



**TUALATIN CITY COUNCIL
AND
TUALATIN DEVELOPMENT COMMISSION**
Monday, March 23, 2009

City Council Chambers
18880 SW Martinazzi Avenue, Tualatin, Oregon

WORK SESSION begins at ~~5:00~~ 6:30 p.m. tonight

REGULAR MEETING begins at 7:00 p.m.

Mayor Lou Ogden

**Council President Chris Barhyte
Councilor Monique Beikman
Councilor Joelle Davis**

**Councilor Jay Harris
Councilor Donna Maddux
Councilor Ed Truax**

WELCOME! By your presence in the City Council Chambers, you are participating in the process of representative government. To encourage that participation, the City Council has specified a time for citizen comments on its agenda – Item C, following Presentations, at which time citizens may address the Council concerning any item not on the agenda, with each speaker limited to three minutes, unless the time limit is extended by the Mayor with the consent of the Council.

Copies of staff reports or other written documentation relating to each item of business referred to on this agenda are available for review on the world wide web at www.ci.tualatin.or.us, at the Library located at 18878 SW Martinazzi Avenue, and are also on file in the Office of the City Manager for public inspection. Any person who has any question concerning any agenda item may call Administration at 503.691.3011 to make an inquiry concerning the nature of the item described on the agenda.

In compliance with the Americans With Disabilities Act, if you need special assistance to participate in this meeting, you should contact Administration at 503.691.3011 (voice) or 503.692.0574 (TDD). Notification thirty-six (36) hours prior to the meeting will enable the City to make reasonable arrangements to assure accessibility to this meeting.

Council meetings are televised “live” on the day of the meeting on Washington County Cable Access Channel 28. The replay schedule for Council meetings can be found at www.tvctv.org.

Your City government welcomes your interest and hopes you will attend the City of Tualatin City Council meetings often.

- SEE ATTACHED AGENDA -

PROCESS FOR LEGISLATIVE PUBLIC HEARINGS

A “legislative” public hearing is typically held on matters which affect the general welfare of the entire City rather than a specific piece of property.

1. The Mayor opens the public hearing and identifies the subject.
2. A staff member presents the staff report.
3. Public testimony is taken.
4. The Council then asks questions of staff, the applicant or any member of the public who testified.
5. When the Council has finished its questions, the Mayor closes the public hearing.
6. When the public hearing is closed, Council will then deliberate to a decision and a motion will be made to either approve, deny, or “continue” the public hearing.

PROCESS FOR QUASI-JUDICIAL PUBLIC HEARINGS

A “quasi-judicial” public hearing is typically held for annexations, planning district changes, variances, conditional use permits, comprehensive plan changes, and appeals from subdivisions, partitions and architectural review.

1. The Mayor opens the public hearing and identifies the case to be considered.
2. A staff member presents the staff report to the Council.
3. Public testimony is taken:
 - a) In support of the application
 - b) In opposition or neutral
4. The Council then asks questions of staff, the applicant or any member of the public who testified.
5. When the Council has finished its questions, the Mayor closes the public hearing.
6. When the public hearing is closed, Council will then deliberate to a decision and a motion will be made to either approve, approve with conditions or deny the application, or “continue” the public hearing.

TIME LIMITS

The purpose of time limits on public hearing testimony is to provide all interested persons with an adequate opportunity to present and respond to testimony. All persons providing testimony **shall be limited to 10 minutes**, subject to the right of the Mayor to amend or waive the time limits.

EXECUTIVE SESSION INFORMATION

Executive session is a portion of the Council meeting that is closed to the public to allow the Council to discuss certain confidential matters. No decisions are made in Executive Session. The City Council must return to the public session before taking final action.

The City Council may go into Executive Session under the following statutory provisions to consider or discuss: *ORS 192.660(2)(a)* the employment of personnel; *ORS 192.660(2)(b)* the dismissal or discipline of personnel; *ORS 192.660(2)(d)* labor relations; *ORS 192.660(2)(e)* real property transactions; *ORS 192.660(2)(f)* non-public information or records; *ORS 192.660(2)(g)* matters of commerce in which the Council is in competition with other governing bodies; *ORS 192.660(2)(h)* current and pending litigation issues; *ORS 192.660(2)(i)* employee performance; *ORS 192.660(2)(j)* investments; or *ORS 192.660(2)(m)* security issues. **All discussions within this session are confidential.** Therefore, nothing from this meeting may be disclosed by those present. News media representatives are allowed to attend this session (unless it involves labor relations), but shall not disclose any information discussed during this session.



A. CALL TO ORDER

Pledge of Allegiance

B. PRESENTATIONS, ANNOUNCEMENTS, SPECIAL REPORTS

- 1. Tree City USA Presentation and Proclamation Declaring April 5-11, 2009 “Arbor Week5
in the City of Tualatin”
- 2. Proclamation Declaring April 12-18, 2009 “National Community Development Week”6
- 3. Library Foundation Update – *Marge Congress*

C. CITIZEN COMMENTS

This section of the agenda allows citizens to address the Council regarding any issue not on the agenda. The duration for each individual speaking is limited to 3 minutes. Matters requiring further investigation or detailed answers will be referred to City staff for follow-up and report at a future meeting.

D. CONSENT AGENDA (Item Nos. 1 – 5)

Page #

The Consent Agenda will be enacted with one vote. The Mayor will first ask the staff, the public and the Councilors if there is anyone who wishes to remove any item from the Consent Agenda for discussion and consideration. The matters removed from the Consent Agenda will be considered individually at the end of this Agenda under “Items Removed from the Consent Agenda.” At that time, any member of the audience may comment on any item pulled from the Consent Agenda. The entire Consent Agenda, with the exception of items removed to be discussed under “Items Removed from the Consent Agenda,” is then voted upon by roll call under one motion.

- 1. Approval of the Minutes for Special Work Session of March 2, 2009 and the Work.....6a
Session and Meeting of March 9, 2009
- 2. 2008 Annual Report of the Tualatin Planning Advisory Commission7
- 3. Resolution No. 4872-09 Amending a Communication Site Lease Agreement with14
Mobilitie Investments II, LLC for the Cell Tower at the
Norwood Water Reservoir Site
- 4. Resolution No. 4873-09 Accepting Public Improvements for 115th Commerce Park43
- 5. Resolution No. 4874-09 Adopting Policies and Fees for the Tualatin Public45
Library Community Room

E. PUBLIC HEARINGS – Legislative or Other

- 1. Ordinance Relating to Tree Removal; and Amending TDC 34.200, 73.405, 74.706,53
74.707, 74.708, and 74.765 (PTA-08-04)

Ordinance No. 1279-09 Relating to Tree Removal, and Amending TDC 34.200, 73.405,
74.706, 74.707, 74.708, and 74.765 (PTA-08-04)

F. PUBLIC HEARINGS – Quasi-Judicial
None.

G. GENERAL BUSINESS (Item Nos. 1 – 2)

- 1. 2008 Annual Report of the Tualatin Library Advisory Committee84
- 2. Ordinance No. 1280-09 Relating to Mandatory Recycling for Businesses; Adding87
New Sections 9-6-005, 9-6-010, 9-6-020, and 9-6-030 to the
Tualatin Municipal Code

H. ITEMS REMOVED FROM CONSENT AGENDA
Items removed from the Consent Agenda will be discussed individually at this time. The Mayor may impose a time limit on speakers addressing these issues.

I. COMMUNICATIONS FROM COUNCILORS

J. EXECUTIVE SESSION

K. ADJOURNMENT

Proclamation

PROCLAMATION DECLARING APRIL 5 - 11, 2009 ARBOR WEEK IN THE CITY OF TUALATIN

WHEREAS in 1872, J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees. This holiday became Arbor Day and was first observed with the planting of more than a million trees in Nebraska. Arbor Day is now observed throughout the nation and the world and is observed in the State of Oregon during the week of April 5 - 11, 2009; and

WHEREAS healthy trees can reduce the erosion of topsoil by wind and water, moderate the temperature, calm traffic, clean the air, produce oxygen, provide habitat for wildlife and are a renewable resource giving us paper and countless other wood products; and

WHEREAS trees in our city increase property values, enhance the economic vitality of business areas, and beautify our community, and where almost 9,000 trees and shrubs have been planted by volunteers on City of Tualatin parkland this year alone; and on April 11, 2009, volunteers will plant over 800 native plants and trees at Hedges Creek to beautify and celebrate the value of trees in Tualatin; and

WHEREAS recertification for 2009 marks the 22nd consecutive time the City of Tualatin has been recognized as a Tree City USA by the National Arbor Day Foundation and this year will mark the eighth time that Tualatin has received the Tree City USA Growth Award; and

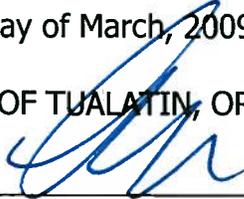
BE IT PROCLAIMED BY THE CITY COUNCIL OF THE CITY OF TUALATIN, that:

Section 1. All citizens are urged to support efforts to protect and plant trees to gladden the hearts and promote the well being of present and future generations.

Section 2. The citizens of the City of Tualatin support the State of Oregon Department of Forestry in their recognition of the value of trees and forests by proclaiming April 5 - 11, 2009, as Arbor Week in Tualatin.

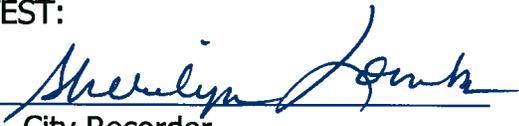
INTRODUCED AND ADOPTED this 23rd day of March, 2009.

CITY OF TUALATIN, OREGON

BY  _____

Mayor

ATTEST:

BY  _____

City Recorder

Proclamation

PROCLAMATION DECLARING THE WEEK OF APRIL 12 - 18, 2009 AS "NATIONAL COMMUNITY DEVELOPMENT WEEK"

WHEREAS the Community Development Block Grant Program (CDBG) was enacted into law by President Gerald Ford, as the centerpiece of the Housing and Community Development Act of 1974; and

WHEREAS the CDBG program has as its primary objective "the development of viable urban communities by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income"; and

WHEREAS the CDBG program has considerable flexibility to allow communities to carry out activities that are tailored to their unique affordable housing and neighborhood revitalization needs; and

WHEREAS throughout its 34-year history, the CDBG program has been a partnership among the federal, state and local governments, business, and the nonprofit sector which carry out activities that improve the lives and neighborhoods of low and moderate income families; and

WHEREAS the City of Tualatin since 1979, with CDBG funds in the amount of \$999,256 has provided housing rehabilitation; neighborhood revitalization; addition or expansion of community facilities and shelters; and physical redevelopment; and

WHEREAS funding for CDBG has been reduced in recent years; and

WHEREAS this reduction in funding has had an impact on the City of Tualatin by eliminating improvements to our roads and infrastructure, and community buildings.

NOW THEREFORE, BE IT PROCLAIMED by the City Council of the City of Tualatin, Oregon that it hereby calls on Congress to provide increased formula funding for CDBG in FY 2009-10.

BE IT FURTHER PROCLAIMED that the City of Tualatin designate the week of April 12 through April 18, 2009 as "*National Community Development Week*" in Tualatin in support of this valued program that has made a tremendous contribution to the viability of the housing stock, neighborhood and infrastructure in Tualatin.

BE IT FURTHER PROCLAIMED that the City Council urges all the citizens of our City to join in together in expressing support for the Community Development Block Grant Program.

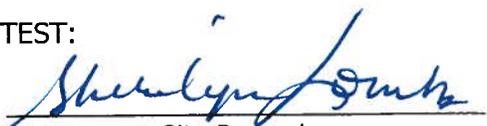
INTRODUCED AND ADOPTED this 23rd day of March, 2009.

CITY OF TUALATIN, OREGON

By 

Mayor

ATTEST:

By 

City Recorder



Approved By Tualatin City Council
Date March 23, 2009
Recording Secretary J. Kirby

STAFF REPORT CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

FROM: Sherilyn Lombos, City Manager

DATE: March 23, 2009

SUBJECT: APPROVAL OF THE MINUTES FOR SPECIAL WORK SESSION OF MARCH 2, 2009 AND THE WORK SESSION AND MEETING OF MARCH 9, 2009

ISSUE BEFORE THE COUNCIL:

The issue before the Council is to approve the minutes for the Special Work Session of March 2, 2009 and the Work Session and Meeting of March 9, 2009.

RECOMMENDATION:

Staff respectfully recommends that the Council adopt the attached minutes.

FINANCIAL IMPLICATIONS:

There are no financial impacts associated with this item.

Attachments: Minutes



SPECIAL CITY COUNCIL/DEVELOPMENT COMMISSION MEETING MINUTES OF MARCH 2, 2009

PRESENT: Mayor Lou Ogden; Councilors Chris Barhyte, Monique Beikman, Joelle Davis, Jay Harris, Donna Maddux, and Ed Truax

STAFF

PRESENT: Sherilyn Lombos, City Manager; Doug Rux, Community Development Director, Mike McKillip, City Engineer; Paul Hennon, Community Services Director, Eric Underwood, Development Coordinator; Carina Christensen, Assistant to the City Manager; Don Hudson, Finance Director; Nancy McDonald, Human Resources Director; Kent Barker, Police Chief; Dan Boss, Operations Director; Brenda Braden, City Attorney; and Maureen Smith, Recording Secretary

The special work session was called to order at 6:08 p.m. at the Tualatin Heritage Center.

1. ANNOUNCEMENTS – None.
2. ITEMS DISCUSSED

A. Urban Renewal Discussion

City Manager Sherilyn Lombos opened the discussion on urban renewal which has three discussion points.

[Note: Councilors also act as "Commissioners" for the Tualatin Development Commission.]

Overview of Urban Renewal

Community Development Director Doug Rux began with a PowerPoint presentation giving an overview of urban renewal – what it is, how it works, projects that have been done over the years, and how the financing portion works. Examples of how a tax bill works with and without urban renewal.

Leveton Tax Increment District

Community Development Director Rux proceeded with a PowerPoint on the Leveton Tax Increment District (LTID). Mr. Rux said the district is scheduled to close down. The question for the Council/Commission is should the LTID close down as scheduled and should the maximum indebtedness of the LTID be increased to address blight and *not* close down, and if yes, what are the blight issues and possible projects.

The district was created in 1985 and ten amendments have been done since its creation, with maximum indebtedness established. The tax increment fund collections/debt was explained by Mr. Rux and possible projects that remain that could be done. The emerging statewide urban renewal issues include some form of revenue sharing with overlapping taxing districts, would apply to new plans or increasing maximum indebtedness of existing plans, could have impacts on bonding capabilities, and could extend the timelines to complete future projects.

Council discussion followed on how to address the over collection/reserves and how the funding would be dispersed as the district reaches maximum indebtedness. It was asked and answered that the waterline infrastructure in the district is fully serviceable. Council discussed whether to continue the district. Also discussed was if the current district could be closed and a new one created.

After discussion, Council agreement by all present was to not to move forward with continuing the Leveton Tax Increment District after maximum indebtedness ends in 2010.

Brief discussion followed, with Council asking about what would happen to any remaining funds. Mention was made of using any remainder of funds towards a gateway project

Central Urban Renewal District Maximum Indebtedness

Community Development Director Rux continued with discussion on the Central Urban Renewal District (CURD) maximum indebtedness. Policy considerations are whether the Commission should close down the CURD as scheduled, should the maximum indebtedness of the CURD be increased to address blight and not close down, and if yes what are the blight issues and possible projects.

The district was created in 1975 and 22 amendments have been done since its creation. Maximum indebtedness of how the funding was distributed and reviewed. Possible projects to complete were also reviewed. Mr. Rux said the emerging statewide urban renewal issues are the same as with the LTID.

The challenge is whether to extend the CURD. Options to consider would be to keep the district the same with the same maximum indebtedness, close down the district, or start a new district with similar or different boundaries and a new maximum indebtedness. Discussion followed on the process of creation of a new district with new boundaries. A new plan would be at least a year out, and it would be three to four years before projects could be constructed. Discussion continued on what does the Council wants accomplished that couldn't be done by normal zoning and development.

Discussion followed. While recognizing the current economic situation, Council also believes what is envisioned for Tualatin in the future is important. A cap of \$10 million was suggested for the CURD, and a ten year plan.

Councilor Maddux said she, along with Councilor Harris, were not in favor of closing down the CURD, to continue with increasing the maximum indebtedness, and keep going with what has taken place in the district to date. Councilor Barhyte said he is in favor of extending the district but also wanted to recognize the need to scale back. Mayor Ogden agreed with scaling back but wanted to be sure there will be adequate funds to be able to complete redevelopment. Councilor Truax said he was in favor of continuing the CURD, finish projects that have been identified, have enough funds to be a partner in the redevelopment of the downtown, and to have adequate funding to be able to accomplish what is envisioned for the Tualatin community.

City Manager Lombos summarized Council discussion to extend the life of the CURD, and for staff to bring back a set of projects that match the vision heard from Council in November 2008. Also to bring back a ten year plan and continue with the CURD but to be prudent.

[Councilor Truax left at 7:45 p.m.]

B. Five-Year Forecast Follow-up

City Manager Lombos said at a previous work session a brief review of the five year forecast was done that left some questions to be answered. Along with Finance Director Don Hudson a PowerPoint presentation was given on an overview of the long term health of the General Fund, and review of other funds, such as utility, special revenue, etc.

The Water and Sewer Funds were reviewed showing revenues, expenditures and reserves. The buildup of reserves over the five year period was explained for the sewer and water funds. The storm drain fund was reviewed and explained that the rates that have been collected have not been keeping up with expenses over time, which is why revenues will increase in the out years. Councilor Harris asked to have a water discussion at a future meeting. The amount and having adequate reserves, particularly for emergency situations was discussed. Finance Director Hudson said contingencies are set aside that are not part of the reserves funds to handle emergencies that may arise. A more in depth discussion will be done during the annual fiscal year budget review.

City Manager Lombos continued with review of the Engineering and Building Fund, and said staff has been closely monitoring the fund, and at this point in time the fund matches revenues and expenditures. During the annual budgeting process no new positions will be proposed but are not in the position of a lay-off or restructuring.

The Operations Fund was reviewed. Staff monitors this fund yearly and what is contracted. The Road Utility Fund was reviewed. Although not certain which year, there is a potentially large road project accounting for the considerable reserves.

The Gas Tax Fund was reviewed noting there are not any reserves available. If there is an increase by the Legislature there could be a change in revenues. This fund covers traffic signal maintenance, street lights, some reverse frontage, transfers to the Operations Fund, and pedestrian friendly projects, etc. City Manager Lombos said a more specific plan will be brought back during the annual fiscal year budget discussion.

City Manager Lombos continued with review of the General Fund, and review of the budget versus actual expenditures. City Manager Lombos explained staff projects revenues conservatively and have typically ended up with additional funds. In terms of expenditures, historically the City has spent about 96% of what is budgeted, but there is cost and salary savings from employee turnover, etc. In looking at the five year revenue and expenditure history and the stable funding sources in place, Tualatin is in much better shape than many other cities. And has been prudent living within our means. Current revenues in 2008/09 are trending exactly where they should be, with expenditures trending below budget as well. Tualatin also has a 15% contingency policy which is very prudent. Also briefly discussed was keeping up with future PERS increases and suggested to budget for those increases.

Other Revenue Options for the General Fund were reviewed and the differences that happen with adding revenues in first years and the out years. Council discussed ways to look at cutting the expenditure side of things.

City Manager Lombos concluded that during the annual budget process a specific discussion of how to balance the budget in fiscal year 2009/10 will be done and goals and strategic areas will also be discussed. Council briefly reviewed upcoming budget meeting dates.

4. ADJOURNMENT

The special work session adjourned at 9:03 p.m.

Sherilyn Lombos, City Manager

Recording Secretary *Maureen Smith*



TUALATIN CITY COUNCIL WORK SESSION MINUTES OF MARCH 9, 2009

PRESENT: Mayor Lou Ogden *[arrived at 5:22 p.m.]*; Councilors Chris Barhyte, Monique Beikman, Joelle Davis, Jay Harris, Donna Maddux, Sherilyn Lombos, City Manager; Brenda Braden, City Attorney; Doug Rux, Community Development Director; Dan Boss, Operations Director; Don Hudson, Finance Director; Police Captain Brad King; Carina Christensen, Assistant to the City Manager; Kaaren Hofmann, Civil Engineer; Paul Hennon, Community Services Director; Abigail Elder, Library Manager; Aquilla Hurd-Ravich, Senior Planner; Eric Underwood, Development Coordinator; Colin Cortes, Assistant Planner; and Maureen Smith, Recording Secretary

ABSENT: Councilor Ed Truax* *[* denotes excused]*

[Unless otherwise noted, MOTION CARRIED indicates all in favor.]

