordinance, no person employed by, or under the direct or indirect control of any business shall, within an Alcohol Free Zone, serve, provide access, or allow access to any beer, wine, distilled alcoholic beverage or any other beverage, food or substance regulated or prohibited by the Oregon Liquor Control Commission. It is the intent of this Ordinance to prohibit, to the greatest extent permitted by law, the provision or consumption of alcohol to or by any patron, customer, employee, business invitee, or trespasser on or about the premises of any business within an Alcohol Free Zone. It is not the intent of this ordinance to prohibit the lawful consumption of alcoholic beverages in private residential settings or other lawful private settings that are not associated with any business.

Section 3. Violation. A violation of this Ordinance shall be punishable by a fine of up to \$1,000 per incident and/or the revocation of any license or other city issued permit to conduct a business inside or outside an Alcohol Free Zone.

RESOLUTION No. \_\_\_\_\_

A RESOLUTION OF THE CITY OF TUALATIN ESTABLISHING GUIDELINES FOR THE PROTECTION OF THE PUBLIC DURING LIVE PERFORMANCE EVENTS .

WHEREAS the City of Tualatin is an incorporated city with a large and diverse population exceeding \_\_\_\_\_ in number;

WHEREAS the City of Tualatin does not have established procedures for protecting the public when the public attends live artistic and musical performances;

WHEREAS the City of Tualatin believe it is in the best interest of its citizens to enact regulations that provide protection to the public;

NOW THEREFORE BE IT RESOLVED by the Tualatin City Council as follows:

Section 1. Definitions. The following terms shall be defined as:

“**Audience**” shall mean those who are in attendance during the Live Performance. Audience can be one person or more than one person.

“**Health Barrier**” shall mean a 4-foot distance between the Performer and the Audience.

“**Live Performance**” shall mean an act of performing any form of entertainment that occurs at a time when the audience is actually present contemporaneously while the Live Performance takes place. Examples of “Live Performance” are, but not necessarily limited to, musical concerts, plays, school theater performances, dance recitals, or other forms of entertainment that is not displayed via any pre-recorded medium.

“**Performer**” shall mean any person who performs any form of Live Performance.

“**Venue**” shall mean the physical location where any Live Performance occurs.

Section 2 Health Protection by prohibiting direct payment from Audience to Performer. Immediately after this Ordinance comes into effect, no Venue where an Audience is able to view or observe a Live Performance shall permit direct payment for the Live Performance from any member or members of the Audience to any Performer or Performers, except that a performer may accept payment prior to commencement of the Live Performance outside the Venue or within three feet of the public entrance to the Venue. It is the intent of this Ordinance to limit contact between any Performer and the Audience in order to limit potential conveyance of unhealthy germs, viruses or other pathogens, organic or chemical, that may cause an illness.

Section 3. Violation. A violation of this Ordinance shall be punishable by a fine of up to \$1,000 per incident and/or the revocation of any license or other city issues permit to conduct a Live Performance at Venue.

## MEMORANDUM

TO: Brenda Braden, Tualatin City Attorney

FROM: Heather R. Martin, Beery, Elsner & Hammond

SUBJECT: Proposed Ordinances

DATE: October 3, 2008

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### INTRODUCTION

The City is considering three ordinances that would: 1) create an alcohol free zone; 2) establish a health barrier during live performances; and 3) prohibit direct payments to live performers. The City has asked for an opinion on the legality of each ordinance. Each is addressed below.

It appears that all the ordinances are generally applicable and do not single out adult businesses or one type of entertainment in particular which is helpful but at the same time brings up several preliminary concerns. First, the City would need to consider the effects on existing businesses and entertainment outlets. Second, if there is little to no impact on other businesses a pretext argument could be made that while the ordinances are of general applicability they only impact adult businesses. There weren't many cases that directly address the pretext argument, specifically the type of proof the City needs to show that the reason for the regulation(s) is not related to a specific type of speech. The City's posture here would be that none of these ordinances implicates *Article I, section 8* of the Oregon Constitution because they are not aimed at suppressing expressive activities. As long as they are applied in a non-discriminatory manner, the City would probably be able to defend against a challenge. *See Moser v. Frohnmayer*, 112 Ore. App. 226 (1992).

Keeping these overarching concerns in mind, we turn now to each individual ordinance.

## ANALYSIS

### Ordinance 1: Creating an Alcohol Free Zone

One of the main concerns here is whether the City has the authority to create an alcohol-free zone that affects private businesses and not just public areas. ORS 471.164 allows cities to place reasonable time, place, and manner restrictions on establishments that serve alcoholic beverages. There are no readily apparent cases interpreting ORS 471.164 but at first glance a total prohibition on alcohol sales in a particular zone probably wouldn't be a reasonable regulation. A better idea might be to create an alcohol-free zone during certain hours (i.e. no alcohol sales between 10 p.m. and 10 a.m.).

There are other cities in Oregon that have instituted drug and prostitution-free zones. For example, Portland used to enforce drug and prostitution-free zones in certain areas of the city, but it should be noted that these were exclusionary zones meaning that once an individual was cited for drug possession or prostitution they could not re-enter the zone for another 90 days. This concept is different from the one articulated in Tualatin's ordinance.

A better way for the City to control certain establishments is to encourage the Oregon Liquor Control Commission to withhold licenses. This is clearly within the power of local governments under ORS 471.166.

We would need to do more research on this ordinance if the City wanted to seriously consider it.

### Ordinance 2: Establish Health Barrier

The town of Nyssa, Oregon had an ordinance that established a four foot distance between entertainers and patrons of adult businesses, very similar to the health barrier ordinance proposed here. Nyssa's ordinance was struck down by the Oregon Supreme Court in 2005 because it was directed by its terms and focus at restraining a particular variety of expression and it did not fall within any well-established historical exception to the prohibition against such laws in *Article I, section 8* (the standard articulated in *State v. Robertson*, 293 Ore. 402 (1982)). *Nyssa v. Dufloth*, 339 Ore. 330, 340 (2005).

There are no cases directly on point where the ordinance is not directed at adult businesses in particular and instead applies to all entertainment establishments in a municipality. The ultimate outcome here would hinge on whether a court found this to implicate *Art I, sec 8* or whether it was a permissible broad-based restriction. The underlying motives and reasons for the

regulation would be important as well to prove that the reason (i.e. health concerns) was not just a pretext for the real reason, regulating adult businesses. Again, we were not able to locate cases directly on point here and would need to do more research if the City is seriously considering this ordinance.

### Ordinance 3: Direct Payments Prohibited

Prohibiting direct payments from a patron to a performer might be the most promising proposal because again it is a regulation of general applicability that does not single out adult businesses and would affect other types of shows, etc. There is some support in *Nyssa* for prohibiting contact between performers and patrons as the Supreme Court noted “the city constitutionally can regulate such conduct as sexual contact between performers and patrons.” 339 Ore. at 340 n5. The government may enact laws designed to prohibit or punish conduct that amounts to prostitution or other criminal activity, but *Article I, sec 8* precludes using limitations on speech or expression as a substitute for regulating that conduct directly. *See State v. Ciancanelli*, 339 Ore. 282, 322 n 31 (2005).

Presumably, under the *Ciancanelli* reasoning, if the City wants to prohibit contact between performers and patrons, they are allowed to do that outright stating their desire to avoid conduct that is illegal. A secondary concern could be health issues as mentioned in the ordinance. One could challenge the ordinance as being overbroad, particularly if some sort of expressive activity was implicated. For example, an adult business would claim that if the City’s main concern is contact or health then the patrons should be allowed to leave their money on the table or in a cup at the side of the stage, etc. The City’s response would be that this regulation is designed to address both concerns in a way that can be easily regulated and that ensures the City’s goals are met.

If the City decides to go this route, it should ensure that the ordinance contains findings that justify the City’s position and also demonstrate that the ordinance has general applicability (i.e. it also applies to street performers, buskers, etc).

### **CONCLUSION**

Of the three proposed ordinances, the direct payment prohibition is probably the most legally sound. There is some support for limiting contact between performers and patrons and the City has several rational reasons for implementing this type of regulation. While the health barrier concept might stand up to a challenge, the similar *Nyssa* ordinance that was struck down makes this the most risky regulation. Finally, if the City is serious about an alcohol-free zone, we can do more research to determine whether this is a viable option.

October 3, 2008  
Page 4

Thank you for allowing us to assist the City with these sensitive issues. Please let us know if we can be of further assistance or if you have any questions.

# 2nd Annual Volunteer Recognition Barbeque





Get involved!

Make a difference!

**Volunteer!**

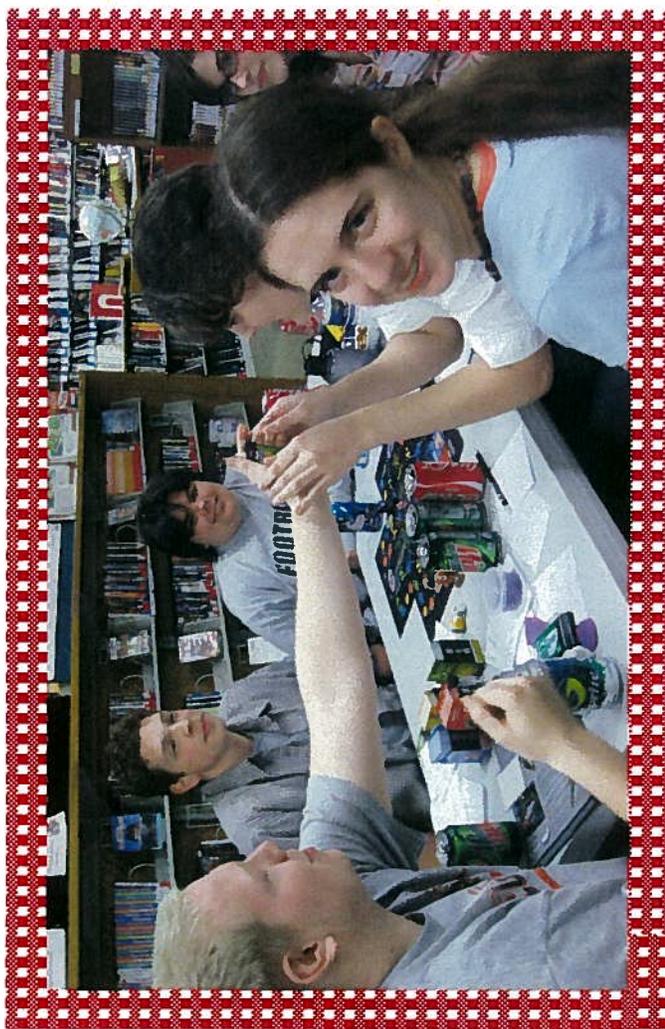
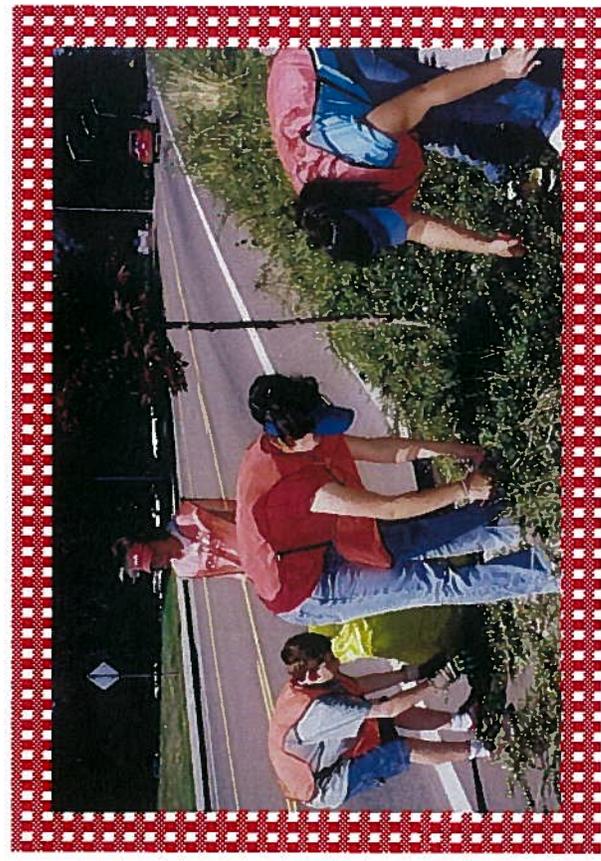
Call 503.691.8100