A. CALL TO ORDER

Council President Barhyte called the work session to order at 5:03 p.m.

B. PRESENTATIONS, ANNOUNCEMENTS, SPECIAL REPORTS

1. *Urban/Rural Reserves – Local Aspirations*

Senior Planner Aquilla Hurd-Ravich began by presenting a PowerPoint on the urban/rural reserves – local aspirations residential land and South Tualatin analysis.

At the February 4, 2009 special work session, information was presented for discussion on building trends in planning areas, capacity inside and outside the planning areas, and two identified potential candidates for urban reserves. Various topic areas will be presented in greater detail with a final report back to Council at the April 13, 2009 Council meeting, in preparation for the presentation of presenting the information at the Tualatin Tomorrow community event April 30, 2009.

Policy considerations for Council to consider is how much growth should Tualatin plan for in the next 20 and 50 years in the residential planning area, and what density requirements should apply to residential land in South Tualatin. A review of residential land indicates net vacant land is at 99 acres, infill land at 25 acres and redevelopable land is 114 acres. South Tualatin's residential net vacant land is 314 acres, industrial land at 19 acres, and commercial/retail at 10 acres. Aerial maps were displayed indicating vacant, infill, and redevelopable residential land within Tualatin, and net developable vacant land south of Tualatin, including the North Wilsonville Study area.

Council reviewed dwelling units per acres/density requirements. Tualatin's current population is 26,040. The combined growth of City and low density development ranges from a low of approximately 28,000 to a high of 35,000, combined growth of City and State densities ranges from a low of 30,000 to a high of 36,000, and the combined growth of City and Metro densities estimated population at a low of 32,000 to a high of 38,000. The projected numbers do not take into consideration the Stafford area. The cities of Tigard and Wilsonville are looking at more density for their cities and other cities have not submitted any local aspirations as yet to Metro. Discussion followed, and staff reminded Council of their discussion in November about not wanting more density than what is currently in place. Keeping the population at 28,000 to 35,000 was discussed by Council.

City Manager Lombos said there will be one more work session to discuss the remaining components in the next few weeks, with a final report of Local Aspirations brought back to Council on April 13, 2009 for presentation to the Tualatin Tomorrow Community Event at the end of April, 2009.

3. *Fence Standards – Phase II Follow-up*

Assistant Planner Cindy Hahn presented a PowerPoint on the next round of discussion on fence standards. As requested by Council, staff has provided additional analysis on whether to extend the current fence standards that apply along arterials and collector streets to freeways in residential planning districts that have back or side yards facing the freeways. If so, to be determined is what type of fencing should be required and what should be the required height. A sound wall will also be done as part of ODOT's I-5 auxiliary lane project from the I-5 / I-205 interchange south to SW Norwood Road.

Displayed and reviewed by Council were topographic maps, aerial photos and Google Earth photos of various areas along the I-5 / I-205 freeways where additional fencing may be placed.

Discussion followed on the fence height requirement and the type of material that should be required. Council also suggested staff bring back language to extend the fence regulation to freeways, unless there is a natural buffer of 200 feet, starting at the right-of-way, and require fence heights to be a minimum of eight feet. What types of fence materials and the costs and aesthetics of wood versus masonry fences was discussed, with masonry being the favored fence material by Mayor Ogden and Councilors Barhyte, Davis and Harris. Staff will also take what has been discussed to the Tualatin Planning Advisory Committee (TPAC) members for their review.

4. *Policies & Fees for Use of Library Rooms*

Community Services Director Paul Hennon and Library Manager Abigail Elder were present to review with Council proposed policies and fees for public use of the Library Community Room and also the Library Study Room. The Tualatin Library Advisory Committee (TLAC) has reviewed the proposed policies and fees.

Staff reviewed the current policies for use of the Community Room. Examples of approved and non-approved uses under the "draft" policy were also reviewed. In addition to Library and other City-sponsored and co-sponsored uses the proposal is that the room be used by groups and organizations that are open to the public, and private and commercial uses not be allowed. Scheduling priorities and the reservations policy were reviewed

Discussion followed. It was suggested to add a clarification of damages to the facility would be the responsibility of the renter. The fee schedule was reviewed, and it was suggested to increase the non-resident fee, and also cancellation fees be charged. It was noted by staff in the proposed resolution the need to strike the word "Individuals" under Section 6, Fee Schedule, Class 4, All Other Groups, Organizations, and Individuals.

Considerable discussion continued on the concern of how to account for limiting the frequency of use for the Community Room. Non-profit versus commercial uses were also mentioned and whether types of groups such as the Chamber would be considered commercial use.

City Manager Lombos summarized the discussion on the proposed policies and fees for use of the library rooms – to be used for non-commercial uses, open to the public, and not for-profit making uses. Staff will clarify the Chamber of Commerce's organization status and it was requested to also look at trade organizations, etc. Staff will come back with clarification and will address the extended usage issue, etc. at the next meeting.

C. CITIZEN COMMENTS

N/A

D. CONSENT AGENDA

4. Resolution No. 4869-09 Affirming the December 19, 2008 Historic Landmark Demolition Decision of the Gerald Avery Building Located at 19945 SW Boones Ferry Road (2S123DD 500) (HIST-08-01)

Councilor Davis requested Item D-4 be removed from the Consent Agenda.

City Manager Lombos noted Councilor Truax will be available telephonically when this is discussed during the regular meeting.

E. PUBLIC HEARINGS – Legislative or Other

N/A

F. PUBLIC HEARINGS – Quasi-Judicial

N/A

G. GENERAL BUSINESS

1. Ordinance No. 1278-09 Adopting Core Area Parking District Tax Rate and Credit Year 2009/10

MOTION by Councilor Harris, SECONDED by Councilor Beikman for a first reading by title only. MOTION by Councilor Harris, SECONDED by Councilor Beikman for a second reading by title only. MOTION CARRIED. The poll was unanimous. [Truax absent.] MOTION by Councilor Harris, SECONDED Councilor Beikman to place adoption of the ordinance on the Consent Agenda. MOTION CARRIED.



City of Tualatin

www.ci.tualatin.or.us

Approved By Tualatin City Council

Date March 23, 2009

Recording Secretary J Kirby

TUALATIN CITY COUNCIL MINUTES OF MARCH 9, 2009

PRESENT: Mayor Lou Ogden, Councilors Chris Barhyte, Monique Beikman, Joelle Davis, Jay Harris, and Donna Maddux; Sherilyn Lombos, City Manager; Brenda Braden, City Attorney; Mike McKillip, City Engineer; Doug Rux, Community Development Director; Dan Boss, Operations Director; Kent Barker, Police Chief; Maureen Smith, Recording Secretary

ABSENT: Councilor Ed Truax* [*available telephonically for a portion of the meeting*]
[* denotes excused]

Mayor Ogden called the meeting to order at 7:06 p.m.

[Unless otherwise noted, MOTION CARRIED indicates all in favor.]

A. CALL TO ORDER

Councilor Harris led the Pledge of Allegiance.

B. PRESENTATIONS, ANNOUNCEMENTS, SPECIAL REPORTS

1. Tualatin Student Visual Chronicle Presentation

Community Services Director Paul Hennon introduced Tualatin Arts Advisory Committee (TAAC) members Richard Hager and Buck Braden. Two students whose art was chosen for the visual chronicle were present – Madelyn Reynolds and Kevo Kirakossian, and also noted was that two other art pieces chosen for the visual chronicle by Laura Koch and Haley Fisher (*not present*). A brief PowerPoint was shown outlining the visual chronicle which is to create a record in various mediums documenting life of the Tualatin community, and was open to students in grades 9-12. The Student Visual Chronicle now comprises 17 pieces, with a total of the total chronicle is approx. 180 pieces, with almost 90 the historical portion of the chronicle.

Mayor Ogden and the Council congratulated the TAAC for all the work that has been done with the committee over the years, and admired the art work of the youth, on view in the Council Chambers. Mr. Braden added having been a former high school art teacher the work that was done by this group of students is excellent.

said in a previous life I was a high school art teacher, and the artwork that he's seen in this group are really incredible and is a good start and was a great reception held to recognize the artists. Hager acknowledged the other committee members that were present, and Councilor Maddux' participation.

2. New Employee Introductions

City Attorney Brenda Braden introduced new paralegal Linda Odermott, and gave a brief background on her qualifications and experience. Council welcomed Ms. Odermott to the City staff.

Community Services Director Paul Hennon introduced new Library Assistant Amy Honisett, and gave a brief background on her qualifications and experience. Council welcomed Ms. Honisett to the City staff.

3. *Tualatin Historical Society Presentation – 150th Celebration*

Loyce Martinazzi, representing the Tualatin Historical Society (THS), gave a presentation on a story theatre production titled "The Road to Statehood Ran Through Tualatin" in honor of the 150th year of Oregon's statehood. Also present was THS member John Hartman, and presented a short video clip of the theatre production. Ms. Martinazzi noted the video is approximately 48 minutes long and is available for purchase at the Tualatin Historical Society Heritage Center.

C. CITIZEN COMMENTS

Amy Anderson, 22923 SW Cowlitz Drive, was present to comment on commuter rail horn noise. Ms. Anderson said the horn noise has been disruptive to her family beginning in the early morning hours, which then causes the freight trains to pass by in the middle of the night. Her family moved in the neighborhood knowing the freight trains went by every so often, but they were not prepared for the commuter rail horn noise. Ms. Anderson mentioned the importance of getting a quiet zone for Tualatin and asked for an update on Council's progress with that issue.

Charlie Cheever, 22729 SW Cowlitz Drive, agreed with Ms. Anderson's comments. He said his family moved to Tualatin knowing about the commuter rail project, but was not prepared for the train horn noise. He believes it has caused property values to decline because of it and is looking for support on the implementation of quiet zones.

Derek Colby, 21717 SW Aspen Place, asked about Councilor Maddux' recent trip to Washington DC. He noted he has spoken with a few attorneys regarding taking a legal approach to the train horn issue, and an injunction was mentioned to get TriMet to take notice on quiet zones mitigation. Mr. Colby also mentioned appropriate noise decibel levels, and suggested an independent noise analysis be done by the City.

Councilor Maddux noted she was in Washington DC for work, and had the opportunity to pass on information on the train horn noise issue to Representative Wu and other legislators. Councilor Maddux said they are all aware of the train horn noise and the need to address this issue, but the question of funding remains. Councilor Maddux reiterated that the federal legislators are hearing the citizens' concerns.

Mayor Ogden said a number of solutions are being examined, and filing a lawsuit to get attention would not solve the problem and would be counterproductive as Mayor Ogden believes TriMet is committed to being a partner in working together to arrive at a solution.

Mr. Cheever asked that quiet zones still be pursued in response to Mayor Ogden's mention of wayside horns. Mayor Ogden responded that there are situations where the use of wayside horns for safety may be needed, as unprotected railroad crossings are of concern. Mayor Ogden wanted all to know that Council is looking at all options and is continuing to work with TriMet to arrive at a mutually beneficial solution.

Dave Simmons, representing CH2M Hill, was present to present a donation to the Tualatin Food Pantry. Mr. Simmons said at the recent opening of the 108th Avenue construction project, CH2M Hill opted as a goodwill gesture to make a donation to the Tualatin Food Pantry.

Mike Shiffer, and Linda Moholt, Tualatin Food Pantry representatives, were present to accept the \$500 donation and said they appreciated the support given by CH2M Hill. It is greatly needed and they have seen an amazing increase in need, and they also seen an increase in food donations. Mr. Shiffer noted they will continue to have a huge need and ask citizens, businesses, and Council to continue the support.

Kathy Newcomb, 17515 SW Cheyenne Way, was present to speak to Council on the I-5/99W connector project, specifically Alternative 7. Ms. Newcomb noted her disappointment in Councilor Beikman's affirmative vote on Alternative 7 at a recent steering committee meeting, and questioned how the direction was given by Council.

Mayor Ogden explained the City's involvement in regional committees, etc., and that a councilor will act as a representative for Council at the various committees, forums, etc. City Attorney Brenda Braden explained in response to Ms. Newcomb's concern that Council can vote on issues during a work session. Mayor Ogden also said in response to Ms. Newcomb's comment, that the I-5/99W connector and alternatives has been brought before the Council for discussion on numerous occasions. And Alternative 7 required a unanimous vote of the committee, which did not happen and the steering committee is no longer meeting. There is a process to complete the Regional Transportation Plan which is reviewed periodically. Staff will get back to Ms. Newcomb with more information as requested, about the process.

Joy Basse, representing Rainbow Valley Press, was present to thank the Council for the rental standards program that has been put in place. To date it has been very effective and she also thanked the Community Services Officer for her help in compliance with landlords. Ms. Basse thanked Council for their willingness to listen to reason and to hear the pleas of tenants in the community. Mayor Ogden noted the Council's support, in particular the efforts of Councilors Barhyte and Harris in making this happen.

General Business Item No. 2 was moved to this portion of the meeting.

G. General Business

2. Youth Advisory Council Monthly Report and Discussion of Mayors' Action Challenge For Children and Families

Four representatives from the YAC were present to give an update on activities they are taking part in. The YAC also reviewed goals they have set and the Mayor's Action Challenge for Children and Families. They recognize that all the goals will not be able to be met, and there is a pared-down list with two focus areas. Mayor Ogden asked about what the roles of the Council and the YAC in those two focus areas, and the fit challenge goal would need to be an ongoing effort.

Councilor Harris notice the community garden was removed from the list and he believes it is a tangible project that could move forward and suggested some partnering to be able to get this project going. Councilor Beikman said she would be glad to be part of the YAC efforts, and mentioned her interest in the safe routes to schools program. Brief discussion followed.

D. CONSENT CALENDAR

Item D-4 was removed from the Consent Agenda by Councilor Davis at the work session. Item G-1 was added to the Consent Agenda at work session. MOTION by Councilor Harris, SECONDED by Councilor Maddux to adopt the Consent Agenda as amended and read:

1. Approval of Minutes for the Special Work Session of February 4, 2009 and the Work Session and Meeting of February 9, 2009, and the Work Session and Meeting of February 23, 2009
2. Approval of 2009 Liquor License Renewals – Late Submittals
3. Approval of New Liquor License Application for Marinepolis Sushi Land
5. Resolution No. 4870-09 To Close Out the City Center Remodel Fund and Transfer Remaining Funds to the General Fund
6. Resolution No. 4871-09 To Authorize Interfund Loan for Voice Over Internet Protocol Phone System
- G-1 Ordinance No. 1278-09 Adopting Core Area Parking District Tax Rate and Credit Year 2009/10

MOTION CARRIED.

E. PUBLIC HEARINGS – *Legislative or Other*

1. Ordinance Relating to Monument Signs in the Office Commercial (CO) Planning District; Amending Provisions and TDC 31.060 and 38.190 (PTA-08-07)

Mayor Ogden opened the public hearing.

Associate Planner Will Harper presented the staff report and entered the entire staff report into the record. The proposal is to amend the Office Commercial (CO) Planning District elements of the Tualatin Development Code chapter on sign regulations regarding freestanding monument signs. The issue arose in the South Center business complex to better identify the complex itself particularly for visitors. Mr. Harper said this would be a change of the standards to allow an eight foot tall monument style sign. The Tualatin Planning Advisory Committee (TPAC) voted 5-2 recommending the Council approve this plan text amendment.

Staff recommends that Council consider the staff report and its supporting attachments and direct staff to prepare an ordinance granting PTA-08-07 based on the draft ordinance in Attachment A.

PROPONENTS/OPPONENTS – None.

COUNCIL DISCUSSION

Council asked and staff replied on what the process would be if the plan text amendment is approved. Council also questioned the benefit to the whole community, not just a developer request for change. Staff was in agreement with the property owner to have this part of the sign code modified.

It was asked and answered that the sign permit process is done mainly for the size and does not include content, color, etc. Also asked about was brightness, and staff replied there is a portion in the TDC that addresses illumination, however there is not a specific standard. Also asked were the reasons behind the dissenting votes of TPAC members, and Mr. Harper said one member believed one sign would be enough, and there was concern about the size of the sign by the other member. Also the question was raised and staff replied there is an area to be able to pull off the road to view the sign.

Mayor Ogden closed the public hearing.

COUNCIL DELIBERATIONS

MOTION by Councilor Beikman, SECONDED by Councilor Davis to adopt the staff report and direct staff to prepare an ordinance granting PTA-08-07 based on the draft ordinance attached. MOTION CARRIED. [Vote: 6-0; Truax absent]

MOTION by Councilor Harris, SECONDED by Councilor Beikman for a first reading by title only. MOTION by Councilor Harris, SECONDED by Councilor Beikman for a second reading by title only. MOTION CARRIED. The poll was unanimous [Truax absent]. MOTION by Councilor Harris, SECONDED by Councilor Beikman to adopt the ordinance as presented in the staff report. MOTION CARRIED. [Vote: 6-0; Truax absent]

2. Ordinance Relating to Definitions and Parking Standards for Single Family Residential Development; Amending Definitions and Parking Standard; and Amending TDC 1.020; 31.060 and 73.370 (PTA-08-08)
-

Mayor Ogden opened the public hearing.

Associate Planner Will Harper presented the staff report and entered the entire staff report into the record. Mr. Harper said this plan text amendment would provide a revised definition of the term "family" with respect to residential uses, and revisions to the off-street parking standards for single-family residential development. The Tualatin Planning Advisory Committee (TPAC) voted 4-2, with one abstention, recommending approval.

Staff recommends that Council consider the staff report and supporting attachments and direct staff to prepare an ordinance granting PTA-08-08 based on the draft ordinance in Attachment A.

PROPONENTS/OPPONENTS – None.

COUNCIL DISCUSSION

Council asked and staff replied the two dissents and abstention by TPAC members were outlined in the staff report.

City Attorney Braden replied in response to the question that changing the definition of "family" is consistent with the current standard. It was also asked about the implications of using "household" instead of "family". Staff replied family is commonly used terminology and there would be consistency issues and would require a major change to the Development Code. Also asked whether the higher density areas in Tualatin would be able to meet the two parking space requirement, and staff replied this would only apply to single-family detached homes.

Mayor Ogden closed the public hearing.

COUNCIL DELIBERATIONS

MOTION by Councilor Beikman, SECONDED by Councilor Barhyte to adopt the staff report and supporting attachments and direct staff to prepare an ordinance granting PTA-08-08 based on the draft ordinance in Attachment A. MOTION CARRIED.
[Vote: 6-0; Truax absent.]

MOTION by Councilor Harris, SECONDED by Councilor Barhyte for a first reading by title only. MOTION CARRIED. MOTION by Councilor Harris, SECONDED by Councilor Beikman for a second reading by title only. The poll was unanimous. *[Truax not present.]* MOTION by Councilor Harris, SECONDED by Councilor Beikman to adopt the ordinance as presented in the staff report. MOTION CARRIED.

F. PUBLIC HEARINGS – *Quasi-Judicial*

None.

G. GENERAL BUSINESS

1. Ordinance No. 1278-09 Adopting Core Area Parking District Tax Rate and Credit Year 2009/10

[The ordinance had first and second readings at work session and was placed on the Consent Agenda.]

[The following item was removed from the Consent Agenda]

4. Resolution No. 4869-09 Affirming the December 19, 2008 Historic Landmark Demolition Decision of the Gerald Avery Building Located at 19945 SW Boones Ferry Road (2S123DD 500) (HIST-08-01)
-

Mayor Ogden noted Councilor Davis requested this item be removed from the Consent Agenda. City Manager Lombos noted Councilor Truax' availability telephonically.

Mayor Ogden said this is not reopening the public hearing but whether Council will be approving the resolution.

Councilor Harris noted his reason of not supporting this issue initially was because of not including a condition for recycling of materials. He hopes the developer will work with staff and the Historical Society and Council Harris said he would support the resolution at this meeting if a recycling of materials plan was included.