latin.or.us



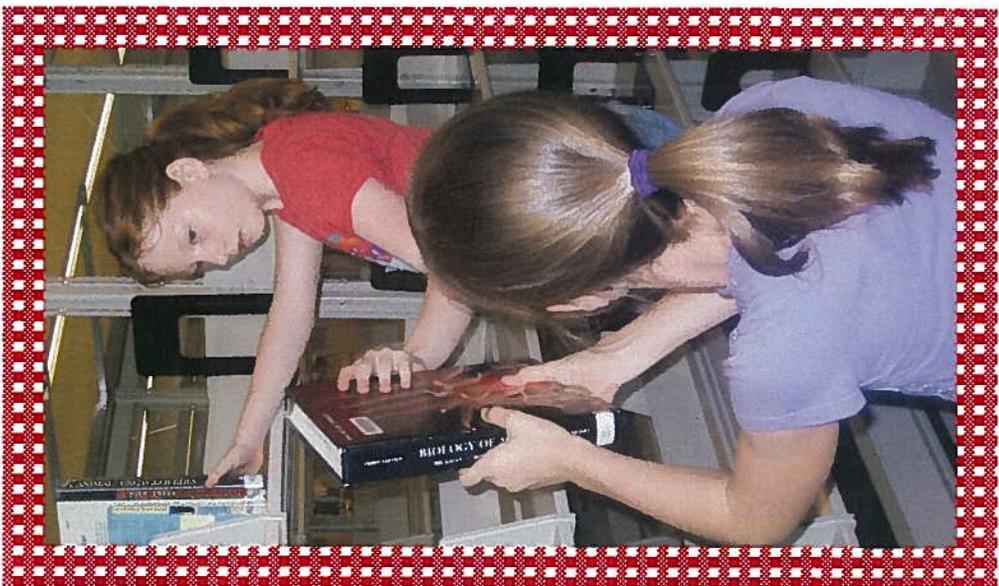
- 200 Volunteers
- 40 Guests
- 15 Staff

# Young Volunteers

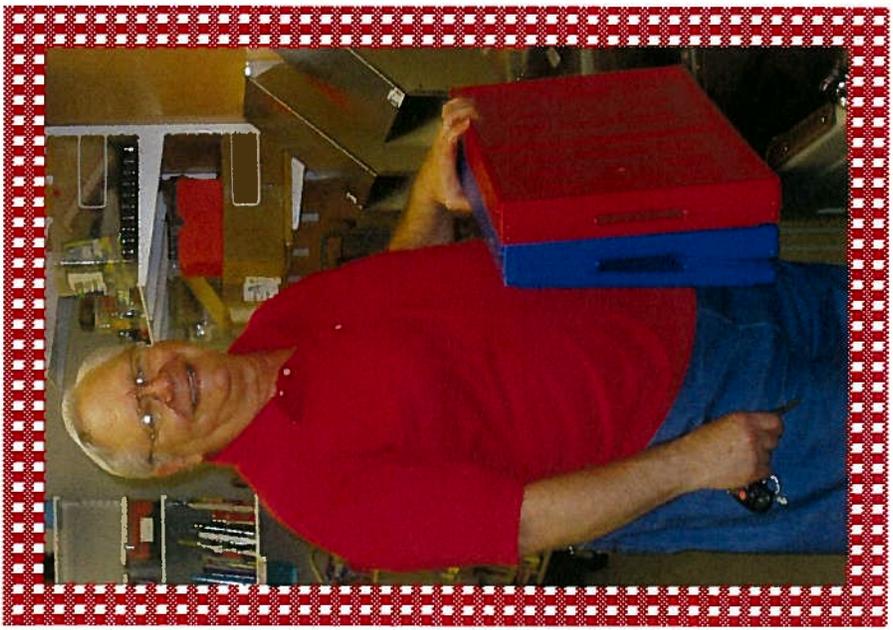
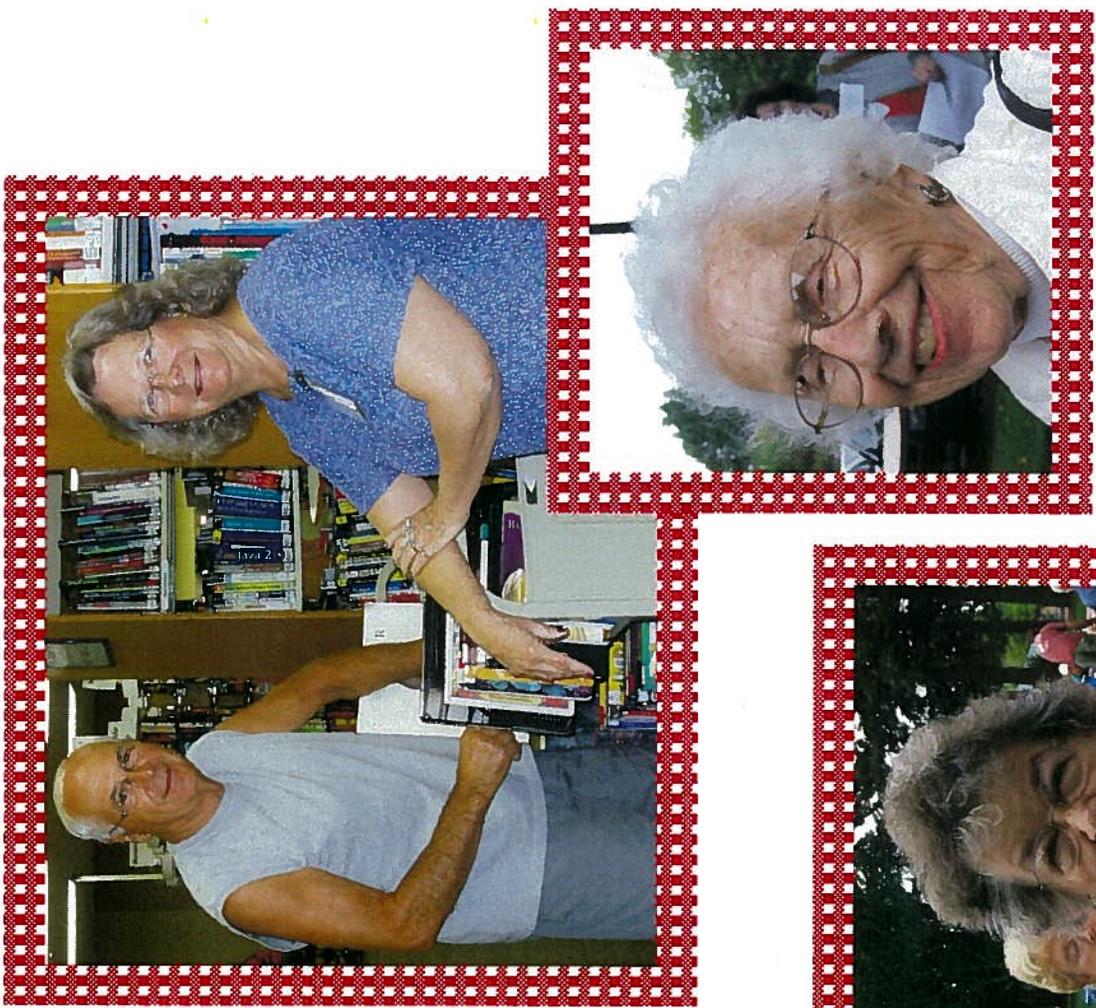




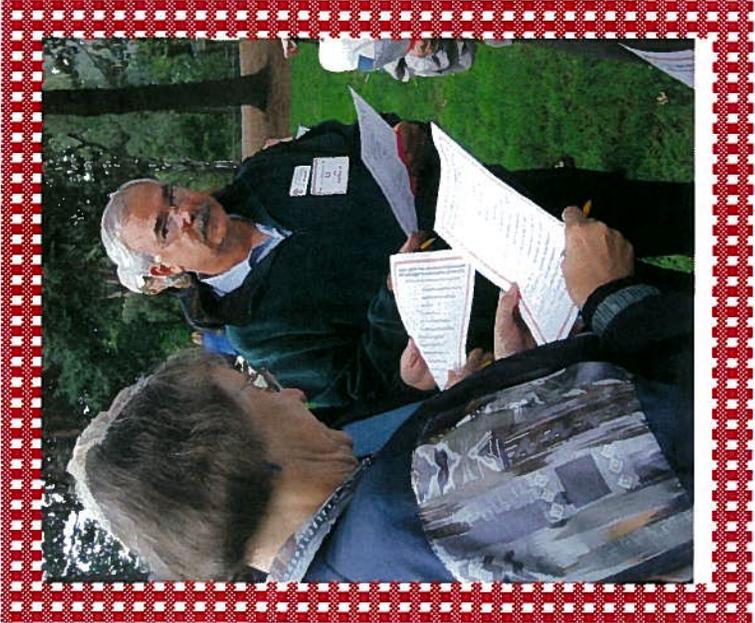
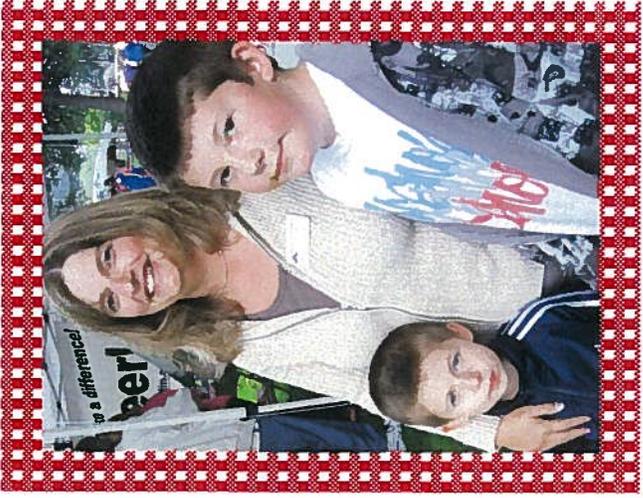
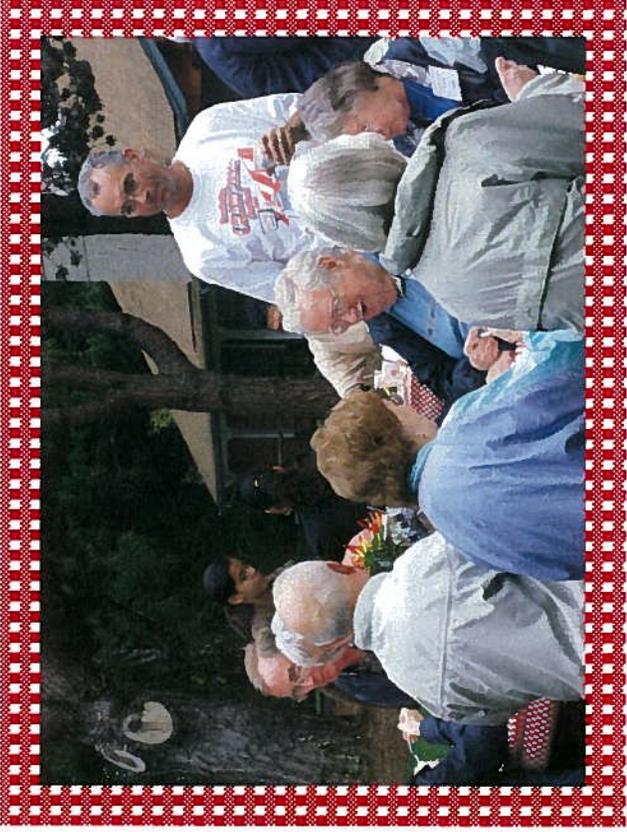
# YAC Volunteers



# Family Volunteers

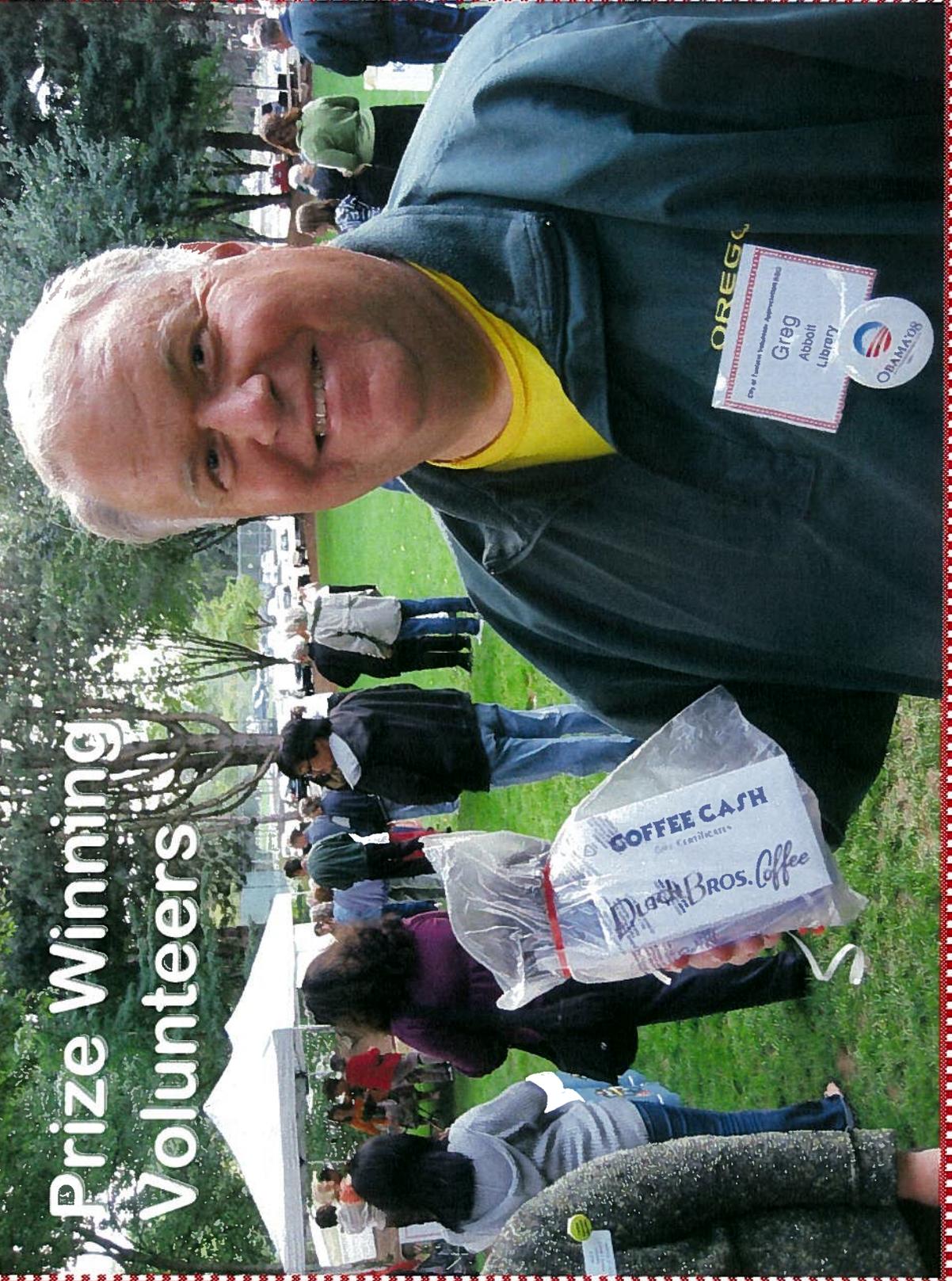


# Classic Volunteers



# VIP Volunteers

# Prize Winning Volunteers



**Get involved!**

**Make a difference!**

**Volunteer!**



**Call 503.691.8105 / [www.ci.tualatin.or.us](http://www.ci.tualatin.or.us)**

**Volunteer Prizes**





**Well Fed  
Volunteers**

*Thank you*

**Richard Christie, Volunteer  
Photographer**

**Paul Hennon, Barbeque  
Photographer**

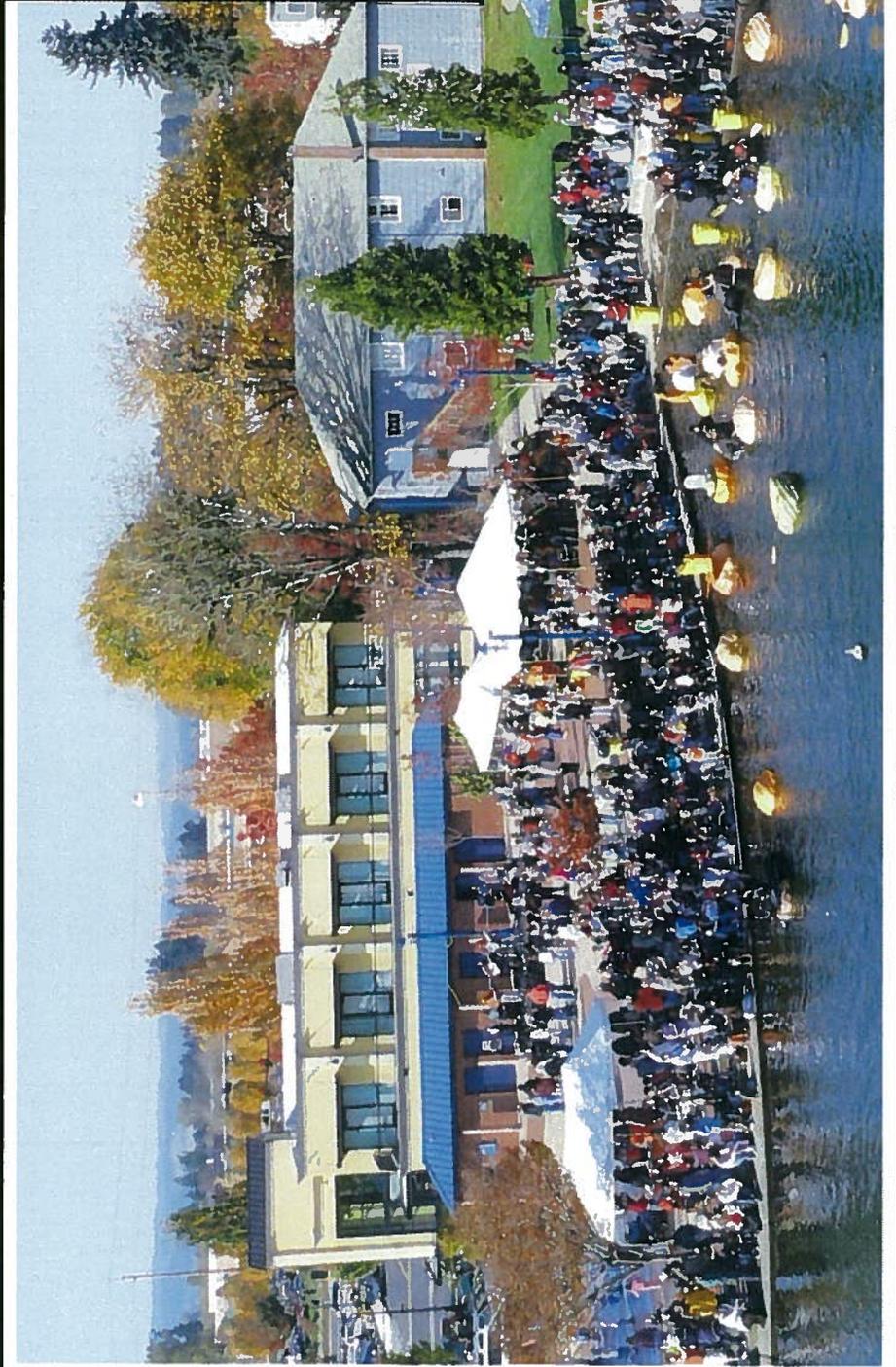
## **How to Get Involved!**

- **Visit our website –**  
**[www.ci.tualatin.or.us](http://www.ci.tualatin.or.us)**
- **Choose a place to serve**
- **Send in an application**
- **Have an interview**

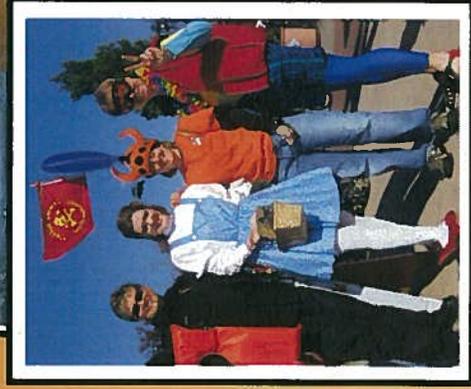
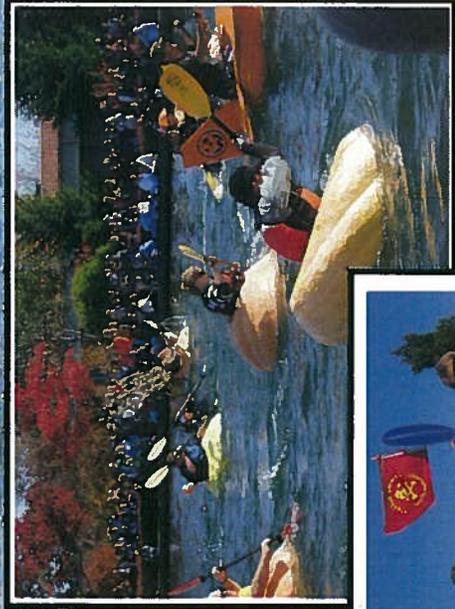
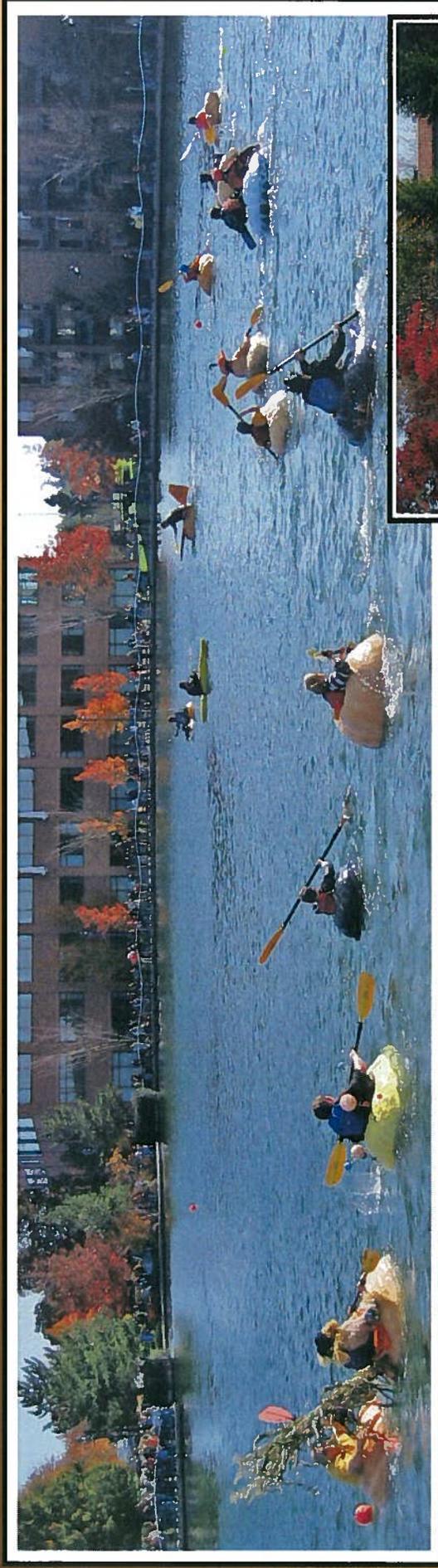
**Make a difference!**