Mayor Ogden asked and City Attorney Braden clarified Council is only able to ask process questions of staff.

Councilor Davis said she agreed with Councilor Harris' request for a motion to develop a recycle plan, and her objection has been there is nothing holding the developer to in terms of recycling materials from the building.

Councilor Barhyte reiterated his position from the public hearing held and believes the ordinance does allow for recycling of materials, etc.

Mayor Ogden said he is fully supportive of anything that can be done to retain as much material as possible, however the problem is if Council wants to legislate it needs to be specific and clear on what it takes to comply. It is also possible the project may not proceed forward and he is convinced there is no economic viability for the building and the applicant has met the required conditions.

Councilor Maddux said a public hearing was held on this matter and her position has not changed. This is not a reopening of the public hearing and Council should proceed with voting on the resolution.

Councilor Truax said this is an issue of doing business with the City that is governed by ordinance, of which the applicant has met with the ordinance as written. He is not opposed to having a recycling plan, but it is not right to attempt to create something in the middle of the hearing. The applicant has the right to expect that the City upholds the codes that are on the books. Councilor Truax added he is willing to have a future discussion about changing the ordinance itself.

City Attorney Braden replied to the process question of additional conditions on the applicant would require supportable findings.

COUNCIL DELIBERATIONS

MOTION by Councilor Maddux, SECONDED by Councilor Beikman to uphold the resolution affirming the December 19, 2008 Historic Landmark Demolition Decision of the Gerald Avery Building located at 19945 SW Boones Ferry Road (HIST-08-01).

MOTION CARRIED.

[Vote: 4-3; YES – Ogden, Beikman Maddux, Truax; NO – Barhyte, Davis, Harris]

H. ITEMS REMOVED FROM CONSENT AGENDA

Items removed from the Consent Agenda will be discussed individually at this time. The Mayor may impose a time limit on speakers addressing these issues.

I. EXECUTIVE SESSION

An executive session pursuant to ORS 192.660 (2)(d) to discuss labor relations was held after the regular meeting.

J. COMMUNICATIONS FROM COUNCILORS

None.

K. ADJOURNMENT

MOTION by Councilor Harris, SECONDED by Councilor Maddux to recess the meeting at 9:59 p.m. to go into executive session. MOTION CARRIED.

The meeting adjourned at 10:47 p.m.

Sherilyn Lombos, City Manager

Recording Secretary





Approved By Tualatin City Council
Date March 23, 2009
Recording Secretary J Kirby

STAFF REPORT 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*

DATE: March 23, 2009

SUBJECT: 2008 ANNUAL REPORT OF THE TUALATIN PLANNING ADVISORY COMMITTEE

ISSUE BEFORE THE COUNCIL:

Consideration and acceptance of the Tualatin Planning Advisory Committee (TPAC) 2008 Annual Report.

RECOMMENDATION:

The Tualatin Planning Advisory Committee met on February 12, 2009 and voted 7-0 to forward a recommendation the City Council to accept the 2008 Annual Report.

Staff recommends that the City Council accept the 2008 Annual Report of the Tualatin Planning Advisory Committee.

EXECUTIVE SUMMARY:

- This is not a public hearing.
- Not later than April 1 of each year, commencing with the year 1977, the Committee shall file with the City Council its annual report of the activities of the Committee.
- The annual report shall include a survey and report of the activities of the committee during the preceding year, in addition to specific recommendations to the City Council not otherwise requested by the City Council, relating to the planning process, plan implementation measures within the City, or the future activities of the Committee.
- The report may include activities of the Committee. The report may include any other matters deemed appropriate by the Committee for recommendation and advice to the Council.

- TPAC reviewed seven Plan Text Amendments and one Plan Map Amendment during 2007.
- TMC 11-1 contains the provisions for the functions and activities of TPAC.
- TPAC is the official Committee for Citizen Involvement in accordance with Statewide Land Use Planning Goal 1, Citizen Involvement.
- There are no criteria applied to acceptance of the annual report.

OUTCOMES OF DECISION:

Acceptance of the TPAC Annual Report will result in the following:

1. TPAC will have fulfilled its requirements for submittal of a report by April 1, 2009.

Not accepting the TPAC Annual Report will result in the following:

1. No impact is identified if the City Council does not accept the annual report.

ALTERNATIVES TO RECOMMENDATION:

The alternatives to the TPAC and staff recommendations are:

- Not accept the annual report.
- Continue consideration of the annual report and return to the matter at a later date.

FINANCIAL IMPLICATIONS:

Funds have been budgeted in the Planning Division for preparation of the TPAC annual report.

PUBLIC INVOLVEMENT:

The February 12, 2009 TPAC meeting was a noticed public meeting allowing citizen input and comment on the annual report.

Attachments: A. 2008 Annual Report of TPAC



2008 ANNUAL REPORT OF THE TUALATIN

PLANNING ADVISORY COMMITTEE

MARCH 23, 2009

Committee Members:

David Adent, Chair
Paul Sivley, Vice Chair
Guy Wherity
Nic Herriges
Gunnar Olsen
William Hawley
Charlie Tumelty
Alan Aplin
Mark Coolican

2008 ANNUAL REPORT OF THE TUALATIN PLANNING ADVISORY COMMITTEE

BACKGROUND

The Tualatin Planning Advisory Committee (TPAC) was established by Ordinance No. 342-76 adopted July 26, 1976. The Ordinance prescribes TPAC's role in reviewing plans and ordinances and makes TPAC the official Committee for Citizen Involvement in accordance with Statewide Land Use Planning Goal 1, Citizen Involvement. In addition, the ordinance calls for an annual report summarizing TPAC's activities and solicits recommendations from TPAC concerning Tualatin's planning process, plan implementation measures and future committee activities.

This report will address two specific TPAC mandates under Ordinance No. 342-76.

§ 7(4). Serve as the City of Tualatin Committee for Citizen Involvement in accordance with the State of Oregon Land Conservation and Development Goal No. 1, with the following responsibilities.

- (a) Evaluate the effectiveness of the citizen involvement program during March and October of each calendar year.
- (b) Recommend and make suggestions to the City Council regarding revisions in the citizen involvement program, as the Committee deems appropriate.

§8 Annual Report of Committee. Not later than April 1 of each year, commencing with the year 1977, the Committee shall file with the City Council its annual report of the activities of the Committee. The annual report shall include a survey and report of the activities of the committee during the preceding year, in addition to specific recommendations to the City Council not otherwise requested by the City Council, relating to the planning process, plan implementation measures within the City, or the future activities of the Committee. The report may include activities of the Committee. The report may include any other matters deemed appropriate by the Committee for recommendation and advice to the Council.

Following is the 2007 Annual Report of TPAC prepared by staff. With TPAC approval, the report and the committee's recommendations regarding the planning process and citizen involvement will be presented to the City Council at their March 24, 2008 meeting.

EFFECTIVENESS OF THE CITIZEN INVOLVEMENT PROGRAM

Tualatin provides opportunities for citizens to participate in land use plan formation in Tualatin Planning Advisory Committee meetings where an agenda item is reserved for planning related or other public communications. Similarly, the City Council's "Open Mike" agenda item enables citizens to directly address the Council concerning any matter whatsoever. A number of standing and ad hoc committees and boards enable citizens to participate directly in issues related to land use:

Architectural Review Board (ARB)
Tualatin Planning Advisory Committee (TPAC)
Urban Renewal Advisory Committee (URAC)
Tualatin Parks and Recreation Advisory Committee (TPARK)

Citizens also have opportunity to participate in plan implementation. Site posting (notice of proposed action) is required for architectural reviews (except for expedited process) and subdivisions. Applicant Neighborhood meeting notices and City notices of ARB and staff recommended decisions (such as Code interpretations) be sent to owners of property and recognized neighborhood associations within 300 feet of a proposed development. Appeals may be filed within fourteen calendar days of a staff or ARB decision (except for expedited process decisions). Some notices generate citizen inquiries about proposed actions. These are usually satisfied by a detailed explanation from staff. In practice, appeals have been very uncommon.

State law requires expedited land use decisions for partitions, subdivisions and residential architectural review have a 100-foot notice area and a comment period prior to the final decision. Appeals of expedited decisions go to a "referee" rather than the ARB or Council.

City Council hearings provide another avenue for citizen involvement. Hearings are required for numerous actions. These include conditional use permits, variances and amendments to the Tualatin Community Plan. The Council also hears appeals from the Architectural Review Board and staff recommended decisions (final expedited process decisions go to a referee). Notices of hearing are mailed to owners of property and recognized neighborhood associations within 300 feet of a proposed development. Notices are also posted in the lobbies of the City offices and post office.

In addition to the notice requirements, staff has prepared an advisory guide for citizen involvement in land use actions. These are brochure style handouts outlining how citizens can become engaged in land use actions within the community. The brochures are available at the City offices and are posted on the City's web site.

Public involvement is also encouraged for various transportation, park development and other public facility capital improvements in the City.

RECOMMENDED REVISIONS TO THE CITIZEN INVOLVEMENT PROGRAM

In 2003 TPAC and the City Council engaged in discussions about citizen involvement. TPAC has not identified any additional actions necessary for Tualatin to remain in compliance with State Land Use Planning Goal 1, Citizen Involvement in 2008. There may be revisions in the future based on the Tualatin Tomorrow Community Visioning program and other broader planning programs such as Urban and Rural Reserves, Urban Growth Boundary Expansion decision in 2010 and 2011, Town Center Plan, SW Concept Plan and Periodic Review.

- PTA-08-04 Street Tree Removal and Replacement – Still in review

During the 2007 Calendar Year, TPAC reviewed one (1) proposed Plan Map Amendment.

- PMA-08-02 Institutional B Level Reservoir. TPAC met on 5/7/08 and voted 5-0 recommending that the City Council accept the staff report and attachments and direct staff to prepare an ordinance that approves PMA-08-02. Council met on 5/27/08 and voted 7-0 to accept staff's report as written and direct staff to prepare a resolution granting PMA-08-02.

Five (5) individuals (persons other than TPAC members) participated in meetings considering Plan Amendments.

OTHER TPAC ACTIVITIES

Under the agenda item "Communications from the Public" no suggestions were submitted by the public.

Staff brought forward several topics for TPAC discussion including:

- Tualatin Tomorrow (Community Visioning)
- Oxford House
- Central Urban Renewal District Maximum Indebtedness
- I5/99W Connector Project
- Urban/Rural Reserves Administrative Rule development
- Volunteer of the Year nominations
- 2007 Annual Report

CITY COUNCIL GOALS

The activities of TPAC are consistent with the following Council Goals:

Goal #1 – Enhance Sense of Place and City Beautification.

TPAC reviewed Plan Amendments addressing this goal through PTA-06-05, PTA-06-09, PTA-07-01.

Goal #2 – Promote Community Involvement & Engagement.

TPAC reviewed Plan Amendments addressing this goal through PTA-06-05, PTA-06-09, PTA-07-01, PTA-07-02, PTA-07-03, PTA-07-04, PTA-07-05 and PMA-07-01.



Approved By Tualatin City Council
Date March 23, 2009
Recording Secretary J. Kelly

STAFF REPORT CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos, City Manager 

FROM: Daniel J. Boss, Operations Director 

DATE: March 23, 2009

SUBJECT: RESOLUTION AMENDING A COMMUNICATION SITE LEASE AGREEMENT WITH MOBILITIE INVESTMENTS II, LLC FOR THE CELL TOWER AT THE NORWOOD WATER RESERVOIR SITE

ISSUE BEFORE THE COUNCIL:

The issue before Council is adoption of this Resolution to allow a second carrier to co-locate on the existing cell tower at the Norwood water reservoir site and provide the city with additional monthly income.

RECOMMENDATION:

It is recommended that the Council adopt this Resolution, which will modify the current agreement with Mobilitie Investments II, LLC ("Mobilitie") and allow a second carrier to co-locate on the existing cell tower at the Norwood water reservoir site.

EXECUTIVE SUMMARY:

- In April 2006, the Council authorized the City to enter into a communications site lease agreement with T-Mobile West Corporation ("T-Mobile") for a cell tower at the Norwood Reservoir site.
- In January 2008, Mobilitie acquired the ownership interests in this tower site from T-Mobile.
- The lease agreement allows co-locations of additional carriers on this tower, but requires each additional carrier to negotiate with the City for any additional ground space needed and the amount of the additional monthly lease payment.
- Mobilitie notified the City last year that Clearwire was interested in co-locating on this tower.
- Currently, we are receiving \$1,560 per month for the primary lease, with a four percent increase each year.

- Mobilitie has offered an additional \$500 per month, with a three percent increase each year, for this additional carrier.
- We contacted other public agencies in the area to understand what payments may be being received for second sub-leases. It varies, but those that were higher were also leasing additional land to the second or third carrier.
- Clearwire will not need additional land from us. If we get a third carrier, they will likely need additional space and we will factor that into the negotiations at that time.

OUTCOMES OF DECISION:

If the Council adopts the Resolution, Mobilitie and Clearwire will move ahead and begin installation this year.

FINANCIAL IMPLICATIONS:

This lease amendment will would provide the City \$500 per month for the lease, with a three percent increase each year. The money will be split 50/50 between the General Fund and the Water Fund, as is the existing cell tower lease.

Attachments: A. Resolution

B. Current lease with amendment

C. Second amendment to site lease with option

RESOLUTION NO. 4872-09

RESOLUTION AMENDING A COMMUNICATION SITE LEASE
AGREEMENT WITH MOBILITIE INVESTMENTS II, LLC FOR THE CELL
TOWER AT THE NORWOOD WATER RESERVOIR SITE

WHEREAS the City is currently leasing land to Mobilitie Investments II, LLC for a communications tower and building at the Norwood Water Reservoir site, and

WHEREAS Mobilitie Investments II, LLC wishes to add a second carrier to the existing cell tower, and

WHEREAS Mobilitie Investments II, LLC will pay the City \$500 per month for the second carrier with an increase of three percent each year.

WHEREAS the Council finds that the recommendations of the Operations Director should be adopted and the lease modified.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TUALATIN, OREGON, that:

Section 1. The City Manager be, and hereby is, authorized and instructed to sign the attached lease amendment as shown on Exhibit A (attached hereto) and by this reference incorporated herein.

INTRODUCED AND ADOPTED this 23rd day of March, 2009.

CITY OF TUALATIN, OREGON

BY  _____
Mayor

ATTEST:

BY  _____
City Recorder

Approved as to legal form:

 _____
City Attorney

Resolution No. 4871-09



SENT BY CERTIFIED MAIL

T-Mobile USA, Inc.
12920 SE 38th Street, Bellevue, WA 98006

SECOND NOTICE

01/15/08

City of Tualatin
18880 SW Martinazzi
Tualatin, OR 97062

Re: Lease Site # PO01145A ("Lease") dated 5/8/2006 between City of Tualatin, a Municipal corporation ("Landlord") and T-Mobile West Corporation, a Delaware corporation ("T-Mobile")

Dear Sir:

T-Mobile and Mobilitie Investments, LLC ("Mobilitie") have entered into a business relationship in which Mobilitie will acquire T-Mobile's ownership interest in certain cell sites in return for business and monetary considerations to T-Mobile ("Agreement"). In conjunction with this relationship, T-Mobile would like to assign the Lease referenced above to Mobilitie. Upon and from the date of assignment, Mobilitie will assume all obligations and responsibilities under the Lease. T-Mobile shall remain responsible for any liabilities prior to the date of the assignment.

T-Mobile will continue its operations at the site as a subtenant of Mobilitie and, pursuant to the Lease, Mobilitie desires to sublease to other subtenants that may, or may not be, affiliated entities of T-Mobile. Mobilitie requests that Landlord gives its consent to the assignment of the Lease by T-Mobile to Mobilitie.

T-Mobile and Mobilitie again seek your consent to the assignment of the Lease from T-Mobile to Mobilitie. Please sign below to indicate your consent and return to: Jennifer Parrish - T-Mobile 12920 SE 38th Street Bellevue, WA 98006. We will send you notice of the actual date of assignment when it occurs and provide contact information for Mobilitie then. If you have any questions about this, please e-mail: Scott.McNees@T-Mobile.com

Sincerely,

Scott McNees
National Construction Manager
T-Mobile USA

Acknowledged, Consented and Agreed to:

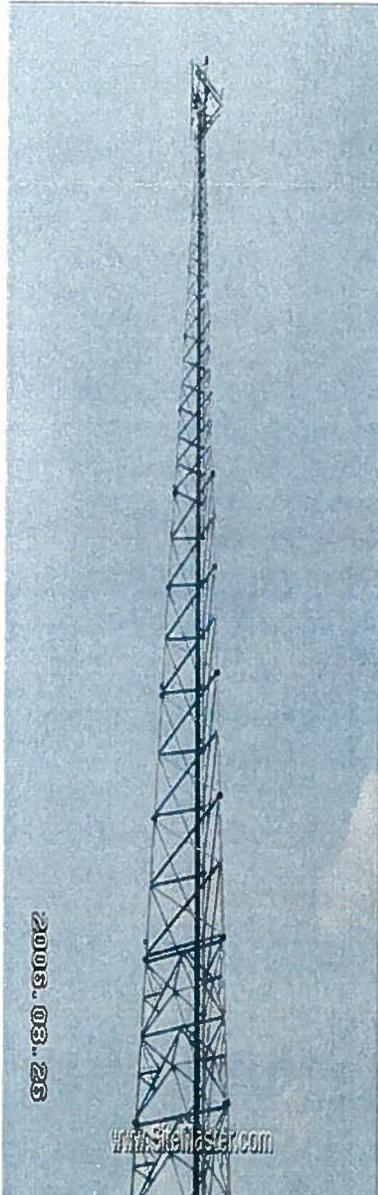
Print name: Sherilyn Lombos

Dated: 2/7/2008

Mailed 2/13/08

mobilitie

Mobilitie, LLC
660 Newport Center Drive
Suite 200
Newport Beach, CA 92660
USA
Tel: + 1 949-999-4549
Fax: + 1 949-209-0452
www.mobilitie.com



Who is Mobilitie?

Mobilitie is a private owner of telecommunications infrastructure. We acquire assets through sale-leaseback type transactions with major wireless carriers. Over 99% of Mobilitie's revenues are derived from long term lease obligations entered into with the Big 4 wireless carriers: Sprint-Nextel, T-Mobile, Cingular and Verizon.

Mobilitie currently owns hundreds of cellular tower sites located in most every state. We are the fastest growing owner of tower assets in the Country. Mobilitie also owns the largest fiber based wireless network in the United States, located in Chicago, IL. In addition, the company leverages a world class asset administration, property management, payment processing and customer service center that processes over 30,000 leases. Mobilitie utilizes a dedicated call center with a live person available to answer your questions 24 hours a day 7 days a week. Questions will be answered and any issues resolved typically within 24 hours.

Mobilitie is headquartered at 500 Newport Center Drive, Ste. 830 Newport Beach California 92660. We have regional offices in Atlanta, Georgia; Boston, Massachusetts; Chicago, Illinois; Denver, Colorado and Reston, Virginia.

mobilitie

Frequently Asked Questions (FAQ's)

Will this assignment affect my lease rate?

No, the terms and rates agreed to in your lease agreement will not be effected by this document.

Will T-Mobile still be installing equipment on this site?

Yes, T-Mobile will remain the wireless carrier on this tower as a long term tenant of Mobilitie.

How can I reach Mobilitie with lease, payment or site issues and questions?

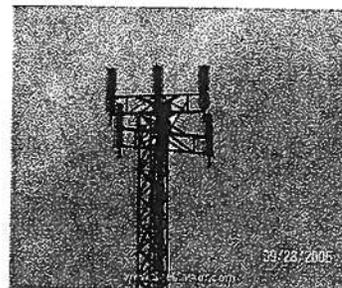
Mobilitie utilizes a dedicated call center with a live person available to answer your questions 24 hours a day 7 days a week. Questions will be answered and any issues resolved typically within 24 hours. The number to the call center is (949)515-1500.

What if I need to report a maintenance issue at the site?

All maintenance issues should be reported to the call center. A maintenance technician will assess the problem can dispatch a crew with within 48 hours of notice, if necessary.

Who can I contact with specific questions about this assignment?

Please contact Dan Farris at (949) 999-4549.





Dan Boss

**REC'D
CITY OF TUALATIN**

MAY 11 2006

May 10, 2006

MAYOR ___ COUNCIL ___ POLICE ___ ADM ___
FINANCE ___ COMM DEV ___ LEGAL ___ OPER ___
COMMSVCS ___ ENG & BLDG ___ LIBRARY ___

Via DHL

City of Tualatin
18880 SW Martinazzi Avenue
Tualatin, OR 97062

Re: PCS Site # PO 1145A, Norwood, Site Lease with Option

To Whom It May Concern:

Please find enclosed for your records one (1) fully executed original Rooftop Lease with Option for the above-referenced site. The option period shall extend from May 8, 2006 through May 7, 2007. An option check in the amount of \$1000.00 shall be arriving in 10 to 14 business days under separate cover for the above-referenced site.

Please note that this is an option to lease. You will be notified in writing when and if the option is exercised and before construction begins.

On behalf of T-Mobile USA I would like to thank you for your involvement with the development of our wireless network. If you have any questions or concerns, please feel free to contact my direct line at (425) 398-7631 or email address at jill.goldman@t-mobile.com.

Sincerely,

T-Mobile West Corporation
a subsidiary of T-Mobile USA, Inc.

for 

Jill H. Goldman
Property Management Supervisor

Enclosure

SITE LEASE WITH OPTION

THIS SITE LEASE WITH OPTION (this "Lease") is by and between **City of Tualatin, a Municipal corporation** ("Landlord") and **T-Mobile West Corporation, a Delaware corporation** ("Tenant").

1. Option to Lease.

(a) In consideration of the payment of **One-thousand and no/100 dollars (\$1000.00)** (the "Option Fee") by Tenant to Landlord, Landlord hereby grants to Tenant an option to lease a portion of the real property described in the attached Exhibit A (the "Property"), on the terms and conditions set forth herein (the "Option"). The Option shall be for an initial term of twelve (12) months, commencing on the Effective Date (as defined below) (the "Option Period"). The Option Period may be extended by Tenant for an additional twelve (12) months upon written notice to Landlord and payment of the sum of **One-thousand and no/100 dollars (\$1000.00)** ("Additional Option Fee") at any time prior to the end of the Option Period.

(b) During the Option Period and any extension thereof, and during the Initial Term and any Renewal Term (as those terms are defined below) of this Lease, Landlord agrees to cooperate with Tenant in obtaining, at Tenant's expense, all licenses and permits or authorizations required for Tenant's use of the Premises (as defined below) from all applicable government and/or regulatory entities (including, without limitation, zoning and land use authorities, and the Federal Communication Commission ("FCC") ("Governmental Approvals"), including all land use and zoning permit applications, and Landlord agrees to cooperate with and to allow Tenant, at no cost to Landlord, to obtain a title report, zoning approvals and variances, land-use permits. Landlord expressly grants to Tenant a right of access to the Property to perform any surveys, soil tests, and other engineering procedures or environmental investigations ("Tests") on the Property deemed necessary or appropriate by Tenant to evaluate the suitability of the Property for the uses contemplated under this Lease. During the Option Period and any extension thereof, and during the Initial Term or any Renewal Term of this Lease, Landlord agrees that it will not interfere with Tenant's efforts to secure other licenses and permits or authorizations that relate to other property. During the Option Period and any extension thereof, Tenant may exercise the Option by so notifying Landlord in writing, at Landlord's address in accordance with Section 12 hereof.

(c) If Tenant exercises the Option, then Landlord hereby leases to Tenant that portion of the Property sufficient for placement of the Antenna Facilities (as defined below), together with all necessary space and easements for access and utilities, as generally described and depicted in the attached Exhibit B (collectively referred to hereinafter as the "Premises"). The Premises, located at **8930 SW Norwood Rd. Tualatin, OR 97062**, comprises approximately **756** square feet.

2. Term. The initial term of this Lease shall be five (5) years commencing on the date of exercise of the Option (the "Commencement Date"), and terminating at midnight on the last day of the initial term (the "Initial Term").

3. Permitted Use. The Premises may be used by Tenant for the transmission and reception of radio communication signals and for the construction, installation, operation, maintenance, repair, removal or replacement of related facilities, including, without limitation, tower and base, antennas, microwave dishes, equipment shelters and/or cabinets and related activities.

4. Rent. Tenant shall pay Landlord, as rent, **One Thousand Five-Hundred and no/100 dollars (\$1500.00)** per month ("Rent"). Rent shall be payable within twenty (20) days following the Commencement Date prorated for the remainder of the month in which the Commencement Date falls, and thereafter Rent will be payable monthly in advance by the fifth day of each month to Landlord at the address specified in Section 12 below. If this Lease is terminated at a time other than on the last day of a month, Rent shall be prorated as of the date of termination for any reason (other than a default by Tenant) and all prepaid Rent shall be immediately refunded to Tenant.

5. Renewal. Tenant shall have the right to extend this Lease for five (5) additional and successive five-year terms (each a "Renewal Term") on the same terms and conditions as set forth herein, except that Rent shall be increased by **four percent (4%)** of the Rent paid over the preceding year. This Lease shall automatically renew for each successive Renewal Term unless Tenant notifies Landlord, in writing, of Tenant's intention not to renew this Lease, at least thirty (30) days prior to the expiration of the Initial Term or any Renewal Term. If Tenant shall remain in possession of the Premises at the expiration of this Lease or any Renewal Term without a written agreement, such tenancy shall be deemed a month-to-month tenancy under the same terms and conditions of this Lease.

6. Interference. Tenant shall not use the Premises in any way which interferes with the use of the Property by Landlord, or lessees or licensees of Landlord with rights in the Property prior in time to Tenant's (subject to Tenant's rights under this Lease, including, without limitation, non-interference). Similarly, Landlord shall not use, nor shall Landlord permit its lessees, licensees, employees, invitees or agents to use, any portion of the Property in any way which interferes with the

operations of Tenant. Such interference shall be deemed a material breach by the interfering party, who shall, upon written notice from the other, be responsible for terminating said interference. In the event any such interference does not cease promptly, the parties acknowledge that continuing interference may cause irreparable injury and, therefore, the injured party shall have the right, in addition to any other rights that it may have at law or in equity, to bring a court action to enjoin such interference or to terminate this Lease immediately upon written notice.

7. Improvements; Utilities; Access.

(a) Tenant shall have the right, at its expense, to erect and maintain on the Premises improvements, personal property and facilities necessary to operate its communications system, including, without limitation, radio transmitting and receiving antennas, microwave dishes, tower and base, equipment shelters and/or cabinets and related cables and utility lines and a location based system, as such location based system may be required by any county, state or federal agency/department, and including, without limitation, additional antenna(s), coaxial cable, base units and other associated equipment (collectively, the "Antenna Facilities"). Tenant shall have the right to alter, replace, expand, enhance and upgrade the Antenna Facilities at any time during the term of this Lease. Tenant shall cause all construction to occur lien-free and in compliance with all applicable laws and ordinances. Landlord acknowledges that it shall neither interfere with any aspects of construction nor attempt to direct construction personnel as to the location of or method of installation of the Antenna Facilities and the Easements (as defined below). The Antenna Facilities shall remain the exclusive property of Tenant and shall not be considered fixtures. Tenant shall have the right to remove the Antenna Facilities at any time during and upon the expiration or termination of this Lease.

(b) Tenant, at its expense, may use any and all appropriate means of restricting access to the Antenna Facilities, including, without limitation, the construction of a fence.

(c) Tenant shall, at Tenant's expense, keep and maintain the Antenna Facilities now or hereafter located on the Property in commercially reasonable condition and repair during the term of this Lease, normal wear and tear and casualty excepted. Upon termination or expiration of this Lease, the Premises shall be returned to Landlord in good, usable condition, normal wear and tear and casualty excepted.

(d) Tenant shall have the right to install utilities, at Tenant's expense, and to improve the present utilities on the Property (including, but not limited to, the installation of emergency power generators). Landlord agrees to use reasonable efforts in assisting Tenant to acquire necessary utility service. Tenant shall, wherever practicable, install separate meters for utilities used on the Property by Tenant. In the event separate meters are not installed, Tenant shall pay the periodic charges for all utilities attributable to Tenant's use, at the rate charged by the servicing utility. Landlord shall diligently correct any variation, interruption or failure of utility service.

(e) As partial consideration for Rent paid under this Lease, Landlord hereby grants Tenant easements, under and across the Property for ingress, egress, utilities and access (including access for the purposes described in Section 1) to the Premises adequate to install and maintain utilities, including but not limited to, the installation of power and telephone service cable, and to service the Premises and the Antenna Facilities at all times during the Initial Term of this Lease and any Renewal Term (collectively, the "Easements"). The Easements provided hereunder shall have the same term as this Lease.

(f) Tenant shall have 24-hours-a-day, 7-days-a-week access to the Premises at all times during the Initial Term of this Lease and any Renewal Term, at no charge to Tenant.

(g) Landlord shall maintain and repair all access roadways from the nearest public roadway to the Premises in a manner sufficient to allow vehicular and pedestrian access at all times, at its sole expense, except for any damage to such roadways caused by Tenant.

8. Termination. Except as otherwise provided herein, this Lease may be terminated, without any penalty or further liability as follows:

(a) upon thirty (30) days' written notice by Landlord if Tenant fails to cure a default for payment of amounts due under this Lease within such thirty (30) day period;

(b) immediately upon written notice by Tenant if Tenant notifies Landlord of any unacceptable results of any Tests prior to Tenant's installation of the Antenna Facilities on the Premises, or if Tenant does not obtain, maintain, or otherwise forfeits or cancels any license (including, without limitation, an FCC license), permit or any Governmental Approval necessary to the installation and/or operation of the Antenna Facilities or Tenant's business;

(c) upon thirty (30) days' written notice by Tenant if Tenant determines that the Property or the Antenna Facilities are inappropriate or unnecessary for Tenant's operations for economic or technological reasons;

(d) immediately upon written notice by Tenant if the Premises or the Antenna Facilities are destroyed or damaged so as in Tenant's reasonable judgment to substantially and adversely affect the effective use of the Antenna Facilities. In such event, all rights and obligations of the parties shall cease as of the date of the damage or destruction, and Tenant shall be entitled to the reimbursement of any Rent prepaid by Tenant. If Tenant elects to continue this Lease, then all Rent shall abate until the Premises and/or the Antenna Facilities are restored to the condition existing immediately prior to such damage or destruction; or

(e) at the time title to the Property transfers to a condemning authority, pursuant to a taking of all or a portion of the Property sufficient in Tenant's determination to render the Premises unsuitable for Tenant's use. Landlord and Tenant shall each be entitled to pursue their own separate awards with respect to such taking. Sale of all or part of the Property to a purchaser with the power of eminent domain in the face of the exercise of the power shall be treated as a taking by condemnation.

9. Default and Right to Cure. Notwithstanding anything contained herein to the contrary and without waiving any other rights granted to it at law or in equity, each party shall have the right, but not the obligation, to terminate this Lease on written notice pursuant to Section 12 hereof, to take effect immediately, if the other party fails to perform any covenant or commits a material breach of this Lease and fails to diligently pursue a cure thereof to its completion after thirty (30) days' written notice specifying such failure of performance or default.

10. Taxes. Landlord shall pay when due all real property taxes for the Property, including the Premises. In the event that Landlord fails to pay any such real property taxes or other fees and assessments, Tenant shall have the right, but not the obligation, to pay such owed amounts and deduct them from Rent amounts due under this Lease. Notwithstanding the foregoing, Tenant shall pay any personal property tax, real property tax or any other tax or fee which is directly attributable to the presence or installation of Tenant's Antenna Facilities, only for so long as this Lease remains in effect. If Landlord receives notice of any personal property or real property tax assessment against Landlord, which may affect Tenant and is directly attributable to Tenant's installation, Landlord shall provide timely notice of the assessment to Tenant sufficient to allow Tenant to consent to or challenge such assessment, whether in a Court, administrative proceeding, or other venue, on behalf of Landlord and/or Tenant. Further, Landlord shall provide to Tenant any and all documentation associated with the assessment and shall execute any and all documents reasonably necessary to effectuate the intent of this Section 10. In the event real property taxes are assessed against Landlord or Tenant for the Premises or the Property, Tenant shall have the right, but not the obligation, to terminate this Lease without further liability after thirty (30) days' written notice to Landlord, provided Tenant pays any real property taxes assessed as provided herein.

11. Insurance and Subrogation and Indemnification.

(a) Tenant will maintain Commercial General Liability Insurance in amounts of One Million and no/100 Dollars (\$1,000,000.00) per occurrence and Two Million and no/100 Dollars (\$2,000,000.00) aggregate. Tenant may satisfy this requirement by obtaining the appropriate endorsement to any master policy of liability insurance Tenant may maintain.

(b) Landlord and Tenant hereby mutually release each other (and their successors or assigns) from liability and waive all right of recovery against the other for any loss or damage covered by their respective first party property insurance policies for all perils insured thereunder. In the event of such insured loss, neither party's insurance company shall have a subrogated claim against the other.

(c) Subject to the property insurance waiver set forth in Section 11 (b) above, Landlord and Tenant each agree to indemnify and hold harmless the other party from and against any and all claims, damages, costs and expenses, including reasonable attorney fees, to the extent caused by or arising out of the negligent acts or omissions or willful misconduct in the operations or activities on the Property by the indemnifying party or the employees, agents, contractors, licensees, tenants and/or subtenants of the indemnifying party, or a breach of any obligation of the indemnifying party under this Lease. The indemnifying party's obligations under this section are contingent upon its receiving prompt written notice of any event giving rise to an obligation to indemnifying the other party and the indemnified party's granting it the right to control the defense and settlement of the same.

(d) Notwithstanding anything to the contrary in this Lease, the parties hereby confirm that the provisions of this Section 11 shall survive the expiration or termination of this Lease.

(e) Tenant shall not be responsible to Landlord, or any third-party, for any claims, costs or damages (including, fines and penalties) attributable to any pre-existing violations of applicable codes, statutes or other regulations governing the Property.

12. Notices. All notices, requests, demands and other communications shall be in writing and are effective three (3) days after deposit in the U.S. mail, certified and postage paid, or upon receipt if personally delivered or sent by next-business-day

delivery via a nationally recognized overnight courier to the addresses set forth below. Landlord or Tenant may from time to time designate any other address for this purpose by providing written notice to the other party.

If to Tenant, to:

T-Mobile USA, Inc.
12920 SE 38th Street
Bellevue, WA 98006
Attn: PCS Lease Administrator
With a copy to: Attn: Legal Dept.

With a copy to:

T-Mobile West Corporation, a Delaware corporation
19807 North Creek Parkway
Bothell, WA 98011

Attn: Lease Administration Manager

If to Landlord, to:

City of Tualatin
18880 SW Martinazzi
Tualatin, OR 97062

With a copy to:

13. Quiet Enjoyment, Title and Authority. Landlord covenants and warrants to Tenant that (i) Landlord has full right, power and authority to execute this Lease; (ii) it has good and unencumbered title to the Property free and clear of any liens or mortgages, except those disclosed to Tenant and which will not interfere with Tenant's rights to or use of the Premises; and (iii) execution and performance of this Lease will not violate any laws, ordinances, covenants, or the provisions of any mortgage, lease, or other agreement binding on Landlord. Landlord covenants that at all times during the term of this Lease, Tenant's quiet enjoyment of the Premises or any part thereof shall not be disturbed as long as Tenant is not in default beyond any applicable grace or cure period.

14. Environmental Laws. Landlord represents that it has no knowledge of any substance, chemical or waste (collectively, "Hazardous Substance") on the Property that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. Landlord and Tenant shall not introduce or use any Hazardous Substance on the Property in violation of any applicable law. Landlord shall be responsible for, and shall promptly conduct any investigation and remediation as required by any applicable environmental laws, all spills or other releases of any Hazardous Substance not caused solely by Tenant, that have occurred or which may occur on the Property. Each party agrees to defend, indemnify and hold harmless the other from and against any and all administrative and judicial actions and rulings, claims, causes of action, demands and liability (collectively, "Claims") including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and reasonable attorney fees that the indemnitee may suffer or incur due to the existence or discovery of any Hazardous Substances on the Property or the migration of any Hazardous Substance to other properties or the release of any Hazardous Substance into the environment (collectively, "Actions"), that relate to or arise from the indemnitor's activities on the Property. Landlord agrees to defend, indemnify and hold Tenant harmless from Claims resulting from Actions on the Property not caused by Landlord or Tenant prior to and during the Initial Term and any Renewal Term. The indemnifications in this section specifically include, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any governmental authority. This Section 14 shall survive the termination or expiration of this Lease.

15. Assignment and Subleasing. Tenant shall have the right to assign or otherwise transfer this Lease and the Easements (as defined above) granted herein upon written notice to Landlord. Upon such assignment, Tenant shall be relieved of all liabilities and obligations hereunder and Landlord shall look solely to the assignee for performance under this Lease and all obligations hereunder. Tenant may sublease the Premises, upon written notice to Landlord.

Additionally, Tenant may, upon notice to Landlord, grant a security interest in this Lease and the Antenna Facilities, and may collaterally assign this Lease and the Antenna Facilities to any mortgagees or holders of security interests, including their successors or assigns (collectively "Secured Parties"). In such event, Landlord shall execute such consent to leasehold financing as may reasonably be required by Secured Parties.

16. Successors and Assigns. This Lease and the Easements granted herein shall run with the land, and shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns.

17. Waiver of Landlord's Lien. Landlord hereby waives any and all lien rights it may have, statutory or otherwise, concerning the Antenna Facilities or any portion thereof, which shall be deemed personal property for the purposes of this Lease, whether or not the same is deemed real or personal property under applicable laws, and Landlord gives Tenant and Secured Parties the right to remove all or any portion of the same from time to time, whether before or after a default under this Lease, in Tenant's and/or Secured Party's sole discretion and without Landlord's consent.

18. Miscellaneous.

(a) The prevailing party in any litigation arising hereunder shall be entitled to reimbursement from the other party of its reasonable attorneys' fees and court costs, including appeals, if any.

(b) This Lease constitutes the entire agreement and understanding of the parties, and supersedes all offers, negotiations and other agreements with respect to the subject matter and property covered by this Lease. Any amendments to this Lease must be in writing and executed by both parties.

(c) Landlord agrees to cooperate with Tenant in executing any documents necessary to protect Tenant's rights in or use of the Premises. A Memorandum of Lease in substantially the form attached hereto as Exhibit C may be recorded in place of this Lease by Tenant.

(d) In the event the Property is encumbered by a mortgage or deed of trust, Landlord agrees, upon request of Tenant, to obtain and furnish to Tenant a non-disturbance and attornment agreement for each such mortgage or deed of trust, in a form reasonably acceptable to Tenant.

(e) Tenant may obtain title insurance on its interest in the Premises. Landlord agrees to execute such documents as the title company may require in connection therewith.

(f) This Lease shall be construed in accordance with the laws of the state in which the Property is located, without regard to the conflicts of law principles of such state..

(g) If any term of this Lease is found to be void or invalid, the remaining terms of this Lease shall continue in full force and effect. Any questions of particular interpretation shall not be interpreted against the drafter, but rather in accordance with the fair meaning thereof. No provision of this Lease will be deemed waived by either party unless expressly waived in writing by the waiving party. No waiver shall be implied by delay or any other act or omission of either party. No waiver by either party of any provision of this Lease shall be deemed a waiver of such provision with respect to any subsequent matter relating to such provision.

(h) The persons who have executed this Lease represent and warrant that they are duly authorized to execute this Lease in their individual or representative capacities as indicated.

(i) This Lease may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute a single instrument.

(j) All Exhibits referred to herein and any Addenda are incorporated herein for all purposes. The parties understand and acknowledge that Exhibits A and B may be attached to this Lease and the Memorandum of Lease, in preliminary form. Accordingly, the parties agree that upon the preparation of final, more complete exhibits, Exhibits A, and/or B, as the case may be, may be replaced by Tenant with such final, more complete exhibit(s).

(k) If either party is represented by any broker or any other leasing agent, such party is responsible for all commission fee or other payment to such agent, and agrees to indemnify and hold the other party harmless from all claims by such broker or anyone claiming through such broker.

The effective date of this Lease is the date of execution by the last party to sign (the "Effective Date").