The City of Tualatin's

# 5th Annual West Coast Giant Pumpkin Regatta



*The City of Tualatin's 5th Annual West Coast Giant Pumpkin Regatta*



*Saturday, October 25*

*10:00 a.m. to 2:00 p.m.*

*Rain or Shine*

*Lake at Tualatin Commons*

*(8325 SW Nyberg Street)*

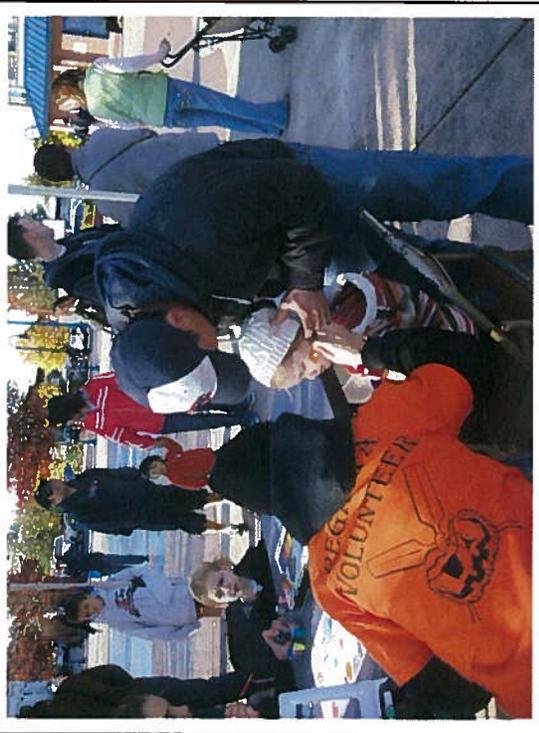
*The City of Tualatin's 5th Annual West Coast Giant Pumpkin Regatta*



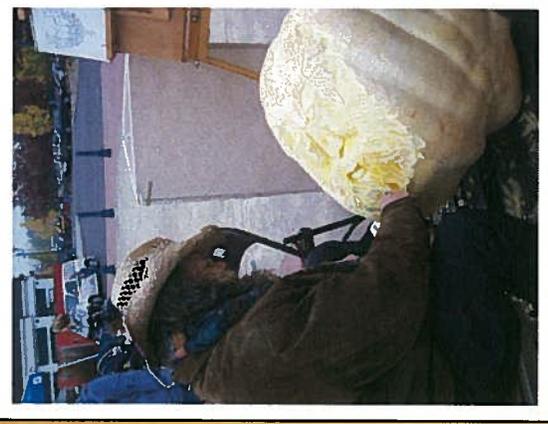
*Music!*



*Clowning!*



*Face  
Painting!*

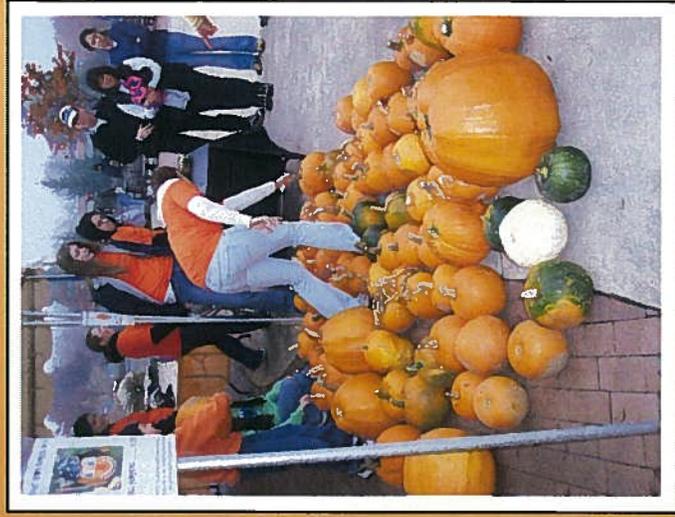


*Giant  
Pumpkin  
Carving!  
Display!*

The City of Tualatin's 5th Annual West Coast Giant Pumpkin Regatta



Pumpkin  
carving  
and  
decorating!



Hot food  
and  
drinks!

Medallion Hunt!

T-shirts!

So much more!



*The City of Tualatin's 5th Annual West Coast Giant Pumpkin Regatta  
Medallion*

**5th Annual West Coast  
Giant Pumpkin Regatta Medallion Hunt**

**Clue 1 of 4**

**Would the Indians and pioneers be very surprised  
At the hidden medallion on land they once prized?  
Just west of the line that now divides counties  
Lies a prize to bring  
fortune, though modest,  
and fame.**

**For Regatta information and  
contest information go to**

**[www.ci.tualatin.or.us](http://www.ci.tualatin.or.us)**



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*The City of Tualatin's 5th Annual West Coast Giant Pumpkin Regatta  
Medallion*

**5th Annual West Coast  
Giant Pumpkin Regatta Medallion Hunt**

**Clue 2 of 4**

Free land in the West, said Dad to the rest.  
"Are we there yet?" the kids must have asked,  
Their 2,000 mile journey a test, but they came  
To where Tualatin's first doctor  
took out his land claim.



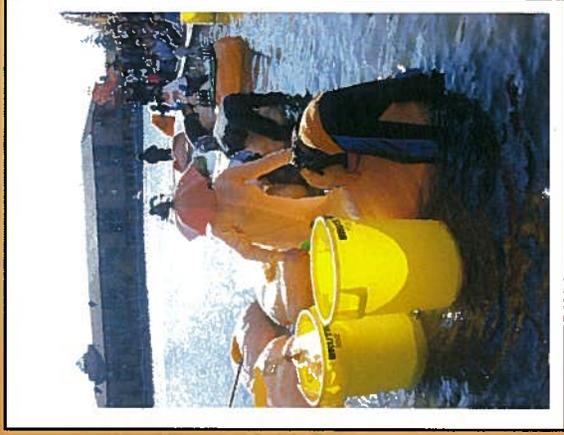
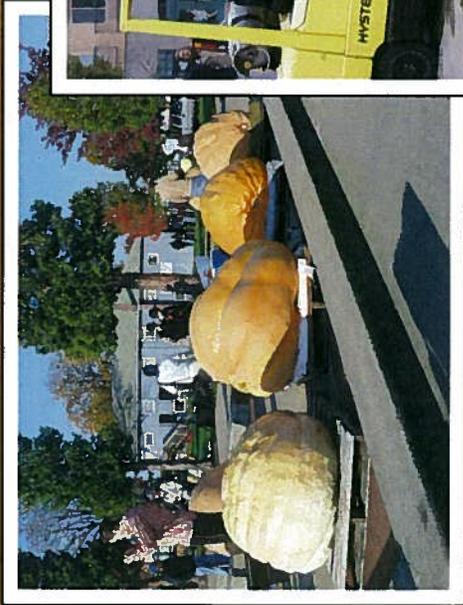
For Regatta information and  
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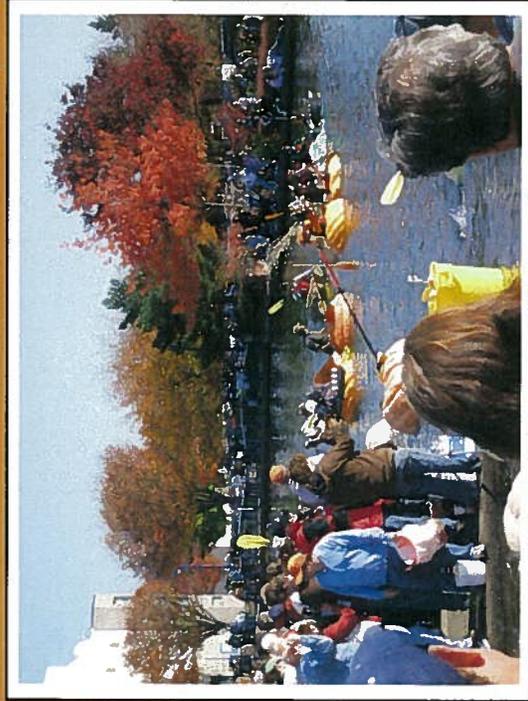


The City of Tualatin's 5th Annual West Coast Giant Pumpkin Regatta

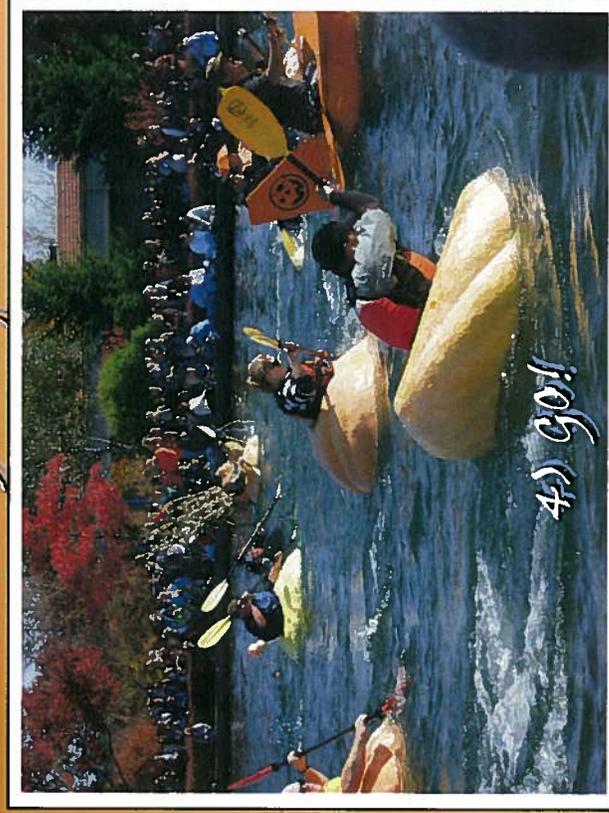


1) Here come the pumpkins!

2) Getting them sea-worthy...



3) On your marks, get set...

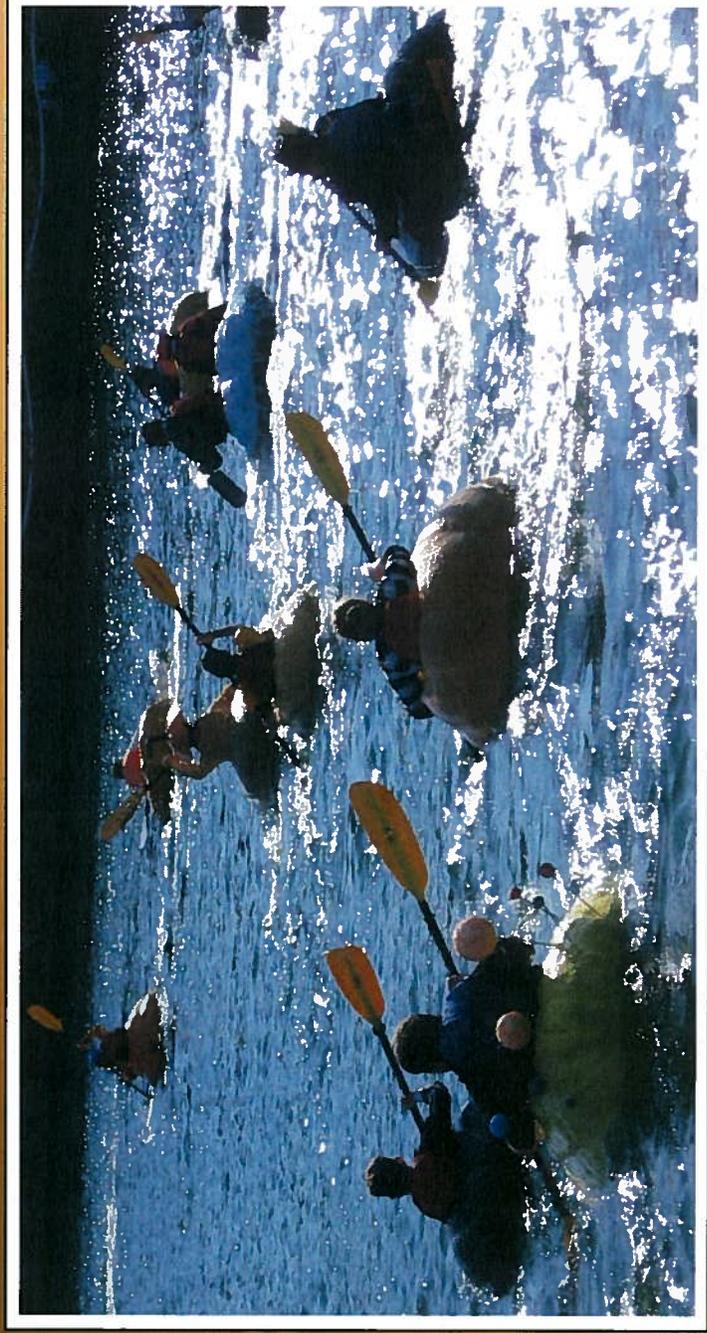


4) GO!