LANDLORD: City of Tualatin

By: _____

Printed Name: _____

Its: _____

Date: _____

Steve Wheeler

Steve Wheeler

City Manager

4/25/06

LANDLORD: City of Tualatin

By: _____
Printed Name: _____
Its: _____
Date: _____

TENANT: T-Mobile West Corporation

By: _____
Printed Name: Kautilya Sanba
Its: Director Engineering & Operations
Date: 5/8/06

T-Mobile Legal Approval

EXHIBIT A
Legal Description

The Property is legally described as follows:

A tract of land situated in the Southeast one-quarter of Section 35, Township 2 South, Range 1 West of the Willamette Meridian, in the County of Washington and State of Oregon, more particularly described as follows:

Beginning at the Northeast corner of that tract of land described in deed to the Sherwood School District No. 88J recorded in Book 804, Page 820 Records of Washington County; thence South along the East line thereof, 676.5 feet to the Southeast corner of said tract, and the true point of beginning of the herein described tract; thence continuing South along the East line extended Southerly, 200 feet to a point; thence East parallel with the South line of said school district tract extended Easterly, 300 feet to a point; thence North on a line parallel with the East line of said school district extended Southerly, 200 feet to a point; thence West 300 feet to the true point of beginning.

EXHIBIT B

**The location of the Premises within the Property (together with access and utilities)
is more particularly described and depicted as follows:**

An area approximately 10' x 18' (180 square feet) in size for placement of the monopole tower on the site, an equipment area approximately 18' x 32' (576 square feet) in size located on the southerly portion of the Property, and an underground coaxial cable installation from the equipment area to the tower. Said Premises are more fully depicted on the attached site plans following.

ADDENDUM TO SITE LEASE WITH OPTION
[Additional Terms]

In the event of conflict or inconsistency between the terms of this Addendum and this Lease, the terms of the Addendum shall govern and control. All capitalized terms shall have the same meaning as in this Lease.

1. Section 4 of the Lease shall be deleted in its entirety and replaced with the following:

4. Rent. Tenant shall pay Landlord, as rent, **One Thousand Five-Hundred and no/100 dollars (\$1500.00)** per month ("Rent"). Rent shall be payable within twenty (20) days following the Commencement Date prorated for the remainder of the month in which the Commencement Date falls, and thereafter Rent will be payable monthly in advance by the fifth day of each month to Landlord at the address specified in Section 12 below. If this Lease is terminated at a time other than on the last day of a month, Rent shall be prorated as of the date of termination for any reason (other than a default by Tenant) ~~and all prepaid Rent shall be immediately refunded to Tenant.~~ **During the Initial Term and any Renewal Terms, Rent will increase annually by four percent (4%) and such increases will be effective on each anniversary of the Commencement Date.**

2. Section 5 of the Lease shall be deleted in its entirety and replaced with the following:

"5. Renewal. Tenant shall have the right to extend this Lease for five (5) additional and successive five-year terms (each a "Renewal Term") on the same terms and conditions as set forth herein, **except that Rent shall increase annually as described above in Section 4.** This Lease shall automatically renew for each successive Renewal Term unless Tenant notifies Landlord, in writing, of Tenant's intention not to renew this Lease, at least thirty (30) days prior to the expiration of the Initial Term or any Renewal Term. If Tenant shall remain in possession of the Premises at the expiration of this Lease or any Renewal Term without a written agreement, such tenancy shall be deemed a month-to-month tenancy under the same terms and conditions of this Lease."

3. Section 6 of the Lease shall be deleted in its entirety and replaced with the following:

"6. Interference. Tenant shall not use the Premises in any way which interferes with the use of the Property by Landlord, or lessees or licensees of Landlord with rights in the Property prior in time to Tenant's (subject to Tenant's rights under this Lease, including, without limitation, non-interference). Similarly, Landlord shall not use, nor shall Landlord permit its lessees, licensees, employees, invitees or agents to use, any portion of the Property in any way which **unreasonably** interferes with the operations of Tenant. Such interference shall be deemed a material breach by the interfering party, who shall, upon written notice from the other, be responsible for terminating said interference. In the event any such interference does not cease promptly, the parties acknowledge that continuing interference may cause irreparable injury and, therefore, the injured party shall have the right, in addition to any other rights that it may have at law or in equity, to bring a court action to enjoin such interference or to terminate this Lease immediately upon written notice."

4. Section 7 (a), (b) and (c) of the Lease shall be deleted in their entirety and replaced with the following:

"7. Improvements; Utilities; Access.

(a) Tenant shall have the right, at its expense, to erect and maintain on the Premises improvements, personal property and facilities necessary and related to the operation of its communications system, including, **but not limited to, without limitation**, radio transmitting and receiving antennas, microwave dishes, tower and base, equipment shelters and/or cabinets and related cables and utility lines and a location based system, as such location based system may be required by any county, state or federal agency/department, and including, without limitation, additional antenna(s), coaxial cable, base units and other associated equipment (collectively, the "Antenna Facilities"). Tenant shall have the right to alter, replace, ~~expand~~, enhance and upgrade the Antenna Facilities at any time during the term of this Lease. Tenant shall cause all construction to occur lien-free and in compliance with all applicable laws and ordinances. Landlord acknowledges that it shall neither interfere with any aspects of construction nor attempt to direct construction personnel as to the location of or method of installation of the Antenna Facilities and the Easements (as defined below). The Antenna Facilities shall remain the exclusive property of Tenant and shall not be considered fixtures. Tenant shall have the right to remove the Antenna Facilities at any time during and upon the expiration or termination of this Lease.

(b) Tenant, at its expense, and with Landlord's consent, which consent shall not be unreasonably denied, conditioned or delayed, may use any and all reasonably appropriate means of restricting access to the Antenna Facilities, including, but not limited to, ~~without limitation,~~ the construction of a fence.

(c) Tenant shall, at Tenant's expense, keep and maintain the Antenna Facilities now or hereafter located on the Property in commercially reasonable condition and repair during the term of this Lease, normal wear and tear and casualty excepted. Upon termination or expiration of this Lease, the Premises shall be returned to Landlord in good, usable condition, normal wear and tear and casualty excepted."

5. Section 7 (g) shall be deleted in its entirety as follows:

~~(g) Landlord shall maintain and repair all access roadways from the nearest public roadway to the Premises in a manner sufficient to allow vehicular and pedestrian access at all times, at its sole expense, except for any damage to such roadways caused by Tenant.~~

6. Section 7 (h) shall be added to the Lease and shall read as follows:

"(h) The Tenant and its Antenna Facilities, shall not at any time interfere with or impede vehicular or pedestrian access to any portion of the Landlord's access road, water tanks, equipment building or other equipment on the Property, including Landlord's vehicular access around the entire circumference of the water tanks."

7. Section 8 (f) shall be added to the Lease and shall read as follows:

"(f) upon five (5) years written notice by Landlord after the end of the first Renewal Term, if Landlord determines, in its sole discretion, that the Property where the Antenna Facilities is located is required for public purposes and that it is not possible to continue the Lease or relocate the Antenna Facilities on another portion of the Property."

8. Section 11(c) of the Lease shall be deleted in its entirety and replaced with the following:

"(c) Subject to the property insurance waiver set forth in Section 11 (b) above, and to the extent allowed by Oregon law, Landlord and Tenant each agree to indemnify and hold harmless the other party from and against any and all claims, damages, costs and expenses, including reasonable attorney fees, to the extent caused by or arising out of the negligent acts or omissions or willful misconduct in the operations or activities on the Property by the indemnifying party or the employees, agents, contractors, licensees, tenants and/or subtenants of the indemnifying party, or a breach of any obligation of the indemnifying party under this Lease. The indemnifying party's obligations under this section are contingent upon its receiving prompt written notice of any event giving rise to an obligation to indemnify the other party and the indemnified party's granting it the right to control the defense and settlement of the same."

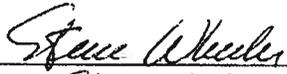
9. Section 15 of the Lease shall be deleted in its entirety and replaced with the following:

"15. Assignment and Subleasing. Tenant will have the right to assign, sell or transfer its interest under this Lease without the approval or consent of Landlord, to Tenant's parent or member company or any affiliate or subsidiary of, or partner in, Tenant or its parent or member company or to any entity which acquires all or substantially all of the Tenant's assets in the market defined by the FCC in which the Property is located by reason of a merger, acquisition, or other business reorganization. Upon notification to Landlord of such assignment, transfer or sale, Tenant will be relieved of all future performance, liabilities and obligations under this Lease. Tenant may not otherwise assign this Lease without Landlord's consent, Landlord's consent not to be unreasonably withheld, conditioned or delayed. ~~Tenant may assign this Lease and the Easements (as defined above) granted herein upon written notice to Landlord. Upon such assignment, Tenant shall be relieved of all liabilities and obligations hereunder and Landlord shall look solely to the assignee for performance under this Lease and all obligations hereunder.~~ Tenant may sublease the Premises, upon written notice to Landlord. However, in the event Tenant subleases a portion of its interest under this Lease to a third-party sublessee ("Sub-Tenant"), said Sub-Tenant shall be required to secure separate access and easement rights from the Landlord in each instance of subletting by Tenant. Landlord and Tenant further acknowledge that Landlord may charge each Sub-Tenant a monthly fee for such access and easement rights, but in no event shall such fee exceed the amount of the then-current rental rate paid by the Tenant under this Lease.

Additionally, Tenant may, upon notice to Landlord, grant a security interest in this Lease and the Antenna Facilities, and may collaterally assign this Lease and the Antenna Facilities to any mortgagees or holders of security interests, including

their successors or assigns (collectively "Secured Parties"). In such event, Landlord shall execute such consent to leasehold financing as may reasonably be required by Secured Parties."

LANDLORD: City of Tualatin

By: 
Printed Name: Steve Wheeler
Its: City Manager
Date: 4/25/06

LANDLORD: City of Tualatin

By: 
Printed Name: Steve Wheeler
Its: City Manager
Date: 4/25/06

TENANT: T-Mobile West Corporation

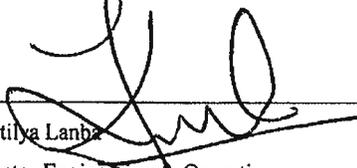
By: 
Printed Name: Kautilya Lanba
Its: Director Engineering & Operations
Date: 5/8/06

EXHIBIT C

**Memorandum
of
Lease**

Memorandum of Lease

Assessor's Parcel Number: 2S135D-00107

Between **City of Tualatin, a Municipal corporation** ("Landlord") and
T-Mobile West Corporation, a Delaware corporation ("Tenant")

A Site Lease with Option (the "Lease") by and between **City of Tualatin, a Municipal corporation** ("Landlord") and
T-Mobile West Corporation, a Delaware corporation ("Tenant") was made regarding a portion of the following property:

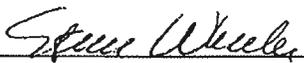
See Attached Exhibit "A" incorporated herein for all purposes

The Option is for a term of twelve months (12) months after the Effective Date of the Lease (as defined under the Lease), with up to one additional twelve(12) month renewal ("Optional Period").

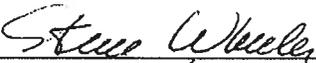
The Lease is for a term of five (5) years and will commence on the date as set forth in the Lease (the "Commencement Date"). Tenant shall have the right to extend this Lease for five (5) additional and successive five-year terms.

IN WITNESS WHEREOF, the parties hereto have respectively executed this memorandum effective as of the date of the last party to sign.

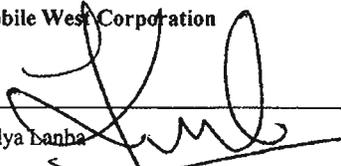
LANDLORD: City of Tualatin

By: 
Printed Name: Steve Wheeler
Its: City Manager
Date: 4/25/06

LANDLORD: City of Tualatin

By: 
Printed Name: Steve Wheeler
Its: City Manager
Date: 4/25/06

TENANT: T-Mobile West Corporation

By: 
Printed Name: Kautilya Banha
Its: Director Engineering & Operations
Date: 5/8/06

[Notary block for Landlord]

[Landlord Notary block for a Corporation, Partnership ,or Limited Liability Company]

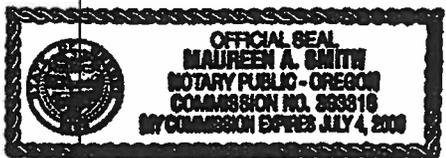
STATE OF Oregon)
)
COUNTY OF Washington) ss.
)

This instrument was acknowledged before me on April 24, 2009 by Steve Wheeler
[title] City Manager of City of Tualatin , a Municipal corporation, on behalf of said City of Tualatin.

Dated: April 24, 2009

Maureen A. Smith

Notary Public
Print Name Maureen A. Smith
My commission expires July 4, 2009



(Use this space for notary stamp/seal)

[Notary block for Tenant]

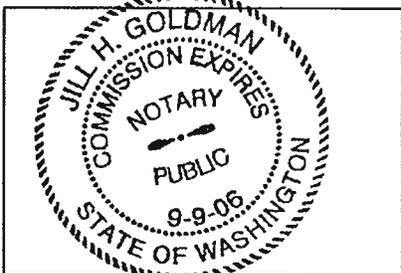
STATE OF WA)
)
COUNTY OF King) ss.
)

I certify that I know or have satisfactory evidence that **Kautilya Lanba** is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the **Director Engineering & Operations of T-Mobile West Corporation, a Delaware corporation**, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 5/8/06

Jill H. Goldman

Notary Public
Print Name Jill H. Goldman
My commission expires 9/9/06



(Use this space for notary stamp/seal)

**Memorandum of Lease EXHIBIT A
Legal Description**

The Property is legally described as follows:

A tract of land situated in the Southeast one-quarter of Section 35, Township 2 South, Range 1 West of the Willamette Meridian, in the County of Washington and State of Oregon, more particularly described as follows:

Beginning at the Northeast corner of that tract of land described in deed to the Sherwood School District No. 88J recorded in Book 804, Page 820 Records of Washington County; thence South along the East line thereof, 676.5 feet to the Southeast corner of said tract, and the true point of beginning of the herein described tract; thence continuing South along the East line extended Southerly, 200 feet to a point; thence East parallel with the South line of said school district tract extended Easterly, 300 feet to a point; thence North on a line parallel with the East line of said school district extended Southerly, 200 feet to a point; thence West 300 feet to the true point of beginning.

Memorandum of Lease

Assessor's Parcel Number: 2S135D-00107

Between **City of Tualatin, a Municipal corporatiuon** ("Landlord") and
T-Mobile West Corporation, a Delaware corporation ("Tenant")

A Site Lease with Option (the "Lease") by and between **City of Tualatin, a Municipal corporation** ("Landlord") and
T-Mobile West Corporation, a Delaware corporation ("Tenant") was made regarding a portion of the following property:

See Attached Exhibit "A" incorporated herein for all purposes

The Option is for a term of twelve months (12) months after the Effective Date of the Lease (as defined under the Lease), with up to one additional twelve(12) month renewal ("Optional Period").

The Lease is for a term of five (5) years and will commence on the date as set forth in the Lease (the "Commencement Date"). Tenant shall have the right to extend this Lease for five (5) additional and successive five-year terms.

IN WITNESS WHEREOF, the parties hereto have respectively executed this memorandum effective as of the date of the last party to sign.

LANDLORD: City of Tualatin

By: *Steve Wheeler*
Printed Name: Steve Wheeler
Its: City Manager
Date: _____

LANDLORD: City of Tualatin

By: *Steve Wheeler*
Printed Name: Steve Wheeler
Its: City Manager
Date: _____

TENANT: T-Mobile West Corporation

By: *[Signature]*
Printed Name: Kautilya Lamba
Its: Director Engineering & Operations
Date: 5/8/06

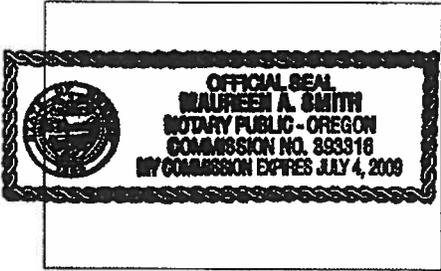
[Notary block for Landlord]

[Landlord Notary block for a Corporation, Partnership ,or Limited Liability Company]

STATE OF Oregon)
) ss.
COUNTY OF Washington)

This instrument was acknowledged before me on April 24, 2006 by Steve Wheeler,
[title] City Manager of City of Tualatin , a Municipal corporation, on behalf of said City of Tualatin.

Dated: April 24, 2006



(Use this space for notary stamp/seal)

Maureen A. Smith

Notary Public

Print Name Maureen A. Smith

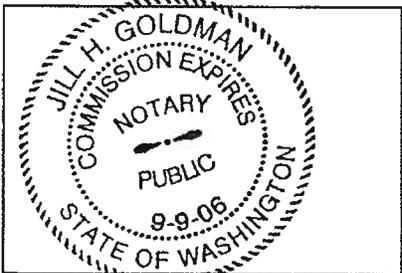
My commission expires July 4, 2009

[Notary block for Tenant]

STATE OF WA)
) ss.
COUNTY OF King)

I certify that I know or have satisfactory evidence that **Kautilya Lanba** is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the **Director Engineering & Operations of T-Mobile West Corporation, a Delaware corporation**, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 5/8/06



(Use this space for notary stamp/seal)

Jill H. Goldman

Notary Public

Print Name Jill H. Goldman

My commission expires 9/9/06

**Memorandum of Lease EXHIBIT A
Legal Description**

The Property is legally described as follows:

A tract of land situated in the Southeast one-quarter of Section 35, Township 2 South, Range 1 West of the Willamette Meridian, in the County of Washington and State of Oregon, more particularly described as follows:

Beginning at the Northeast corner of that tract of land described in deed to the Sherwood School District No. 88J recorded in Book 804, Page 820 Records of Washington County; thence South along the East line thereof, 676.5 feet to the Southeast corner of said tract, and the true point of beginning of the herein described tract; thence continuing South along the East line extended Southerly, 200 feet to a point; thence East parallel with the South line of said school district tract extended Easterly, 300 feet to a point; thence North on a line parallel with the East line of said school district extended Southerly, 200 feet to a point; thence West 300 feet to the true point of beginning.

**SECOND AMENDMENT TO
SITE LEASE WITH OPTION**

THIS SECOND AMENDMENT TO SITE LEASE WITH OPTION (the "Amendment") dated as of _____ ("Effective Date"), is entered by and between CITY OF TUALATIN, a municipal corporation ("Landlord"), and MOBILITIE INVESTMENTS II, LLC, a Delaware limited liability company ("Tenant").

RECITALS

A. Landlord and Tenant's predecessor-in-interest, T-Mobile West Corporation ("T-Mobile"), entered into that certain Site Lease with Option, dated as of May 8, 2006, as supplemented by that Addendum to Site Lease with Option and amended by that certain Amendment to Site Lease with Option dated March 6, 2007 (collectively, the "Lease"), pursuant to which Landlord leased to Tenant that certain real property defined in the Lease as the Premises, constituting a portion of real property commonly known as 8930 SW Norwood Road, Tualatin, Oregon, 97062.