*The City of Tualatin's 5th Annual West Coast Giant Pumpkin Regatta*

*Saturday, October 25*



*10:00 a.m. to 2:00 p.m. - Rain or Shine*

*Lake at Tualatin Commons*

*For more information go to [www.ci.tualatin.or.us](http://www.ci.tualatin.or.us)*



**Tualatin  
Youth Advisory Council**

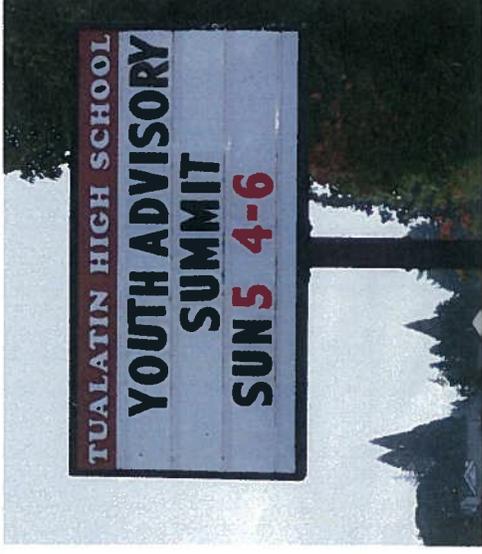


**City Council Update**

**October 13th , 2008**

# Tualatin Youth Summit

- Oct. 5th at the High School
- Good turn-out, 50ish Tualatin high students attended
- Learned about many of the concerns teens have for the city of Tualatin
- Chipotle provided burritos
- Data will be analyzed, then presented at November meeting



# Haunted House

- Haunted House will be at Van Raden Center
- Will be open last two weekends in October before Halloween
- Insane asylum/ haunted hospital theme
- Come to Friends and Family Night! Thursday, Oct. 16 7:00pm

**Tualatin Youth Advisory Council's Annual**

# HAUNTED HOUSE

The thrills and chills of this Haunted House are appropriate for all ages.

**Dates and Times:**  
October 17-18 7:00-10:00 p.m.  
October 24-25 7:00-10:00 p.m.

**Cost:**  
\$4 Adults  
\$3 Youth/Students

**Location:**  
Van Raden Community Center  
8535 SW Tualatin Rd.  
in Tualatin Community Park



Contact the City of Tualatin Community Services Department at 503.681.3052 or [cs.tualatin.or.us](mailto:cs.tualatin.or.us) for more information



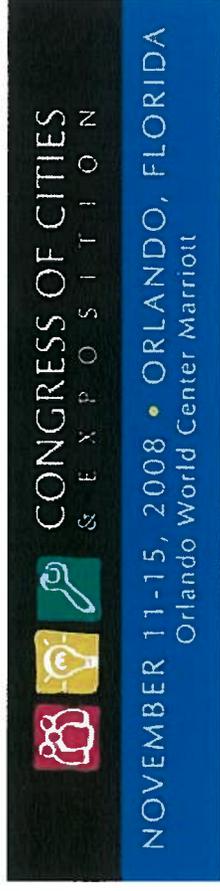
# Pumpkin Regatta



- Saturday, October 25<sup>th</sup> from 10-2.
- Selling concessions
- Pumpkin painting and carving
- Face painting
- Live music
- And of course, the Pumpkin Regatta

# National League of Cities

- NLC will be in Orlando from Nov. 12th-15th
- Opportunity for the Tualatin YAC to learn about what other youth are doing in their communities
- Gain experience, new skills, and information to use for discussion and action back at home
- Congratulations to Alaina, Katie, Michelle and Will who will all be attending this year!





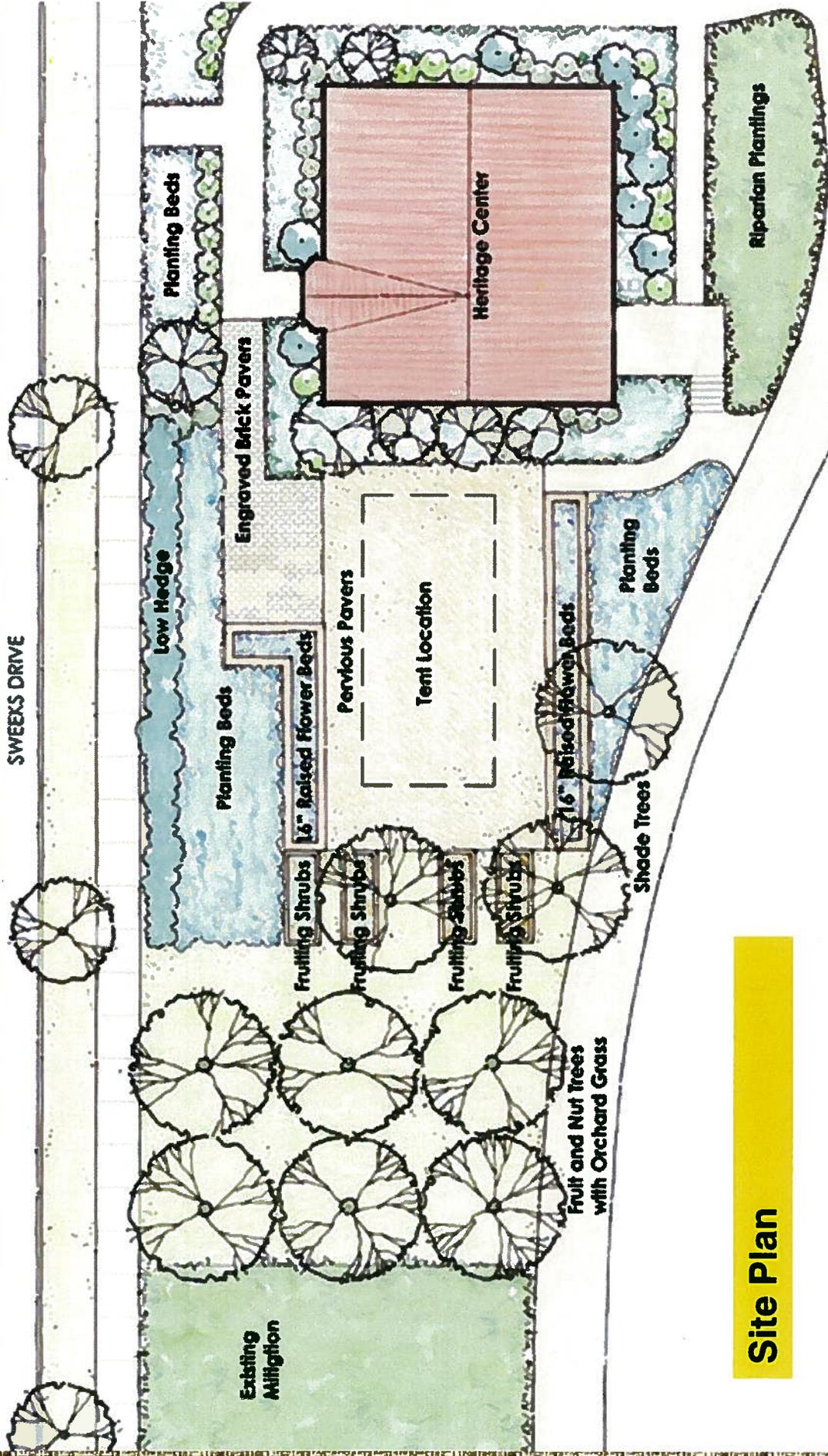
**Thanks for your support!**

**Questions?**

# Tualatin Heritage Center: Phase 2 Patio Improvements



SWEEXS DRIVE



Site Plan



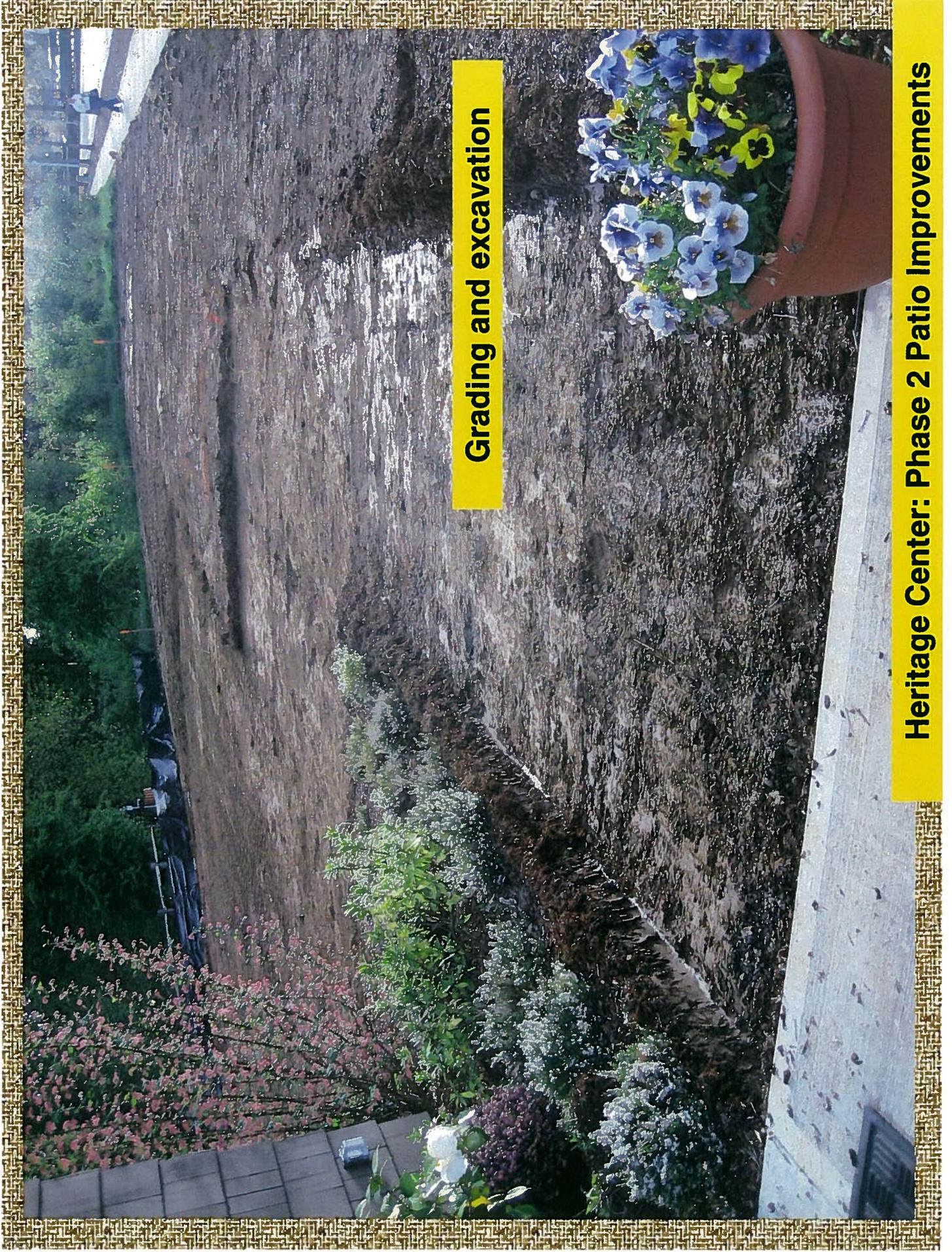
**Before patio**

**Heritage Center: Phase 2 Patio Improvements**



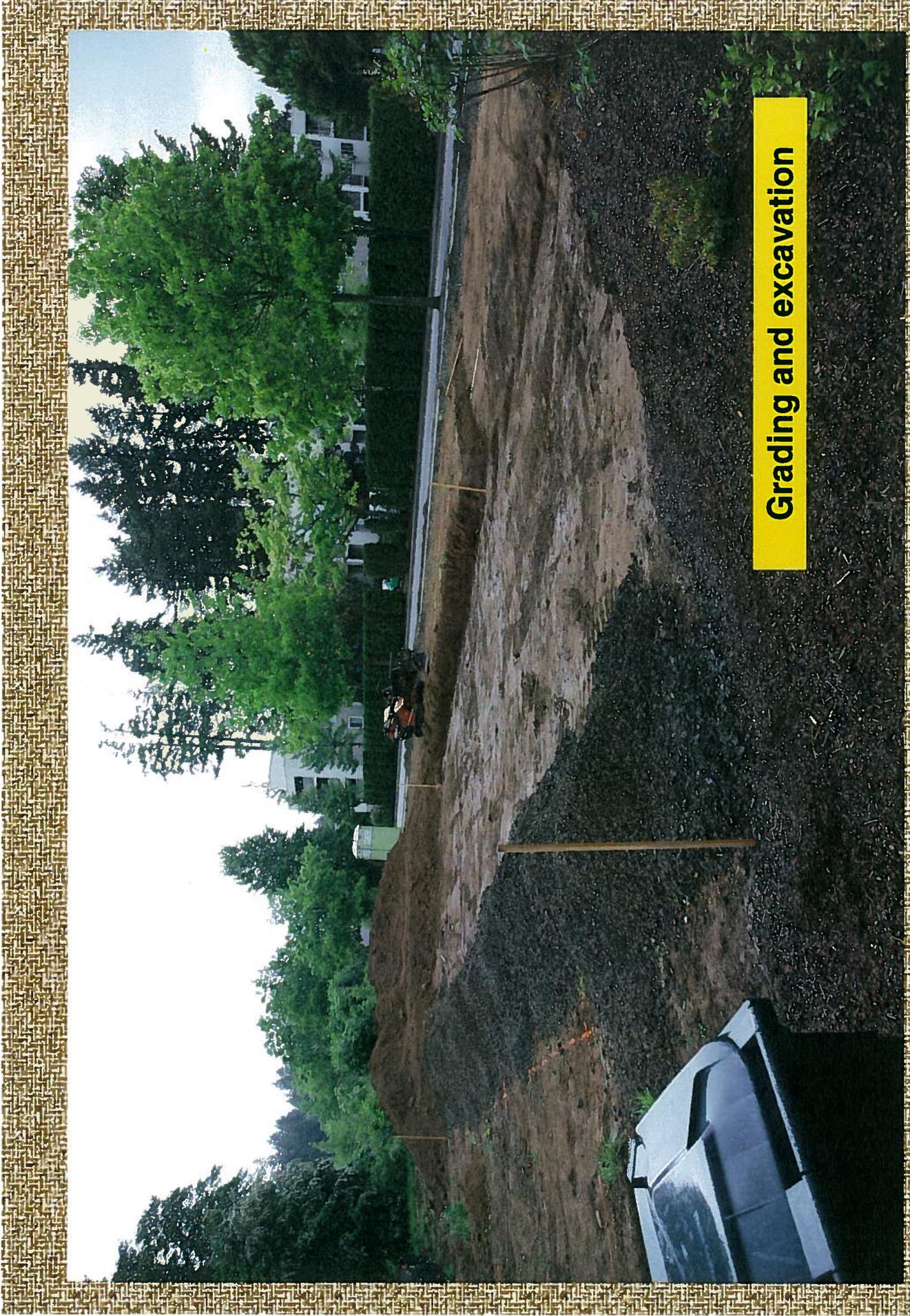
**Groundbreaking**

**Heritage Center: Phase 2 Patio Improvements**



**Grading and excavation**

**Heritage Center: Phase 2 Patio Improvements**



**Grading and excavation**

**Heritage Center: Phase 2 Patio Improvements**

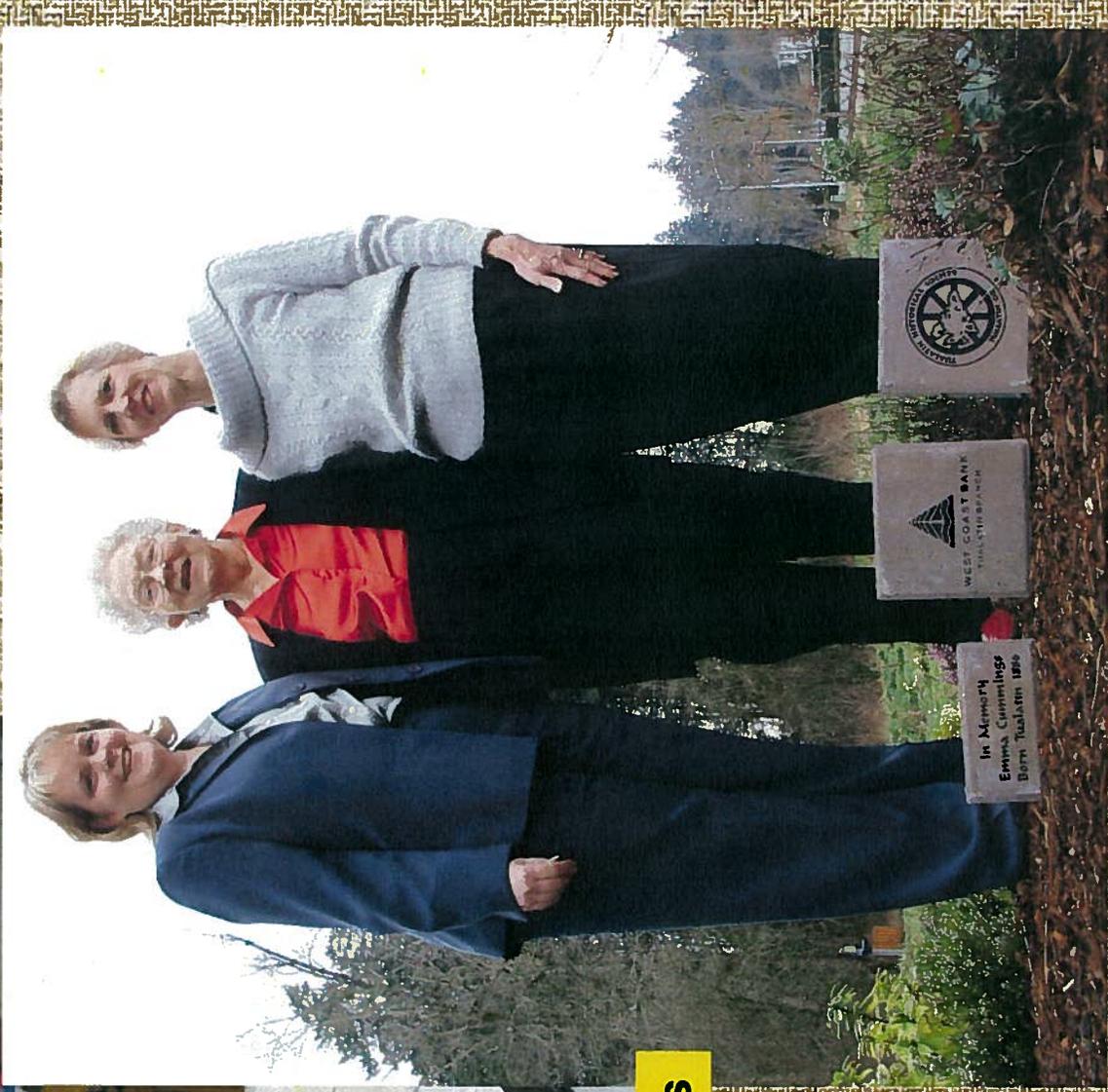