B. Landlord and Tenant now desire to amend the Lease on the terms set forth herein.

C. Any capitalized term not otherwise defined herein shall have the meaning given in the Lease.

NOW, THEREFORE, for Ten Dollars (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. **Term.** Section 15 of the Lease is hereby deleted in its entirety and replaced with the following:

"15. **Assignment and Subleasing.** Tenant shall have the right to assign or otherwise transfer this Lease and the Easements (as defined in Section 7 (e) of the Lease) granted herein upon written notice to Landlord. Upon such assignment, Tenant shall be relieved of all liabilities and obligations hereunder and Landlord shall look solely to the assignee for performance under this Lease and obligations hereunder. Additionally, Tenant may upon notice to Landlord, grant a security interest in this Lease, Tenant's interest in the Easements, and the Antenna Facilities, and may collaterally assign the Lease, Tenant's interest in the Easements, and the Antenna Facilities to any mortgagees or holders of security interests, including their successors or assigns (collectively "Secured Parties"). In such event Landlord shall execute such consent to leasehold financing as may be reasonably required by Secured Parties. Tenant may sublease the Premises, upon written notice to Landlord. If Tenant subleases or licenses

any portion of the Premises to any subtenant or licensee (each a "Carrier"), other than T-Mobile, said Carrier shall be required to secure separate access and easement rights from the Landlord in each instance of subletting by Tenant. Landlord and Tenant further acknowledge that Landlord may charge each Carrier a monthly fee for such access and easement rights, but in no event shall the fee exceed the amount of the then-current rental rate paid by Tenant under the Lease. Notwithstanding the foregoing, Landlord hereby grants access and easement rights comparable to the Easements to the First Carrier (as such term is defined below) and Tenant agrees to pay Landlord a monthly fee in the amount of Five Hundred Dollars (\$500.00) per month ("Revenue Sharing Rent") for the First Carrier. The Revenue Share Rent shall be increased each year by three (3%) percent of the Revenue Share Rent for the preceding year at the same time and in the same manner as the Rent is adjusted pursuant to Section 4 of the Lease during the Initial Term, and pursuant to Section 5 of the Lease during each Renewal Term. The Revenue Share Rent shall begin to be paid as of the License Fee Commencement Date, as defined in the Site Lease Agreement between Tenant and the First Carrier (the "First Carrier SLA") Tenant shall provide Landlord with a redacted copy of Tenant's letter to the First Carrier confirming the License Fee Commencement Date. The Revenue Share Rent shall continue to be paid until the expiration or earlier termination of the First Carrier SLA. Tenant shall provide Landlord with reasonable evidence of the termination of the First Carrier SLA if requested in writing by Landlord. If the License Fee Commencement Date, or the termination or earlier expiration date of the First Carrier SLA, is any day other than the first day of a calendar month, then the Revenue Share Rent for the partial month shall be prorated on the basis of a thirty (30) day month. As used herein "First Carrier" shall mean the first subtenant or licensee that, following the date of this Amendment, commences payment of a License Fee pursuant to an executed Site Lease Agreement with Tenant for any portion of the Premises. "First Carrier" or "Carrier" shall not mean any governmental, public service, civil defense or amateur radio operator."

2. **Effect of Amendment.** Except to the extent the Lease is modified by this Amendment, the remaining terms and provisions of the Lease shall remain unmodified and continue in full force and effect. In the event of a conflict between the terms of the Lease and the terms of this Amendment, the terms of this Amendment shall govern and control.

3. **Entire Agreement.** This Amendment and any other documents executed by the parties hereto, constitutes the entire understanding and agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior agreements, arrangements and understandings, written or oral, between the parties with respect to such subject matter.

Site Name: Norwood
Site Number: 2OR31047

4. **Counterparts.** This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same document.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

Site Name: Norwood
Site Number: 2OR31047

IN WITNESS WHEREOF, Landlord and Tenant have executed this Amendment as of the day and year first above written.

“Landlord”

CITY OF TUALATIN,
a Municipal corporation

By: 
Name: Lou Ogden
Title: Mayor

By: 
Name: Sherilyn Lombos
Title: City Manager

“Tenant”

MOBILITIE INVESTMENTS II, LLC,
a Delaware limited liability company

By: Mobilitie, LLC,
a Nevada limited liability company,
its Manager

By: _____
Name: _____
Title: _____



STAFF REPORT

CITY OF TUALATIN

Approved By Tualatin City Council
Date March 23, 2009
Recording Secretary J. Kirby

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos, City Manager *SL*

FROM: Michael A. McKillip, City Engineer *McK*
Mike Darby, Engineering Technician II *MD*

DATE: March 23, 2009

SUBJECT: RESOLUTION ACCEPTING PUBLIC IMPROVEMENTS
FOR 115TH COMMERCE PARK

ISSUE BEFORE THE COUNCIL:

Acceptance of public improvements constructed in association with Trammel Crow Industrial IteI Site – Building A, B, and C, located at the southwest corner of SW 115th Avenue and SW IteI Street.

RECOMMENDATION:

Staff recommends that the Council adopt the attached resolution approving and accepting the constructed public improvements.

EXECUTIVE SUMMARY:

All public improvements were constructed as part of 115th Commerce Park. The improvements constructed were installation of sanitary, storm, and water connections. These were done as required by Public Works Permit #08-03 issued on June 9, 2008, and have been satisfactorily completed.

FINANCIAL IMPLICATIONS:

There are minor impacts on utility funds as a result of this work. Costs to be paid by ratepayers.

Attachments: A. Resolution

RESOLUTION NO. 4873-09

RESOLUTION ACCEPTING PUBLIC IMPROVEMENTS FOR
115TH COMMERCE PARK

WHEREAS the City of Tualatin, hereinafter referred to as CITY, issued Trammel Crow, hereinafter referred to as DEVELOPER, Public Works Construction Permit No. 08-03 to construct public improvements consisting of the installation of sanitary, storm, and water connections in association with 115th Commerce Park, said improvements being required by the Public Facilities Decision issued on February 29, 2008.

WHEREAS DEVELOPER has constructed said required public improvements to standards required by CITY, and now desires to have CITY accept said improvements; and

WHEREAS CITY staff has inspected and recommends approval and acceptance of all public improvements; and

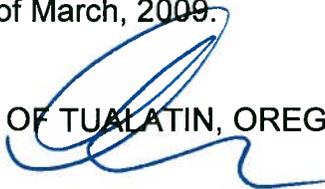
WHEREAS it is in the public interest that CITY accept said improvements.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TUALATIN, OREGON, that:

Section 1. The subject improvements are hereby approved and accepted by the CITY.

INTRODUCED AND ADOPTED this 23rd day of March, 2009.

CITY OF TUALATIN, OREGON

BY 

Mayor

ATTEST:

BY 

City Recorder

Approved as to legal form:



City Attorney

Resolution No. 4873-09



Approved By Tualatin City Council
Date March 23, 2009
Recording Secretary G. Kirby

STAFF REPORT CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos, City Manager 

FROM: Paul Hennon, Community Services Department 
Abigail Elder, Library Manager 

DATE: March 23, 2009

SUBJECT: A RESOLUTION ADOPTING POLICIES AND FEES FOR THE TUALATIN PUBLIC LIBRARY COMMUNITY ROOM

ISSUE BEFORE THE COUNCIL:

The Council will consider a resolution to establish policies and fees to govern public use of the Community Room in the Tualatin Public Library (Library).

RECOMMENDATIONS:

The Tualatin Library Advisory Committee (TLAC) recommends approval of the attached resolution.

The staff respectfully recommends approval of the attached resolution.

EXECUTIVE SUMMARY:

The proposed policies will govern public use of the Community Room for functions that are open to the public during the 65 hours per week that the Library is open.

Policies are needed to maximize use of the space by a broad cross-section of the public and to ensure that the room is available and used for the intended purposes.

Since opening eight months ago, the Community Room has been used about 45 hours per week primarily for civic functions such as Library programs, events, and meetings, and for other City sponsored and co-sponsored activities. The Library program is growing, but there is some time that the Community Room could be used by the public.

It is anticipated that public use of the Community Room will be in high demand. As a result there will not be adequate time to meet all requests for use. In order to ensure that the space is used for the greatest public good, it is proposed that allowed uses be

limited to those functions sponsored by groups and organizations that are open to the public, including uses for political and religious purposes. Individual and private uses would not be allowed, including private parties and soliciting for or conducting business where an activity is carried on by a person or group predominately for economic profit. Fundraising for charitable purposes would be allowed as long as the event was open to the public and complied with the Community Room and Library policies.

The proposed policies cover the rental periods, scheduling priorities, cleaning and security, cancellations and reschedules, use of the room. Rental fees are proposed to recover a portion of the costs to provide a reservation system, general supervision, and maintenance of the Community Room.

Limits are proposed to inhibit one group from dominating use on an on-going basis. Security deposits are not required, but users will be held financially responsible for any damage or excessive cleaning. Users would be responsible for their own set-up, breakdown, and cleaning. The City's audio/visual equipment, other than the projector screen, would not be available for public use due to the extra staff time required and possibility of damage and/or theft.

Use of the Library Community Room will be monitored regularly and changes to the policies will be proposed as needed. Particular attention will be given to dominance by any given group to the exclusion of others and frequently reserving time, but then canceling.

The Library has a Study Room and a Conference Room for smaller groups (of up to 4 and 10 people) that may be used without charge. The City also rents the Tualatin/Durham Senior Center, Brown's Ferry Community Center, and several picnic shelters. These facilities may be rented by groups and individuals for private uses that are not open to the public, such as parties.

FINANCIAL IMPLICATIONS:

The financial implications of these changes are minor and will not require amendment of the adopted budget.

DISCUSSION:

DESCRIPTION OF COMMUNITY ROOM

The Community Room seats up to 147, is a rectangle in shape, and is 1,032 square feet in size. It has moveable tables and chairs, and a built-in audio/visual system. The floor is carpeted. The room is connected to the Children's Room via a hall that has a service counter with a sink, refrigerator, and microwave. Doors open to the outdoor plaza.

WHO CAN USE THE COMMUNITY ROOM?

In addition to the Library and other City sponsored and co-sponsored uses, it is proposed that the Community Room can be used by groups and organizations.

WHAT CAN THE COMMUNITY ROOM BE USED FOR?

In addition to the Library and other City sponsored and co-sponsored uses for programs, events, and meetings, it is proposed that the Community Room could be used by groups and organizations for events, meetings, and other functions that are open to the public, and that private uses or to solicit for or conduct any business would not be allowed.

The City is not required to allow others to use its facilities for any purposes. However, if it chooses to allow its facilities to be used for non-religious and non-political purposes, it now must allow the facilities to be rented for religious and political uses as well.

Under the proposed policies, religious and political uses would be allowed. In 1993 the U.S. Supreme Court issued the Lamb's Chapel v. Center Moriches Union Free School District decision (503 US 384). This is the precedent clarifying case that allows the use of public facilities for religious and political purposes when a public agency lets those facilities be used for other purposes.

Under the proposed policies, "solicit for or conduct any business" means:

1. Sell or offer to sell any article or service;
2. Display goods, or descriptions or depictions of goods or services, with the intent to engage any member of the public in a transaction for the sale of any good or service; or
3. Perform or engage in any act with the intent or expectation of receiving payment from any person.

Nothing in this policy shall be construed to prohibit any act protected under the circumstances by the federal or state constitution. Fundraising for charitable purposes would be allowed as long as the event was open to the public and complied with the Community Room and Library policies.

The City may choose to co-sponsor a meeting, activity, or event that otherwise would not be allowed, provided it finds the function to serve the civic interest.

WHEN CAN THE COMMUNITY ROOM BE USED?

For public use, it is proposed that the Community Room be available when the Library is open.

The Library is open 65 hours per week.

- Monday through Thursday: 10:00 am to 9:00 pm
- Friday and Saturday: 10:00 am to 6:00 pm
- Sunday: 1:00 pm to 6:00 pm

Attachments: A. Resolution

c: Members of the Tualatin Library Advisory Committee

**A RESOLUTION ADOPTING POLICIES AND FEES
FOR THE TUALATIN PUBLIC LIBRARY COMMUNITY ROOM**

WHEREAS the City of Tualatin owns and operates the Tualatin Public Library and chooses to make the Community Room available for use by the public when it is not being utilized by the Library or for other official City purposes; and,

WHEREAS in order to provide an orderly and efficient use of the Library Community Room by a broad cross-section of the public, a reservation system is in the public interest; and,

WHEREAS the costs to provide a reservation system, general supervision, and maintenance of the Community Room necessitates the collection of fees.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TUALATIN, OREGON, that:

Section 1. RENTAL PERIODS

- a. Activities sponsored by the Tualatin Public Library and other official business of the City of Tualatin have priority of use at all hours.
- b. The Tualatin Public Library Community Room is available for general public use during Library open hours.
- c. The minimum reservation period is one (1) hour.

Section 2. SCHEDULING PRIORITIES

- a. For the purpose of scheduling reservations and determining fees, groups will be classified as shown below.

Class 1: TUALATIN PUBLIC LIBRARY, CITY OF TUALATIN
Activities sponsored by the Library and/or City of Tualatin

Class 2: TUALATIN PUBLIC LIBRARY, CITY OF TUALATIN CO-SPONSORED
Activities co-sponsored by the Library and/or City of Tualatin

Class 3: NON-PROFIT ORGANIZATIONS OR ACTIVITIES AND PUBLIC
AGENCIES SERVING THE GENERAL PUBLIC OF TUALATIN

Class 4: ALL OTHER GROUPS AND ORGANIZATIONS

All other organizations, including religious and political groups, are categorized by resident/nonresident for the purpose of determining rental fees.

A resident is defined as:

1. A person who resides within the city limits of Tualatin.
2. A person who works within the city limits of Tualatin.
3. A nonprofit organization of which 50% or more of the members reside in the city.
4. An employee of the City of Tualatin

Final determination of a group's classification will be made by the Community Services Director.

- b. Advance reservations may be made according to the following schedule:
 1. Class 1 groups (TUALATIN PUBLIC LIBRARY, CITY OF TUALATIN)
May reserve the Library Community Room up to one (1) year in advance.
 2. Class 2 groups (TUALATIN PUBLIC LIBRARY, CITY OF TUALATIN CO-SPONSORED)
May reserve the Library Community Room up to one (1) year in advance.
 3. Class 3 groups (NON-PROFIT ORGANIZATIONS OR ACTIVITIES AND PUBLIC AGENCIES SERVING THE GENERAL PUBLIC OF TUALATIN)
May reserve the Library Community Room up to three (3) months in advance for ongoing or one-time activities.
 4. Class 4 groups (ALL OTHER GROUPS AND ORGANIZATIONS)
May reserve the Library Community Room up to three (3) months in advance for ongoing or one-time activities.
- c. All reservations require that a City of Tualatin Facility Use Permit application be completed and fees paid at the time of application. Applicants must be 21 years of age or older. Applications must be submitted at least seven (7) days prior to the desired reservation date. No telephone reservations will be taken.
- d. Extensions of on-going reservations may be made one (1) time per month, but no sooner than two (2) months prior to the expiration of the current reservation.

- e. Conflicts involving the scheduling of facility rentals will be resolved in the following manner.
 - 1. For conflicts when two or more classes of users are involved: Class 1 will have priority over classes 2, 3 and 4; Class 2 will have priority over classes 3 and 4; and Class 3 will have priority over Class 4.
 - 2. For conflicts involving two users of the same class: an ongoing user will yield to the new applicant.
 - 3. For conflicts involving more than two users of the same class: an existing ongoing user will yield to a new user that will be determined by a random drawing among the new applicants.
- f. The City reserves the right to cancel any facility use reservation.
- g. A Special Use Permit application must be submitted and approved by the Library Manager for any fundraising activity, festival, or special event.

Section 3. CLEANING/SECURITY

- a. A cleaning/security deposit is not required.
- b. Any group renting the Library Community Room and found to have caused damage, neglected to leave the Room in a clean condition, or violated any other library rule, will be assessed the direct costs to replace, repair and/or clean damaged or dirty equipment and/or facilities, and may be denied a future facility reservation, up to one year.
- c. The Library Manager may require comprehensive general liability insurance covering personal injury and property damage, naming the City of Tualatin, its officers, agents, and employees as additional insureds, when it is determined to be warranted, given the nature of the activity, size of the group, and/or the City's previous experience with a particular group.

Section 4. CANCELLATIONS/RESCHEDULES

- a. A full refund will be given when the Library Manager has canceled a reservation and a reschedule date cannot be accommodated.
- b. When a reserving group cancels or reschedules fourteen (14) days before a rental date, the full rental fee and any deposit will be refunded, less a Handling Fee.
- c. When a reserving group cancels or reschedules less than fourteen (14) days before a rental date, no refund of the rental fee is given, unless the facility is re-rented. If the facility is re-rented, the full rental fee, less a handling fee, will be refunded.
- d. No refunds will be issued for unused reservations, except as provided above.

Section 5. USE OF THE COMMUNITY ROOM

- a. All meetings and programs held by Class 3 and Class 4 must be open to the general public.
- b. Soliciting for or conducting business is not allowed.
 1. For purposes of this policy "solicit for or conduct any business" means:
 - a. Sell or offer to sell any article or service;
 - b. Display goods, or descriptions or depictions of goods or services, with the intent to engage any member of the public in a transaction for the sale of any good or service; or
 - c. Perform or engage in any act with the intent or expectation of receiving payment from any person.
 2. Nothing in this policy shall be construed to prohibit any act protected under the circumstances by the federal or state constitution.
- c. Fundraising for charitable purposes is allowed as long as the event is open to the public and complies with the Community Room and Library policies.
- d. Multimedia equipment, other than the projector screen, is not available for public use.
- e. Chair and table set-up and take down is the responsibility of the renters.
- f. The Service Counter may be used and must be cleaned up by the renter.
- g. All Library Rules of Conduct, Tualatin Municipal Code, 5-1, apply to activities occurring within the Community Room.

Section 6. FEE SCHEDULE

- a. The fee schedule for the Tualatin Library Community Room is as follows:

Class 1: Tualatin Public Library, City of Tualatin
No fee

Class 2: Tualatin Public Library, City of Tualatin Co-Sponsored
No fee

Class 3: Nonprofit Organizations and Activities, and Public Agencies
Tualatin Residents: \$10 per hour
Non-Residents: \$20 per hour

Class 4: All Other Groups and Organizations
Tualatin Residents: \$15 per hour
Non-Residents: \$30 per hour

b. The Handling Fee for cancellations is \$10.

INTRODUCED AND ADOPTED this 23rd day of March, 2009.

CITY OF TUALATIN, OREGON

By  _____
Mayor

ATTEST:

By  _____
City Recorder

Approved as to Form:


City Attorney



Approved By Tualatin City Council
Date March 23, 2009
Recording Secretary J. Kirby

STAFF REPORT CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos, City Manager *[Signature]*

FROM: Doug Rux, Community Development Director *[Signature]*
Colin Cortes, Assistant Planner *[Signature]*

DATE: March 23, 2009

SUBJECT: AN ORDINANCE RELATING TO TREE REMOVAL; AND
AMENDING TDC 34.200, 73.405, 74.706, 74.706, 74.707, 74.708,
AND 74.765 (PTA-08-04)

ISSUE BEFORE THE COUNCIL:

Whether the City Council should approve amendments to the regulations of street trees to require that removed trees be replaced one for one with three exceptions.

RECOMMENDATION:

The Tualatin Planning Advisory Committee (TPAC) voted 6-1 on 2/12/2009, recommending that the City Council approve PTA-08-04 and motioning that the proposed amendment language be modified as shown in green in Attachment A.

The Tualatin Parks Advisory Committee (TPARK) voted 4-0 on 2/10/2009, recommending that the City Council approve PTA-08-04.

Staff recommends that the Council consider the staff report and attachments and adopt the attached ordinance granting approval of PTA-08-04.

EXECUTIVE SUMMARY:

- The matter is a legislative Plan Text Amendment (PTA).
- The Council goal is to enhance tree canopy and long-term preservation of tree canopy.
- Presently the City allows applicants to remove street trees and does not require planting of new trees.
- Staff drafted the proposed language in Attachment A following three Council work sessions on 9/08/2008, 10/27/2008, and 1/26/2009.

- The amendment strengthens regulations protecting street trees as described in Attachment B (Background) by requiring one for one replacement of removed street trees with three exceptions.
- The three exceptions are:
 1. conflict with public or private improvements or utility facilities, including but not limited to fire hydrants, water meters and pipes, lighting fixtures, traffic control signs, driveways and power, gas, telephone, cable television lines; or, minimum vision clearance;
 2. interference with the existing canopy of adjacent trees, the maturation of the crown of the proposed replacement tree, or both; or
 3. creation of conflict by planting trees too close to each other, hurting their health.
- The amendment satisfies the plan amendment criteria in TDC 1.032 as analyzed in Attachment C (Analysis and Findings).
- The amendment follows PTA-96-04 (Ord. 963-96), which clarified street tree regulations and incorporated them within the TDC, and PTA-01-05 (Ord. 1079-01), which revised and expanded the street tree list, updated departmental responsibilities for regulatory administration, and created the zones in Map 74-1 "Street Tree Plantings." The latter PTA followed Council acceptance of the Urban Forestry Management Plan (UFMP) on 6/11/2001, which recommended tree planting zones.
- The amendments complement and do not change the existing "tree for a fee" program.
- Operations will continue to publicize the "tree for a fee" program through the use of flyers, door hangers, and the City website and guide residents to and through the program, which is useful for retroactively replacing past tree loss.