laying pavers

**Heritage Center: Phase 2 Patio Improvements**



**Engraved pavers**

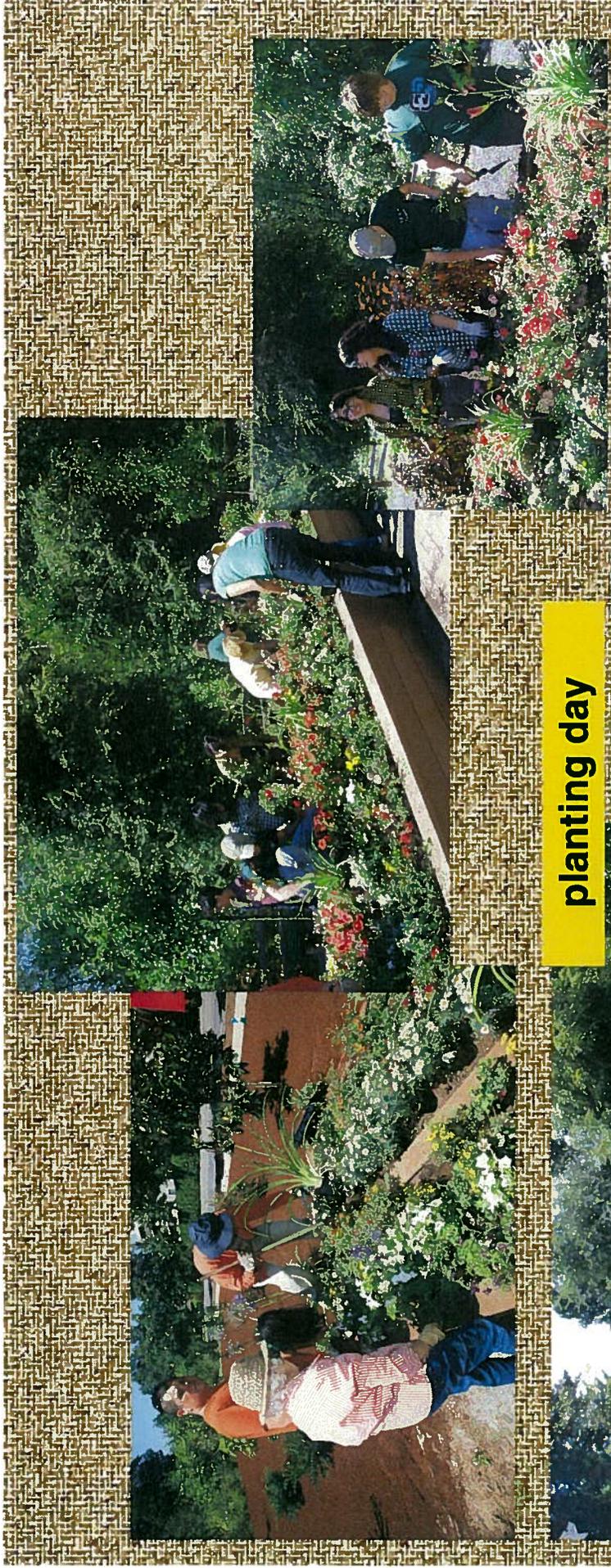


**Heritage Center: Phase 2 Patio Improvements**

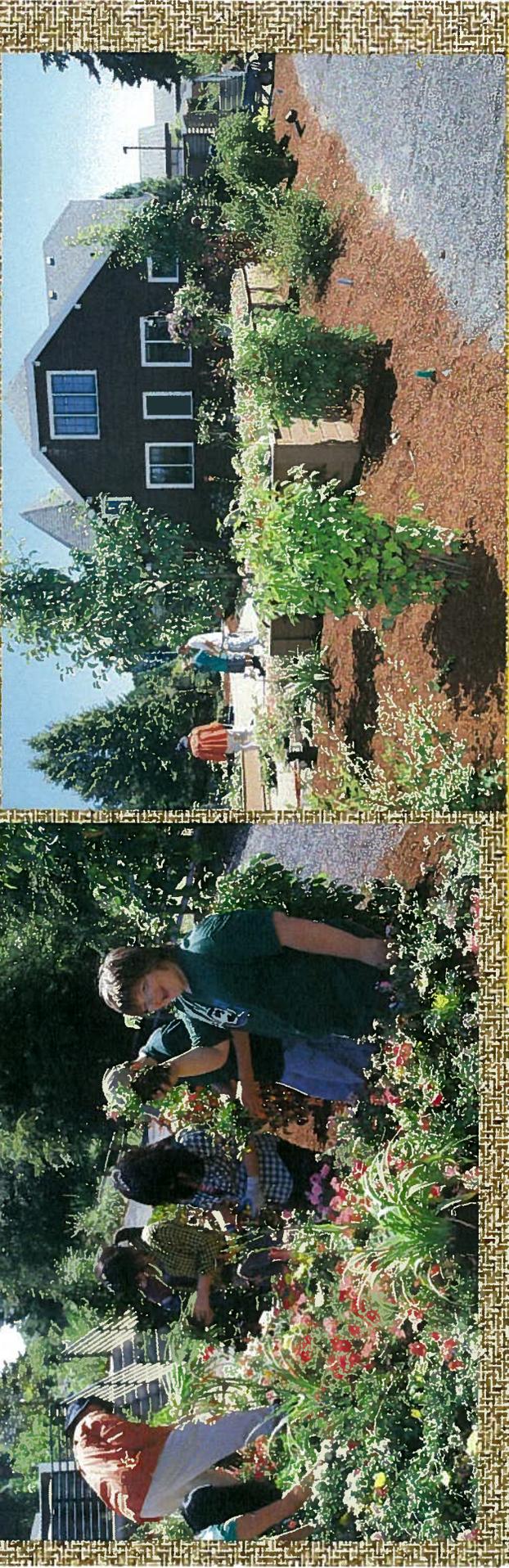


planting day

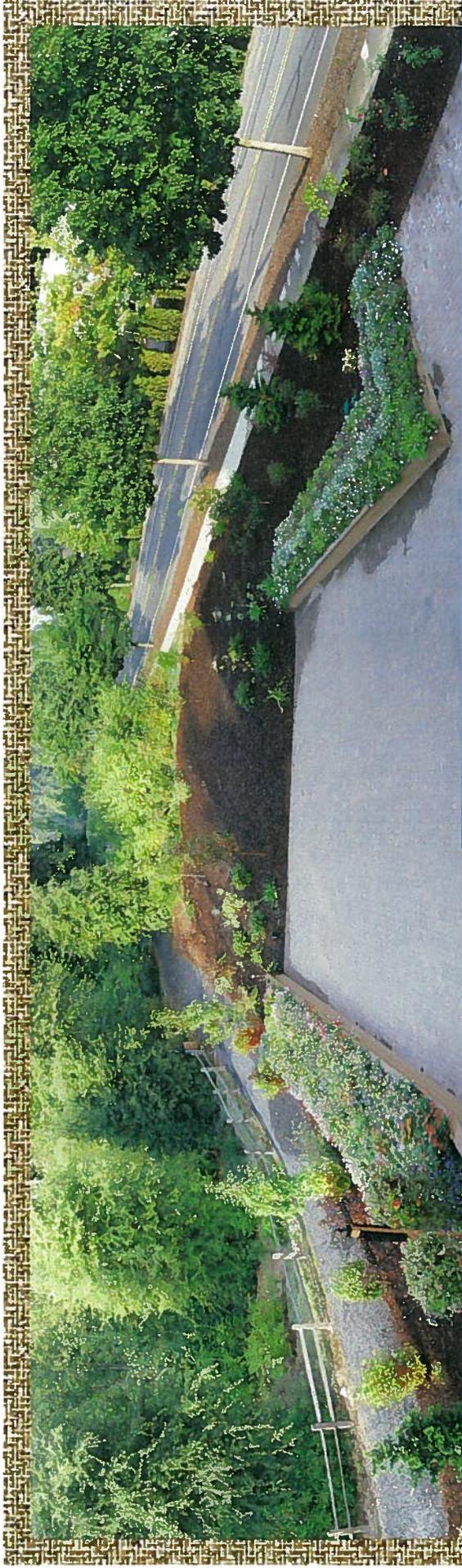
Heritage Center: Phase 2 Patio Improvements



planting day



Heritage Center: Phase 2 Patio Improvements



**the new patio**

**Heritage Center: Phase 2 Patio Improvements**

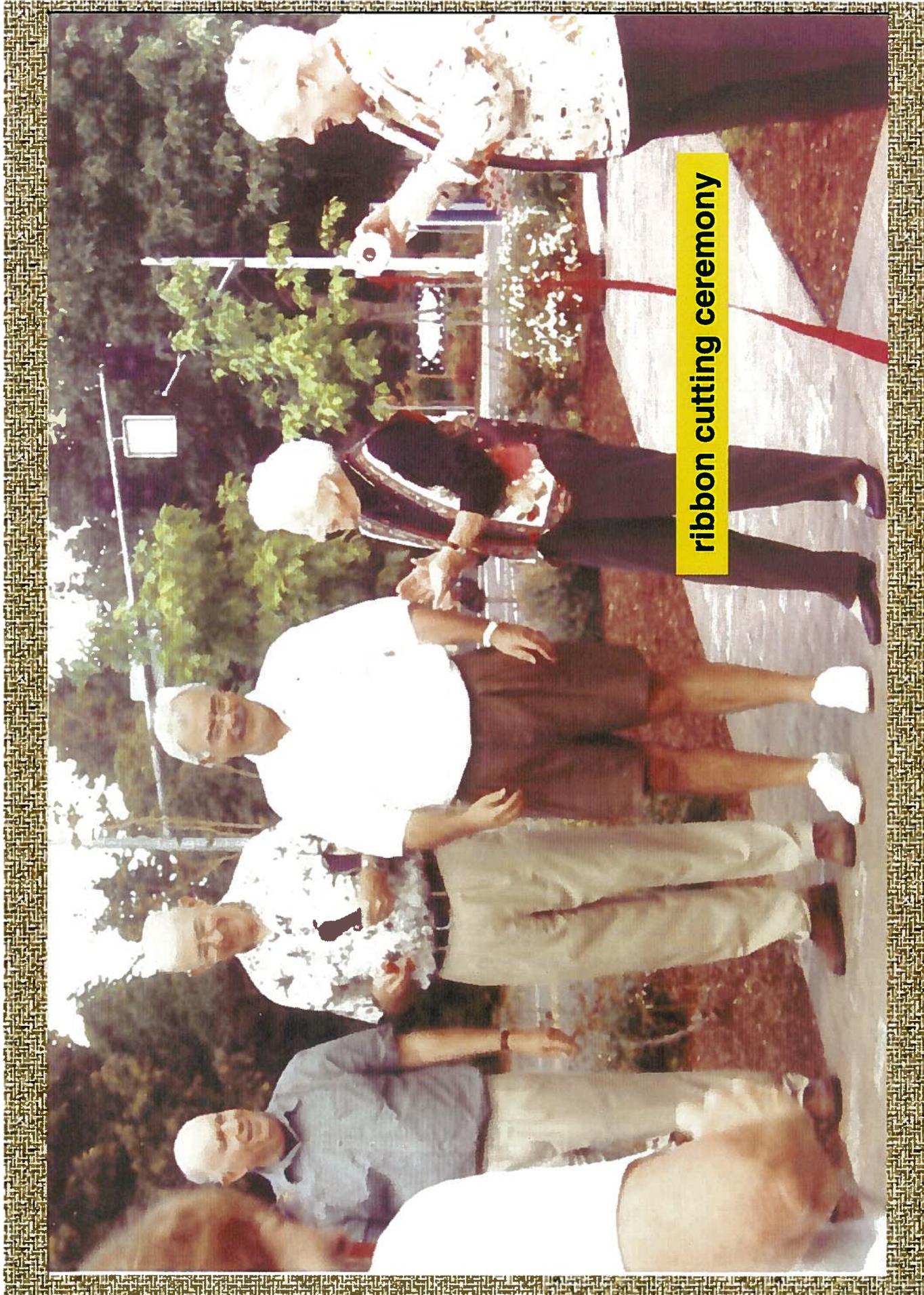


**before**



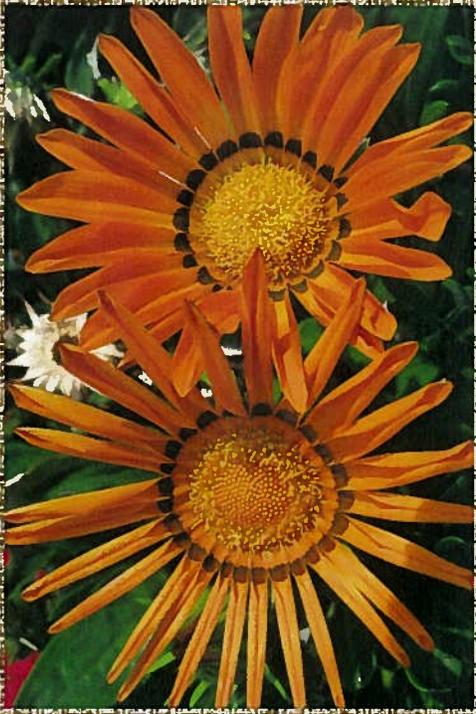
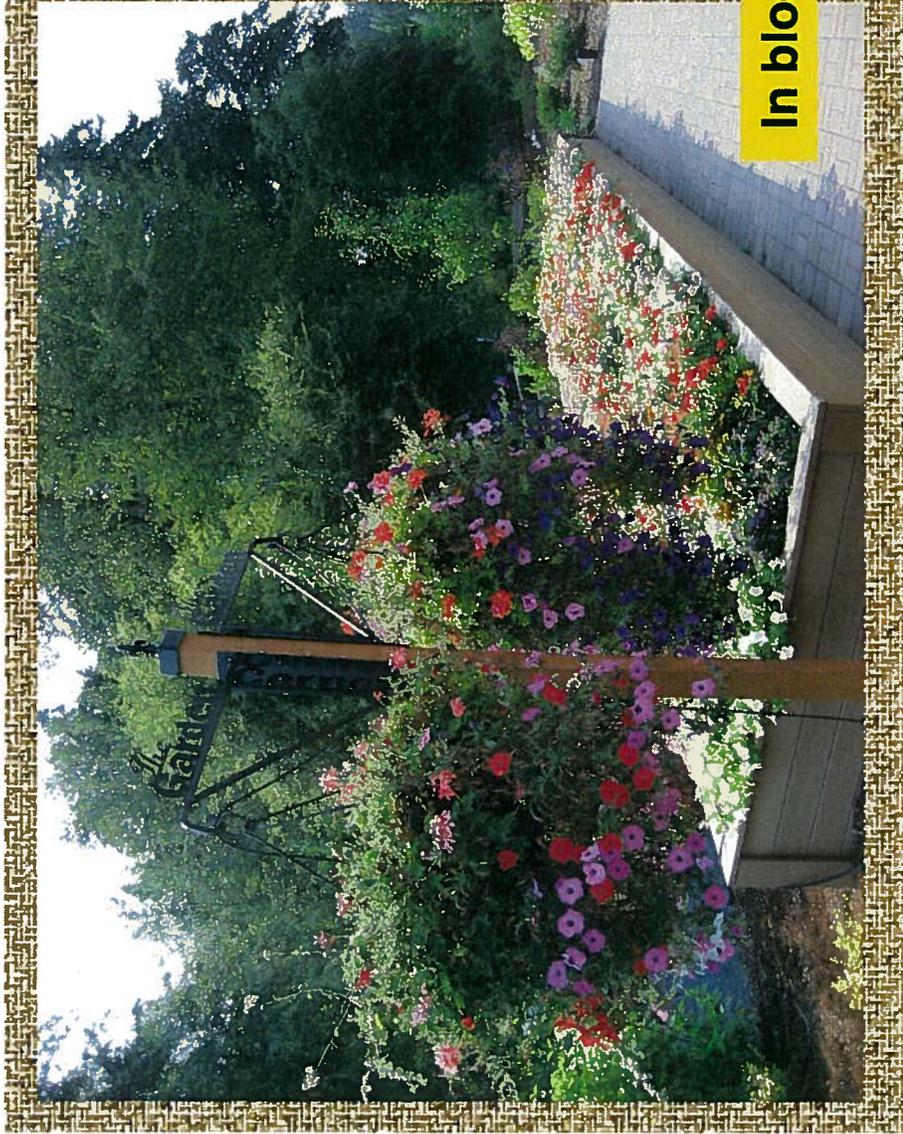
**after**

**Heritage Center: Phase 2 Patio Improvements**

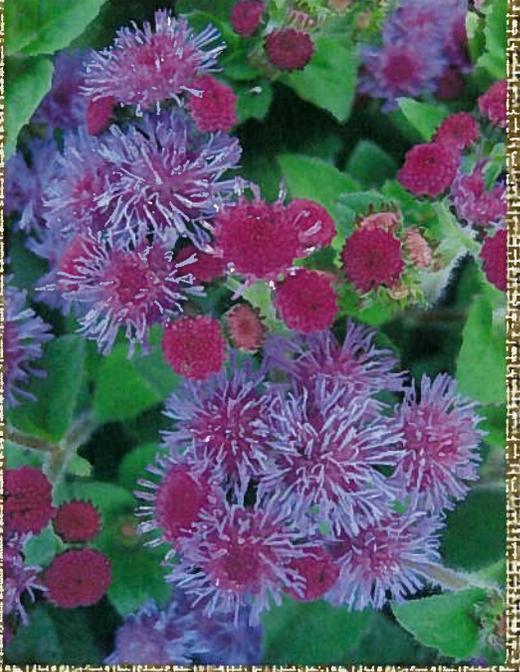


**ribbon cutting ceremony**

**Heritage Center: Phase 2 Patio Improvements**



**In bloom**



**Heritage Center: Phase 2 Patio Improvements**



**great for events!**



**Heritage Center: Phase 2 Patio Improvements**

**Thank you for your support!**



**Heritage Center: Phase 2 Patio Improvements**

**MEETING DATE: Thursday, October 16**

**Time: 5:30-8:30pm**  
**Location: Operations Training Room**  
**Food to be provided**

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***SPECIAL WORK SESSION ITEMS***

***PowerPoint?***

1. Central Urban Renewal – Maximum Indebtedness (Comm. Dev.)
2. Train Noise Mitigation (Engineering)

**WORK SESSION ITEMS**

**PowerPoint?**

1. Rental Housing Additional Information (implementation/roll-out) (Admin/Legal)
  2. Reverse Frontage Future Planning Discussion (Ops)
  3. Street trees follow-up (subcommittee report)
  4. Outside Agencies Allocation of Funds (Admin)
- 

**PRESENTATIONS / ANNOUNCEMENTS / SPECIAL REPORTS**

**PowerPoint?**

1. Introduction of New TVF&R Tualatin Station Captain Case Brown
  2. Tualatin Tomorrow – Health, Safety & Social Services (Comm Dev)
  - 3.
- 

**CONSENT CALENDAR ITEMS**

1. Resolution CUP-08-04 – Reservoir/Cell Site – Norwood Road (Legal)
  2. Award of Bid – Herman Road TDC (Comm Dev)
  3. Resolution – award water line project – Norwood Road (Eng)
  4. Resolution – Herman Road Expenditures Outside the LTID (TDC)
  5. Resolution - Red Flag Identity Theft Program (Finance)
  3. Additional application for Bancroft Bonding on Killarney Lane Sanitary Sewer Project (Eng)
- 

**PUBLIC HEARINGS – Legislative, Other, Quasi-Judicial**

**PowerPoint?**

1. PTA-08-05 – Eighty Percent Density Rule (*Legislative*) (Comm Dev) (*continued from 10/13*)
  - 2.
- 

**GENERAL BUSINESS ITEMS (not consent)**

**PowerPoint?**

1. Liquor license change of ownership application – Stars Cabaret
  - 2.
  - 3.
  - 4.
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**EXECUTIVE SESSION ITEMS**

- 1.
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**WORK SESSION ITEMS**

*PowerPoint?*

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

4. \_\_\_\_\_

5. \_\_\_\_\_

**PRESENTATIONS / ANNOUNCEMENTS / SPECIAL REPORTS**

*PowerPoint?*

1. Youth Advisory Council Update \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

**CONSENT CALENDAR ITEMS**

1. Reso - Approving Commuter Rail Project TriMet & City Maintenance Agr (Comm Dev) - *tentative*

2. Resolution Stafford MOU on Communications (Comm Dev) \_\_\_\_\_

3. \_\_\_\_\_

4. \_\_\_\_\_

**PUBLIC HEARINGS – Legislative, Other, Quasi-Judicial**

*PowerPoint?*

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

**GENERAL BUSINESS ITEMS (not consent)**

*PowerPoint?*

1. ORD PTA-08-05 – Eighty Percent Density Rule (Legal) \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

4. \_\_\_\_\_

5. \_\_\_\_\_

**EXECUTIVE SESSION ITEMS**

1. \_\_\_\_\_

**WORK SESSION ITEMS**

**PowerPoint?**

1. Leveton Maximum Indebtedness (Comm Dev) *(may move to 12/8)*

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2. Franchise Fee / Privilege Tax Discussion (Finance)

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3. PTA-08-06 Sign Design (Comm Dev) *(may move to 12/8)*

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4. Utility underground update ?

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5. Legislative Program (Admin)

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6. Library policies

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7. Tualatin-Sherwood Road Fountain (@ Commons Park) *(Comm Dev)*

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**PRESENTATIONS / ANNOUNCEMENTS / SPECIAL REPORTS**

**PowerPoint?**

1. Starry Nights and Holiday Lights Presentation *(Comm Services)*

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2.

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3.

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**CONSENT CALENDAR ITEMS**

1. Reso Certifying Election Results (Admin)

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2.

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3.

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4.

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**PUBLIC HEARINGS – Legislative, Other, Quasi-Judicial**

**PowerPoint?**

1.

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2.

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3.

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**GENERAL BUSINESS ITEMS (not consent)**

**PowerPoint?**

1.

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2.

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3.

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4.

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5.

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**EXECUTIVE SESSION ITEMS**

1.

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**WORK SESSION ITEMS**

**PowerPoint?**

1. Historic Regulations – Holistic Review (Comm Dev)

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2.

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3.

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4.

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5.

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**PRESENTATIONS / ANNOUNCEMENTS / SPECIAL REPORTS**

**PowerPoint?**

1. Youth Advisory Council Update

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2. Tualatin Tomorrow – Traffic, Transportation & Activity (Comm Dev)

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3.

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**CONSENT CALENDAR ITEMS**

1. Annual Water SDC Report (Eng)

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2. Annual Parks SDC Report (Comm Svcs)

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3.

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4.

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**PUBLIC HEARINGS – Legislative, Other, Quasi-Judicial**

**PowerPoint?**

1. PTA-08-04 Street Tree Regulations (*Legislative*) (Comm Dev)

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2. IMP-08-01 Middleman Property (*Quasi-Judicial*) (Comm Dev)

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3.

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**GENERAL BUSINESS ITEMS (not consent)**

**PowerPoint?**

1.

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2.

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3.

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4.

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5.

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**EXECUTIVE SESSION ITEMS**

1.

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# October

Sun	Mon	Tue	Wed	Thu	Fri	Sat
			<b>1</b> 1:15p Tualatin Historical Soc  7p ARB (if necessary)	<b>2</b>  LOC Conference	<b>3</b> 7:30a Chamber Networking AM @ Marco Ideas Unlimited, Location TBA	<b>4</b>
<b>5</b> 4:00-6:00p YAC City Project - Youth Summit @ TTUSD Commons	<b>6</b>	<b>7</b> 11:30a Chamber Lunch n' Learn, Location TBA 6:30p TLAC	<b>8</b> 6:30p Tualatin Tomorrow VIC Steering Committee Meeting, Council Chambers  Nancy out - cont.	<b>9</b> 7:00p TPAC	<b>10</b> 7:30a Chamber Networking AM @ Best Buy, Nyberg Woods  Paul out - conference	<b>11</b>
<b>12</b>	<b>13</b> 5:00p Work Session 7:00p Council/TDC Mtg Paul out - conference	<b>14</b> 6:00p TPARK 7:00p Community Forum (Election Update) @ Heritage Center	<b>15</b> 5:30p Chamber Alive After Five and Ribbon Cutting @ True Health Medicine, 8555 SW Tualatin Road	<b>16</b> 6p TDC Work Session re: CURD maximum indebtedness @ Operations	<b>17</b> 7:30a Chamber Networking, Alder Dental Group, 7110 SW Hazel Fern Suite 250 Tigard 7p-10p YAC Haunted House at Van Raden Community Center	<b>18</b> 7p-10p YAC Haunted House at Van Raden Community Center
<b>19</b>	<b>20</b>	<b>21</b> 11:30a Chamber Lunch n' Learn, Location TBA  6:30p TAAC  Mike out - conference Dan out - conference	<b>22</b> 7p ARB (if necessary)  Carina out - conference	<b>23</b> 11:30a Chamber Luncheon @ Country Club	<b>24</b> 7:30a Chamber Networking sponsored by Active Media @ Heritage Center 7p-10p YAC Haunted House at Van Raden Community Center	<b>25</b> 10:00a - 2:00p 5th Annual West Coast Giant Pumpkin Regatta  7p-10p YAC Haunted House at Van Raden Community Center
<b>26</b>	<b>27</b> 5:00p Work Session 7:00p Council/TDC Mtg	<b>28</b>	<b>29</b>	<b>30</b>	<b>31</b> 7:30a Chamber Networking, Prudential NW Properties, 5 Centerpointe Drive, Suite 150, Layton Kent out	

2008

# November

Sun	Mon	Tue	Wed	Thu	Fri	Sat
2	3 Kent out	4 Election Day 6:30p TLAC	5 1:15p Tualatin Historical Soc 4p Whazzup Wed. 7p ARB (if necessary)	6 7:30a Chamber Networking AM, Sponsor and location TBA 1:00p Chamber Member Showcase @ Hayden's	7 7:30a Chamber Networking Sponsor and location TBA City Council Goal Setting Retreat John out	8 City Council Goal Setting Retreat
9	10 5:00p Work Session 7:00p Council/TDC Mtg Kent out Sherilyn out	11 Veterans Day Holiday CITY OFFICES CLOSED 6:00p TPARK	12 6:30p Tualatin Tomorrow VIC Steering Committee Mtg. Council Chambers	13 7p TPAC	14 7:30a Chamber Networking AM - 13 Chamber Holiday Mixer @ Wilsonville Costco	15
16	17	18 6:30p TAAC	19 8:00a Chamber New Member Breakfast @ Claim Jumper 12p Core Area Parking District Board, C Chambers 5:30p Chamber Alive After Five, Carl Greve, BPV 7p ARB (if necessary)	20 11:30a Chamber Luncheon @ Country Club	21 7:30a Chamber Networking Sponsor and location TBA City Council Goal Setting Retreat John out	22
23	24 5:00p Work Session 7:00p Council/TDC Mtg John out	25 Dan out	26	27 Thanksgiving Day Holiday CITY OFFICES AND CHAMBER CLOSED	28 Thanksgiving Holiday CITY OFFICES AND CHAMBER CLOSED	29
30						

2008

# December

Sun	Mon	Tue	Wed	Thu	Fri	Sat
	<b>1</b> 5:00p Work Session 7:00p Council/TDC Mtg	<b>2</b> 6:30p TLAC	<b>3</b> 1:15p Tualatin Historical Soc 7p ARB (if necessary)	<b>4</b>	<b>5</b> 7:30a Chamber Networking @ Wells Fargo Bank 6p-9p Stary Nights and Holiday Lights (Tualatin Commons)	<b>6</b>
<b>7</b>	<b>8</b>	<b>9</b> 6:00p TPARK	<b>10</b> 6:30p Tualatin Tomorrow Vision Implementation Committee, Library Community Room	<b>11</b> 7p TPAC	<b>12</b> 7:30a Chamber Networking Sponsor and location TBA	<b>13</b>
<b>14</b>	<b>15</b>	<b>16</b> 6:30p TAAC	<b>17</b> 7:00p ARB (if necessary)	<b>18</b> 11:30a Chamber Luncheon/Holiday Auction @ Country Club	<b>19</b> 7:30a Chamber Networking Sponsor and location TBA	<b>20</b>
<b>21</b>	<b>22</b>	<b>23</b>	<b>24</b>	<b>25</b> Christmas Day Holiday CITY OFFICES CLOSED	<b>26</b> 5pm City Holiday Party (Country Club)	<b>27</b>
<b>28</b>	<b>29</b> Dan out	<b>30</b>	<b>31</b>			

2008