OUTCOMES OF DECISION:

Council approval of the PTA request would result in the following:

1. One-for-one replacement for each tree removed in the majority of cases.
2. Fewer lost street trees.
3. When paired with the existing tree for a fee program, increased tree canopy citywide.

Denial of the PTA request would result in the following:

1. Continued loss of street trees with no means to require replacement.
2. Further decrease in tree canopy citywide.
3. Tree for a fee on its own fails to overcome loss of trees.

ALTERNATIVES TO RECOMMENDATION:

The alternatives to the TPAC, TPARK, and staff recommendation for the City Council are:

- Recommend the Council approve the proposed PTA with changes.
- Recommend the Council deny the request for the proposed PTA.
- Continue the discussion of the proposed PTA and return to the matter at a later date.

FINANCIAL IMPLICATIONS:

Because the City is the applicant, an application fee is not applicable. The FY 2008/09 budget allocated funds to prepare City initiated amendments.

PUBLIC INVOLVEMENT:

The City mailed the required notice of proposed amendment to the Department of Land Conservation and Development (DLCD) and published legal notice of the 3/23/2009 Council hearing in the *Tigard Tualatin Times* on March 5, 2009. Per her request, staff mailed a copy of the staff report to Yvonne Addington, President of the Tualatin Historical Society (THS).

Attachments:

- A. Proposed text amendment language
- B. Background
- C. Analysis and Findings
- D. Draft resolution amending the City fee schedule
- E. Ordinance and exhibits

ATTACHMENT A

PTA-08-04: PROPOSED TEXT AMENDMENT LANGUAGE

Section 34.200 Tree Removal Without Architectural Review, Subdivision or Partition Approval, or Tree Removal Permit Prohibited.

~~(1)~~ (1) Except as provided in TDC 34.200(3), no person shall remove a tree ~~from a privately owned tax lot~~ within the City limits except as follows:

~~(a) For a tree on private property, the person must~~ without first obtaining a Tree Removal Permit from the City; ~~or~~ or obtaining approval through ~~the Architectural Review, Subdivision Review, or Partition Review process.~~

~~(b) or, f~~ For a street tree or tree within a public right-of-way, the person must obtaining approval through in accordance with TDC 74.705. Incentives for tree retention are found in TDC Chapter 73, Community Design Standards. ~~Any~~ property owner who removes, or causes to be removed, one or more trees in violation of applicable TDC provisions, shall pay an enforcement fee and a restoration fee to the City of Tualatin, as set forth in TDC 34.220(3), in addition to civil penalties ~~set forth~~ in TDC 31.111.

(2) As used in this ordinance, "park" means a City-owned parcel, lot or tract of land, designated and used by the public for active and passive recreation.

(3) The following exemptions apply to tree removal:

(a) General Exemption. Four or fewer trees may be removed within a single calendar year from a single parcel of property or contiguous parcels of property under the same ownership without a permit, except when the tree to be removed:

(i) Is located in the Natural Resource Protection Overlay District (NRPO);

(ii) Is located in the Wetlands Protection Area (WPA) of the Wetlands Protection District (WPD);

(iii) Is a Heritage Tree;

(iv) ~~The tree w~~as previously required to be retained under an approved Architectural Review ~~of the Tualatin Development Code (TDC.);~~ decision.

(b) Parks and golf courses are exempt if both the following are met:

(i) The property's owner or owner's agent has submitted a tree management plan to the Community Development Director and has received approval from the Director. The tree management plan shall be approved for a five year period, after which the property owner or owner's agent must submit a new tree management plan for approval or comply with requirements set out in the applicable Architectural Review decision.

(ii) This exemption supersedes the Architectural Review requirements with regard to tree removal except as provided in subsection (i) of this section.

(c) Forest Harvesting Exemption. The harvesting of forest tree species for the commercial value of the timber is permitted subject to the following:

(i) The property from which the forest species are to be harvested must be in a property tax deferred status based on agricultural or forest use under any or some combination of the following:

- Farm Deferral according to state law.
- Forest Land Deferral according to state law.
- Small Woodlands Deferral according to state law.

(ii) The property from which the forest species are to be harvested must have been in property tax deferred status on the effective date of this ordinance or at the time of annexation of the property by the City, whichever occurs later.

(iii) Revocation of the Forest Harvesting Exemption. Property, or portion of the property exempted under TDC, 34.200(3)(c) shall cease to be exempted from the provisions of this ordinance immediately upon the filing of an application for any of the following land use actions:

- Subdivision or Partition review;
- Conditional Use;
- Architectural Review.

(iv) Reinstatement of the Forest Harvesting Exemption. Property or portions of the property previously exempted under TDC 34.200(3)(c) and revoked in accordance with TDC 34.200(3)(c)(iii) will be considered reinstated if the property remains tax deferred in accordance with TDC 34.200(3)(c)(i) and 34.200(3)(c)(ii), and one or more of the following criteria are met:

- The land use action that affected the revocation was denied and the appeals period has expired; or
- The land use action that affected the revocation was approved, and the proposed development ~~which~~ that affected the filing of the land use action did not occur; and the approval, ~~that~~ which was granted, including extensions has expired.

(v) The Community Development Director shall prepare a listing of properties exempted under this section upon the effective date of this ordinance and update the list annually.

(d) Orchards. Tree removal is permitted in orchards of commercial agricultural production.

(e) Public Right-of-Way. Trees within public right-of-way shall be governed by TDC Chapter 74, Public Improvement Requirements.

(f) Federal, state, county, or City road, water, sanitary sewer, or storm sewer improvements and maintenance of City owned property are exempt from this ordinance.

(4) As provided under TDC 31.030, no single-family dwelling building permit application shall be submitted to the City until all required land use approvals, including any required Tree Removal Permit, have been obtained by the property owner.

Section 73.410 Streets. ~~[Reserved for Street Tree Plan.]~~

A person who desires to plant a street tree shall comply with TDC 74.765, which comprises the street tree plan.

Section 74.705 ~~Permit to Remove or Destroy Trees~~ **Street Tree Removal Permit.**

(1) A person who desires to remove or destroy a tree, as defined in TDC 31.060, in or upon any public right-of-way shall make application to the Operations Director on City forms furnished by the City. TDC 31.060 defines "tree," "tree removal," and "street tree."

(2) The applica~~per~~mittee applicant must provide:

(a) the ~~permittee's~~ applicant's name and contact information and if applicable that of the ~~permittee's~~ applicant's contractor;

(b) the number and species of all street trees the ~~permittee~~ applicant desires to remove;

(c) a clear description of the street trees' location ~~of the street tree(s) such that to allow City staff can to~~ accurately identify them, including the nearest street address;

(d) the date of removal; ~~tion must state the number and kind of trees to be removed, the name of permittee and contractor, if applicable, the time the proposed work is to be done, and such~~

(e) the reason(s) for removal; and

(f) other information as the Operations Director deems necessary.

~~other information as the Operations Director deems pertinent. Work done under the written permit must be performed in strict accordance with the permit terms and this chapter, and with the approval of the Operations Director.~~

(3) Upon the Operations Director approving the removal of a street tree, the applicant or designated contractor shall replace ~~one for one~~ each removed tree on a one-for-one basis by fulfilling the following requirements:

(a) Remove both the tree and stump ~~that might otherwise remain~~ prior to planting of a replacement tree; or ~~the permittee may request that the City to remove the tree and stump and pay the applicable fee(s) established in TDC 74.706; and,~~

(b) Replace the removed tree by planting a species of street tree permitted by Schedule A of TDC Chapter 74 within the time period specified in writing by the Operations Director; or, the applicant may request within sixty (60) days of the permit approval date that the City replace the street tree and pay the applicable fee(s) established in TDC 74.706. If an applicant opts for the City to plant the replacement tree, the Operations Department may plant the tree on its usual tree-planting schedule ~~for planting street trees.~~ ~~Any p~~Planting done by the applicant or designated contractor ~~must~~ shall comply with ~~other~~ all applicable TDC sections and any additional requirements imposed by ~~of~~ the Operations Director.

(c) The applicant shall comply with ~~other~~ all applicable TDC sections and ~~any~~ additional requirements ~~of~~ imposed by the Operations Director. The Operations Director may, including:

(i) ~~a waiver of the one-for-one replacement requirement to replace one for one~~ if he or she determines that the replacement would: ~~each removed street tree because of a determination that requiring one for one replacement would:~~

1. ~~conflict with public infrastructure~~ improvements or utility facilities, including but not limited to fire hydrants, water meters and pipes, lighting fixtures, ~~and~~ traffic control signs; ~~private improvements or utility facilities – including but not limited to driveways and power, gas, telephone, cable television lines; or, minimum vision clearance;~~
2. ~~interfere with the existing canopy of adjacent trees, the maturation of the crown of the proposed replacement tree, or both; or~~
3. ~~cause a conflict in which by planting trees are planted too close to each other, hurting their health;~~

(ii) ~~limit the selection of species from Schedule A; and~~

(iii) ~~direct how to plant replacement tree(s).~~

(d) ~~A permittee~~ person who fails to comply with TDC 74.705(3) shall pay an enforcement fee and a restoration fee to the City of Tualatin, as set forth in TDC 34.220(3), in addition to civil penalties in TDC 31.111.

Section 74.706 Street Tree Fees.

~~An permittee~~ A person who applies to remove a street tree under TDC 74.705 shall pay ~~any and~~ all costs incurred by the City as reflected in the applicable fees listed in the City of Tualatin Fee Schedule. City actions and associated fees include but are not limited to inspection of a street tree requested for removal, removal of a street tree, removal of a stump, planting of a street tree, and inspection(s) to determine if the applicant has fulfilled permit requirements.

Section 74.707 Street Tree Voluntary Planting

A person who desires to plant a tree in or upon a public right-of-way may plant or have the City plant a species of street tree permitted by TDC Chapter 74 Schedule A without a City permit if the tree is not a replacement for a tree that the person has removed. Such person may submit a request to the City with payment of fee(s) ~~as established in the City of Tualatin Fee Schedule~~ so that the City may plant a street tree. If a stump exists where a street tree is to be planted, the ~~permittee~~ person shall remove the stump or pay a fee to the City ~~a fee as established in TDC 74.706~~ so that the City may remove the stump on behalf of the ~~permittee~~ person. In all instances, a person who desires to plant a tree shall comply with other applicable TDC sections and any additional requirements of the Operations Director.

Section 74.708 Street Tree Emergencies.

(1) If emergency conditions ~~such as natural disasters~~ occur that require the immediate cutting or removal of street trees to avoid danger or hazard to persons or property, the Operations Director shall ~~ex post facto~~ issue emergency permits without payment of a fees and formal applications. If the Operations Director is unavailable the adjacent property owners may proceed to cut the trees without permits to the extent necessary to eliminate the immediate danger or hazard. If a street tree is cut under this section without filing of an application with the Operations Director, the person doing so shall report the action to the Operations Director within two City business days without payment of fee and shall provide such information and evidence as may be reasonably required by the Operations Director to explain and justify the removal.

(2) In ~~any and~~ all instances, a person who removes a street tree as a result of an emergency must replace it within sixty (60) days of notifying the Operations Director. ~~The City reserves the right to waive this requirement.~~

(3) A person who fails to comply with TDC 74.708 shall pay an enforcement fee and a restoration fee to the City of Tualatin, as set forth in TDC 34.220(3), in addition to civil penalties in TDC 31.111.

(4) ~~Where~~ If no emergency is found to exist, no person shall cut or remove a street tree without complying with the requirement of the Tualatin Development Code. ~~the City prohibits the cutting or removal of street trees.~~

Section 74.765 Street Tree Species and Planting Locations of Plantings.

All trees, plants or shrubs planted in the right-of-way of the City shall conform in species and location and in accordance with the street tree plan in Schedule A. ~~If the Operations Director determines that none of the species in Schedule A is appropriate or finds appropriate a species not listed, the Director may substitute an unlisted species.~~

Schedule A: Street Tree Species

The following street trees are authorized for planting in the City of Tualatin.
Please refer to Map 74-1 to reference locations of the following species of trees:

Species Common Name	Planting Strip Width (feet)			Powerline Compatible	Spacing on center (feet)
	4	5	6+		
<u>Zone 1</u>					
<u>Leprechaun Ash</u>	✓	✓	✓		30
<u>Purple Beech</u>	✓	✓	✓	-	30
<u>European Hornbeam</u>	✓	✓	✓	✓	30
<u>Armstrong Maple</u>	✓	✓	✓	-	30
<u>Scanlon/Bowhall Maple</u>	✓	✓	✓	-	30
<u>Skyrocket English Oak</u>	✓	✓	✓	-	30
<u>Capital Flowering Pear</u>	✓	✓	✓	-	30
<u>Persian Parrotia</u>	✓	✓	✓	-	30
<u>Eastern Redbud</u>	✓	✓	✓	-	30
<u>Zelkova Musashino</u>	✓	✓	✓	-	30
<u>Autumn Applause Ash</u>	-	✓	✓	-	30
<u>Shademaster Honey Locust</u>		✓	✓		30
<u>Zone 2</u>		-			
<u>Golden Desert Ash</u>	✓	✓	✓	✓	30
<u>Leprechaun Ash</u>	✓	✓	✓	-	30
<u>Purple Beech</u>	✓	✓	✓	-	30
<u>Goldenrain</u>	✓	✓	✓	-	30
<u>European Hornbeam</u>	✓	✓	✓	✓	30
<u>Ivory Japanese Lilac</u>	✓	✓	✓	✓	30
<u>Amur Maackia</u>	✓	✓	✓	✓	30
<u>Amur Maple</u>	✓	✓	✓	✓	30
<u>Crimson Sentry Maple</u>	✓	✓	✓	✓	30
<u>Trident Maple</u>	✓	✓	✓	✓	30
<u>Skyrocket English Oak</u>	✓	✓	✓	-	30
<u>Persain Parrotia</u>	✓	✓	✓	-	30
<u>Eastern Redbud</u>	✓	✓	✓	-	30
<u>Yellowwood</u>	✓	✓	✓	-	30
<u>Raywood Ash</u>	-	✓	✓	✓	30
<u>Urbanite Ash</u>	-	✓	✓	-	30
<u>Ginko</u>	-	✓	✓	-	30
<u>Greenspire Linden</u>	-	✓	✓	-	30
<u>Crimson King Maple</u>	-	✓	✓	-	30
<u>Tri-Color Beech</u>	-	-	✓	-	60
<u>Frontier Elm</u>	-	-	✓	-	60
<u>Globe Sugar Maple</u>	-	-	✓	-	60
<u>Red Sunset Maple</u>	-	-	✓	-	60
<u>Red Oak</u>	-	-	✓	-	60
<u>Scarlet Oak</u>		-	✓		60

Schedule A

~~TREE PLANTINGS IN THE CITY OF TUALATIN~~

The following street trees are authorized for planting in the City of Tualatin. Please refer to Map 74-1 to reference locations of the following types of trees:

<u>Zone 1</u>	<u>Zone 2</u>
4 Foot Planter Strips:	4 Foot Planter Strips:
Armstrong Maple	*Golden Desert Ash
*European Hornbeam	*Amur Maple
Scanlon/Bowhall Maple	*Crimson Sentry Maple
Chanticlear Pear	*Ivory Japanese Lilac
Columnar Maple	*European Hornbeam
Zelkova	*Maackia
Planted 30 Foot on Center	*Trident Maple
	Yellowwood
5 to 6 Foot Planter Strips:	Goldenrain
Any of the listing above, plus	Zelkova
Shademaster Honey Locust	Planted 30 Foot on Center
	Autumn Applause Ash
Planted 30 Foot on Center	5 to 6 Foot Planter Strips
	Any of the listing above, plus
6 Foot or More Planter Strips:	Crimson King Maple
Any of the listings above	Ginko
Planted 30 Foot on Center	*Raywood Ash
	Greenspire Linden
	Urbanite Ash
	Planted 30 Foot on Center
	6 Foot or More Planter Strips:
	Any of the listing above, plus
	Red Sunset Maple
	Scarlet Oak
	Tri-Color Beech
	Globe Sugar Maple
	Red Oak
	Frontier Elm
	Planted 60 Foot on Center
	*Powerline Compatible

ATTACHMENT B

PTA-08-04: BACKGROUND

PTA-08-04 is a legislative plan text amendment to the Tualatin Development Code (TDC) that increases tree canopy and preserves it long-term.

Since late 2005, Council direction regarding trees has taken three phases. Phase I of tree regulation review (PTA-06-01) led to the revision of the Tualatin Community Plan to clarify the City's comprehensive plan goal related to preservation of trees and revision of the planning district standards to amend the City's tree preservation regulations.

Phase II (PTA-08-04), which this amendment represents, seeks to strengthen regulations protecting street trees by requiring one-for-one replacement with three exceptions:

1. conflict with public or private improvements or utility facilities, including but not limited to fire hydrants, water meters and pipes, lighting fixtures, traffic control signs, driveways and power, gas, telephone, cable television lines; or, minimum vision clearance;
2. interference with the existing canopy of adjacent trees, the maturation of the crown of the proposed replacement tree, or both; and
3. creation of conflict by planting trees too close to each other, hurting their health.

The Council will begin Phase III by discussing a wide scope of ideas about tree preservation pertaining to natural groves, private property, financial disincentives to remove trees and incentives to plant trees, and replacement of trees that have been lost.

This amendment puts in ordinance form and meets the objectives of Phase II by strengthening street tree regulations. Paired with the existing "tree for a fee" program, the amendment allows for an increase in citywide canopy. The Operations Department will continue to publicize the "tree for a fee" program through the use of flyers, door hangers, and the City website and guide residents to and through the program, which is useful for retroactively replacing past tree loss.

ATTACHMENT C

PTA-08-04: ANALYSIS AND FINDINGS

Tualatin Development Code (TDC) Section 1.032 lists the eight criteria for approval of a plan amendment.

Before granting an amendment to the Plan Text or Plan Map of the Tualatin Development Code (TDC), including the Tualatin Community Plan, the Council shall find that:

1. Granting the amendment is in the public interest.

The purpose of the amendment is to stem the loss of street trees in Tualatin. Street trees provide a variety of physical and psychological benefits to the public, including but limited to helping to define streets as outdoor rooms, providing shade during hot weather, reducing the urban heat island effect, helping to remove carbon dioxide from the atmosphere, lessening soil erosion, and providing psychological comfort by standing as barriers between passing vehicles and pedestrians and through pleasing aesthetics.

The amendment requires one-for-one street tree replacement with three exceptions:

1. conflict with public or private improvements or utility facilities, including but not limited to fire hydrants, water meters and pipes, lighting fixtures, traffic control signs, driveways and power, gas, telephone, cable television lines; or, minimum vision clearance;
2. interference with the existing canopy of adjacent trees, the maturation of the crown of the proposed replacement tree, or both; and
3. creation of conflict by planting trees too close to each other, hurting their health.

The amendment requires that a person who desires to remove a street tree complete a permit form submitted to the Operations Director that requests reason(s) for tree removal. After permit approval, the applicant is responsible for tree removal and stump grinding or requesting that the City perform tree removal and stump grinding. The applicant must plant replacement street tree(s) within 60 days of permit issuance or request that the City complete the work, in which case the Operations Department would follow its usual planting schedule.

The Operations Director would have the authority to limit the selection of replacement tree species from Schedule A of TDC 74 (the street tree plan) and to direct how to plant replacement tree(s). To account for some cost recovery, proposed fees to be added to the City fee schedule (by resolution) accompany the amendment for context. Violation fees and enforcement actions default to those already in the TDC.

The proposed section 74.707 clarifies how the “tree for a fee” program relates to street tree removal. The amendment includes an emergency section that allows tree removal without a permit in response to an emergency acknowledged by the City and requires

replanting within 60 days. The amendment adds to Schedule A five additional species and reformats it for improved readability by an applicant.

As a companion to the proposal, the City is promoting the existing “tree for a fee” program through the Operations Department. Operations will continue to publicize the “tree for a fee” program through the use of flyers, door hangers, and the City website and guide residents to and through the program, which is useful for retroactively replacing past tree loss.

In short, trees provide public benefits. The amendment requires that trees removed be replaced one for one, with exceptions justified by public good. The amendment imposes a time limit for replanting, recovers operational costs, relates to and complements the “tree for a fee” program that Operations is publicizing, and allows for some discretion regarding the application of the street tree plan and handling emergencies. The amendment stems the loss of trees, and when paired with the “tree for a fee” program increases canopy citywide.

The criterion is met.

2. The public interest is best protected by granting the amendment at this time.

Street tree loss continues because of a combination of factors, including lifespan shortened by stressful urban conditions and removal by adjacent property owners in the absence of a City requirement for replacement. The perception of loss is exacerbated in those areas of the city where aged street trees planted within the same time period are near the end of their life span and dying en masse. Stemming the further loss of street trees requires the proposed amendment.

The amendment is in keeping with three goals of the Tualatin Tomorrow Community Vision & Strategic Action Plan (June 2007):

Strategy GHT 21 - Beautiful Streetscapes: Ensure beautiful streetscapes throughout Tualatin, promoting the ongoing maintenance of street easements through a variety of means.

Strategy PRN 9 - City of Trees: Promote continued and ongoing recognition of Tualatin as a “City of Trees” through active preservation activities and expansion of its tree canopy.

Strategy TTC 12 - Roadside Landscaping: Develop new programs and activities to improve and enhance City standards for and involvement in roadside landscaping.

The criterion is met.

3. The proposed amendment is in conformity with the applicable objectives of the Tualatin Community Plan.

The Tualatin Development Code (TDC) Section 10.050 “Tree Preservation and Street Tree Objectives” – a part of the Tualatin Community Plan (TCP) – lists the applicable objectives:

- (1) Develop a program for tree conservation within the City, including control over tree removal, in order to protect and enhance the aesthetic character of Tualatin, protect and improve air and water quality, provide and protect buffering and screening between land uses, and provide and protect habitat for wildlife, in order to create and preserve a desirable community in which to live, work, and invest.**

The amendment fulfills the need for control of removal of street trees and allows the stemming of further loss, in turn helping the City to protect and enhance the aesthetic character of residential areas of Tualatin, protect and improve urban air and stormwater quality, and to preserve a desirable community.

The amendment also allows the existing “tree-for-a-fee” street tree program to increase overall street tree canopy citywide. Operations will continue to publicize the “tree for a fee” program through the use of flyers, door hangers, and the City website and guide residents to and through the program, which is useful for retroactively replacing past tree loss.

In short, the amendment strengthens the City’s tree conservation program, and meets the overall goal of preserving and increasing tree canopy citywide.

- a. Tualatin’s tree preservation goal is consistent with the general purpose of the Tualatin Community Plan, which is to guide the physical development of the City so as to preserve the natural beauty of the area while accommodating economic growth.**

Because the amendment stems further loss of street trees, thereby preserving natural beauty of streetscapes created through physical development, the objective is met.

- b. Tualatin’s tree preservation goal shall be implemented through adoption and administration of Planning District Standards consistent with this goal.**

The City has already adopted and administers Planning District and Community Design Standards that preserve trees. The scope of the amendment is limited to street trees, that is, trees within public rights-of-way (ROWs). Because it is conventionally understood that ROWs are within but not part of zoning districts –planning districts in the case of Tualatin – and the amendment does not amend or interfere with the regulations of any planning district, the objective is not applicable.

(2) Develop a program for street tree planting along public rights-of-way within the City.

The City has existing regulations requiring the planting and upkeep of street trees upon subdivision and partition and development. The amendment further protects these street trees by stemming further loss.

The criterion is met.

4. The factors listed in Section 1.032(4) were consciously considered:

The various characteristics of the areas in the City;

Tualatin has had a street tree program since the 1970s. The City has required developers to plant street trees within new subdivisions and partitions. Beginning in the early 1990s, the city expanded the program by specifying appropriate species for planting, expanded the list of approved species, and regulating tree removal from private property. Through this amendment, the City would require that trees removed from within ROWs be replaced (with three exceptions). These efforts have created the leafy character of many of Tualatin's residential areas. Trees have limited life spans that are shortened by placement in planter strips and damage from extreme weather, disease, and persons who injure or remove them. Because many of Tualatin's trees were planted contemporaneously and are approaching their maximum life spans in an urban environment, and because the cumulative effect of persons removing trees without replacing them is patent, the loss of street trees in Tualatin's residential areas is become acute.

Some residential areas of the city are now losing street trees faster than others. The City has little recorded data about the extent and timing of loss, but common perception is that the loss is becoming detrimental to the city. The amendment addresses this situation by correcting street tree regulations to require one-for-one replacement. Because the amendment would stem further loss of street trees by requiring trees to be replaced if removed, it would address the above problems and also make more effective the existing "tree-for-a-fee" program, a tool that the City is promoting. The result is increased tree canopy citywide, meeting the criterion.

The suitability of the areas for particular land uses and improvements in the areas;

The plan text amendment is legislative because it is not specific to any property. Because street trees are a kind of improvement performing a function as important as any component of conventional public works; the amendment protects this kind of improvement in residential areas citywide; trees are part and parcel of residential character in general; and stemming the loss of trees in residential areas of Tualatin preserves the character of these areas, the criterion is met.

Trends in land improvement and development;

The amendment has no direct relationship to market forces. The City does require that developers plant street trees, and attrition of planted trees occurs. It has become common knowledge that street trees are often an integral component of streetscapes for visual, aesthetic, health, and environmental reasons. Additionally, trees have economic value. In “Tree Conservation Ordinances” (Planning Advisory Service Report No. 446, 1993), the American Planning Association (APA) reports that trees raise the value of residential lots and lead to higher sales prices. Because the City has established a trend of mature trees by requiring for some three decades that developers plant street trees in developed residential areas, the amendment preserves this trend by stemming the loss of street trees and preserving the intended and original trend of residential development with street trees.

Property values;

The plan text amendment is legislative because it is not specific to any property and will have no material detriment to any particular property. Street trees are often an integral component of streetscapes for visual, aesthetic, health, and environmental reasons. Additionally, trees have economic value. In “Tree Conservation Ordinances” (Planning Advisory Service Report No. 446, 1993), the American Planning Association (APA) reports that trees raises the value of residential lots and leads to higher sales prices. Because the City has established a trend of mature trees by requiring for some three decades that developers plant street trees in developed residential areas, residential property values are higher than they would have been without trees. Additionally, the loss of street trees threatens losses in residential property values. The amendment preserves property values by stemming the loss of street trees, and the tree for a fee program allows for increased tree canopy citywide.

The needs of economic enterprises and the future development of the area;

The amendment directly affects land already dedicated to the public, namely planting strips within public rights-of-way, and approval would not preclude residential or other development or imperil economic enterprises. The amendment would facilitate future development of residential areas by precluding the problem of street tree attrition that exists in already developed residential areas. Because the amendment proposes a one-for-one replacement of removed trees, with three exceptions, future developed residential areas will be planted with street trees and keep virtually the same number of street trees, and the tree for a fee program allows for increased tree canopy citywide.

The criterion is met.

Needed right-of-way and access for and to particular sites in the area;

The amendment directly affects land already dedicated to the public, namely planting strips within public rights-of-way, and so does not affect any specific existing or future right-of-way or other public access. The criterion is not applicable.

Natural resources of the City and the protection and conservation of said resources;

While trees are natural objects, by definition they are human artifacts formatted for the public human environment. They are not a natural resource like trees in their original, natural setting. The City requires that developers plant street trees along with other public infrastructure. Infrastructure and private development occur on those lands separated from those that the federal government, the State of Oregon, and the City of Tualatin deem to be significant natural resources. Because street trees are akin to public infrastructure, which comes after the preservation of significant natural resources, the criterion is not applicable.

Prospective requirements for the development of natural resources in the City;

The amendment does not affect regulations of the effects of development on original natural resources. The criterion is not applicable.

The public need for healthful, safe, aesthetic surroundings and conditions.

As described for plan amendment criterion 1, trees provide a variety of benefits to the public. They provide shade during hot weather and reduce the urban heat island effect, thereby lessening heat stress, and take in carbon dioxide. They can help calm traffic and provide to pedestrians a buffer and increased feeling of safety from motor vehicles. Humans respond well to their intrinsic aesthetic, and street trees in particular can reinforce the aesthetics of streets framed as outdoor rooms. The criterion is met.

Proof of change in a neighborhood or area, or a mistake in the Plan Text or Plan Map for the property under consideration are additional relevant factors to consider.

The City does not allege a mistake in the plan text or plan map, and the amendment is not specific to any particular property. The attrition of street trees in residential areas erodes one of the prime aesthetic and healthful qualities of residential areas and lowers property values. The detriment is also economic because it lowers property values and lowers sale prices. The amendment would stem the loss of street trees and prevent further detriment to residential areas. The criterion is met.

5. The criteria in the Tigard-Tualatin School District Facility Plan for school facility capacity have been considered when evaluating applications for a comprehensive plan amendment or for a residential land use regulation amendment.

Because street trees and public school student capacity have no logical relationship, the criterion is not applicable to the amendment.

6. Granting the amendment is consistent with the applicable State of Oregon Planning Goals and applicable Oregon Administrative Rules.

The PTA must comply with the plan amendment criteria in Section 1.032 of the TDC that incorporates the Tualatin Community Plan (TCP), which reflects Metro Code provisions and has been acknowledged by the Oregon Department of Land Conservation and Development (DLCD) as complying with state planning goals. Therefore, compliance with the TCP by definition includes compliance with state and regional minimum planning requirements, including Oregon Administrative Rules (OAR) 660-016 and 660-023, which elaborate on means of compliance with Oregon Statewide Planning Goal 5 “Open Spaces, Scenic and Historic Areas and Natural Resources.” Goal 5 requires that local governments adopt programs that will protect natural resources and conserve scenic, historic, and open space resources for present and future generations. The City inventoried street trees in 1995 and found over 7,000 trees, and it is commonly observable that the inventory has dwindled and continues to dwindle. The amendment strengthens the tree preservation ordinance by those who remove street trees to replace them, which will stem further loss. In conjunction with the existing “tree-for-a-fee” program, the amendment will allow long-term no net-loss in citywide tree canopy. The proposed text amendment complies with the statewide planning goal. The criterion is met.

7. Granting the amendment is consistent with the Metropolitan Service District’ s Urban Growth Management Functional Plan.

Metro’s Urban Growth Management Functional Plan (UGMFP) that constitutes Metro Code Section 3.07 requires protection of natural resources. The amendment improves the existing tree protection ordinance, which complies with Title 13 (Section 3.07.13) “Nature in Neighborhoods,” that recognizes “an existing tree protection ordinance” in subsection 3.07.1330(B)(3)(b)(i) as a valid means of compliance. The criterion is met.

8. Granting the amendment is consistent with Level of Service F for the p.m. peak hour and E for the one-half hour before and after the p.m. peak hour for the Town Center 2040 Design Type (TDC Map 9-4), and E/E for the rest of the 2040 Design Types in the City’s planning area.

Because street trees and p.m. peak vehicle level of service have no logical relationship, the criterion is not applicable to the amendment.

Draft

RESOLUTION NO. _____

RESOLUTION AMENDING THE CITY OF TUALATIN FEE SCHEDULE AND RESCINDING RESOLUTION NO. 4857-09

WHEREAS THE City Council has the authority to set fees for materials and services provided by the City; and

WHEREAS the fees listed under the Operations Department for street trees in the City of Tualatin Fee Schedule are newly established fees; and

WHEREAS Resolution No. 4857-09, adopted January 12, 2009, which last amended the City of Tualatin Fee Schedule, must now be rescinded.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TUALATIN, OREGON, that:

Section 1. Fees listed under the Operations Department for street trees are established as set forth in "Exhibit A", which is attached and incorporated by reference.

Section 2. All other fees provided in the City of Tualatin Fee Schedule remain unchanged, as set forth in "Exhibit A", which is attached and incorporate by reference.

Section 3. The fees shall be effective, and Resolution No. 4857-09 is rescinded, upon adoption by the City Council.

INTRODUCED AND ADOPTED this 13th day of April, 2009.

CITY OF TUALATIN, OREGON

BY _____ Mayor

ATTEST:

BY _____ City Recorder

Approved as to legal form:

City Attorney

CITY OF TUALATIN FEE SCHEDULE

Exhibit A

Administration Department:

Agenda Packet	5.00
Ordinances or Portions Thereof	same as photocopy rate
Photocopies:	
One-sided	0.25
Two-sided	0.25
Color	1.00
11x17.....	0.50
Audio Tape/ CD/ DVD	15.00

Community Development Department:

Amendment to Comprehensive Plan Map.....	1,795.00
Amendment to Comprehensive Plan Text/Landmark Designation/Removal of Landmark Designation.....	1,795.00
Annexation	1,225.00
Appeal Proceeding to Council.....	115.00
Appeal Expedited Process to Referee, Deposit per ORS 197.375.....	300.00
Architectural Review Application, Nonexpedited Process:	
Estimated Project Value:	
Under \$5,000.....	100.00
\$5,000 - \$24,999.99	470.00
\$25,000 - \$99,999.99	850.00
\$100,000 - 499,999.99	1,415.00
\$500,000 and greater.....	2,070.00
Architectural Review Application, Expedited Process:	
Estimated Project Value:	
Under \$5,000.....	100.00
\$5,000 - \$24,999.99	945.00
\$25,000 - \$99,999.99	1,880.00
\$100,000 - 499,999.99	2,830.00
\$500,000 and greater.....	4,335.00
Architectural Review, Single-family Level I (Clear & Objective)	50.00
Architectural Review, Single-family Level II (Discretionary)	700.00
Conditional Use Permit	1,225.00
Conditional Use Permit Renewal.....	1,225.00
Core Area Parking District Tax Appeal.....	115.00
Interpretation of Development Code	No Fee
Industrial Master Plans	1,565.00
Landmark Alteration/New Construction Review	50.00
Landmark Demolition Review	50.00
Landmark Relocation Review	50.00
Reinstatement of Nonconforming Use	1,225.00
Request for Council Rehearing	140.00
Sign Code Interpretation	350.00
Sign Ordinance	6.00
Sign Code Variance	580.00

Sign Permit:	
New Sign or Structural Change to Existing Sign	115.00
Temporary Sign or Each Face Change to Existing Sign	60.00
Temporary Uses, 1 - 3 days	40.00
4 - 180 days.....	\$40.00 + 1.50/day
Over 3 days	not to exceed a total of \$170.00
Transitional Use Permit.....	1,315.00
Tree Removal Permit, 1 tree	276.00
each additional tree, \$10.00 not to exceed a total of.....	300.00
Variance:	
When primary use is a single family dwelling in RL or RML	245.00
When primary use is not a single family dwelling in RL or RML	1,225.00
Variance, Minor:	
When primary use is a single family dwelling in RL or RML	245.00
When primary use is not a single family dwelling in RL or RML	905.00
All Other Actions	280.00

Engineering & Building Department:

Engineering Copies:	
1987 and earlier, aerial/contour maps	6.00
36" x 48"	3.50
24" x 36"	2.50
18" x 24" and 11" x 17"	1.50
Geographic Information System:	
Citywide aerial photo, 36" x 42"	25.00
Subdivision street map, 34" x 36"	12.00
Street map, 22" x 22"	6.00
Planning Districts, 34" x 44"	12.00
Planning Districts, 18" x 24"	6.00
Custom Mapping	45.00/hr, plus materials
Partition,* Nonexpedited & Expedited Processes	350.00
Partition,* Nonexpedited & Expedited Exten. /Modif.	115.00
Partition,* Nonexpedited, Appeal Proceeding to Council	115.00
Partition,* Expedited, Appeal to Referee, Deposit per ORS 197.375.....	300.00
Partition,* Minor Variance included & primary use is a single family dwelling in RL or RML	Add 115.00
Partition,* Minor Variance included & primary use is not a single family dwelling & not in RL or RML.....	Add 175.00
Property Line Adjustm't.,* primary use is a single family dwelling in RL or RML	60.00
Property Line Adjustm't.,* Minor Variance included & primary use is a single family dwelling in RL or RML.....	Add 115.00
Property Line Adjustm't.,* primary use is not a single family dwelling in RL or RML	255.00
Property Line Adjustm't.,* Minor Variance included & primary use is not a single family dwelling in RL or RML.....	Add 115.00
Property Line Adjustm't.* Appeal Proceeding to Council.....	115.00
Public Works Construction Code	40.00

Subdivision,* Nonexpedited and Expedited Processes.....	2,320.00
Subdivision,* Variance included & primary use is a single family dwelling in RL or RML	Add 230.00
Subdivision,* Variance included & primary use is not a single family dwelling in RL or RML	Add 290.00
Subdivision,* Minor Variance included & primary use is a single family dwelling in RL or RML	Add 115.00
Subdivision,* Minor Variance included & primary use is not a single family dwelling in RL or RML	Add 175.00
Subdivision,* Nonexpedited, Extension/Modif. by Council	530.00
Subdivision,* Expedited, Extension/Modif. by City Engineer.....	130.00
Subdivision,* Nonexpedited, Appeal Proceeding to Council	115.00
Subdivision,* Expedited Appeal to Referee, Deposit per ORS 197.375.....	300.00
Street Name Change	115.00
Street Vacation Application Deposit.....	290.00
Zone of Benefit Application Fee	580.00

* Subdivision, Partition and Property Line Adjustment applicants shall contact the Finance Department for a determination of L.I.D. assessment apportionment for the property proposed to be divided or adjusted.

Finance Department:

*L.I.D. Assessment Apportionment Fee	95.00
Lien Search Fee (per tax lot)	26.00
Recovery Charge Installment Payment Plan Application Fee	200.00
Returned Checks (per check for processing NSF check).....	32.00
Zone of Benefit Recovery Charge Administration Fee	105.00
Passport Photo	15.00

Legal Services Department:

Development Code	55.00
Updates	0.25/page + postage
Tualatin Municipal Code	55.00

Municipal Court

Traffic School and Compliance Program Fees:

Class A.....	200.00
Class B.....	150.00
Class C.....	100.00
Class D.....	75.00
Seat Belt Class.....	55.00
Vehicle Compliance Program.....	15.00
Collection Fee.....	25% of ordered amount
License Restatement Fee.....	70.00
Overdue Payment Letter Fee.....	10.00

Operations Department:

Street Tree and Installation (Single Family Only)	\$175
Street Tree Removal (excluding Stump Grinding).....	\$280
Street Tree Stump Grinding	\$110
Tree-for-a-Fee Program	45.00

Police Department:

Copies of Audio Tapes.....	11.00 per tape
Copies of Video Tapes.....	35.00 per tape
Copies of Photographs.....	13.00 plus 0.50 per photo
Copies of Police Reports (no charge to victims):	
1 - 10 pages	7.00
plus each page over 10	0.25
Alarm Permit, Initial Application.....	21.00
Alarm Permit, Annual Renewal	21.00
Alarm Permit, 1st False Alarm	No charge
Alarm Permit, 2nd False Alarm	No charge
Alarm Permit, 3rd False Alarm	79.00
Alarm Permit, 4th False Alarm	105.00
Alarm Permit, 5th False Alarm	158.00
Alarm Permit, 6 th and More False Alarms	210.00 per alarm
Release of Towed (impounded) Vehicles.....	100.00

ORDINANCE NO. 1279-09

AN ORDINANCE RELATING TO TREE REMOVAL; AND
AMENDING TDC 34.200, 73.405, 74.706, 74.707, 74.708,
AND 74.765 (PTA-08-04)

WHEREAS upon the application of the Community Development Department, a public hearing was held before the City Council of the City of Tualatin on March 23, 2009, related to tree removal, and amending TDC 34.200, 73.405, 74.705, 74.706, 74.707, 74.708, and 74.765 (PTA-08-04); and

WHEREAS notice of public hearing was given as required under the Tualatin Community Plan by publication on March 5, 2009, in The Times, a newspaper of general circulation within the City, which is evidenced by the Affidavit of Publication marked "Exhibit A," attached and incorporated by this reference; and by posting a copy of the notice in two public and conspicuous places within the City, which is evidenced by the Affidavit of Posting marked "Exhibit B," attached and incorporated by this reference; and

WHEREAS the Council conducted a public hearing on March 23, 2009, and heard and considered the testimony and evidence presented by the City staff and those appearing at the public hearing; and

WHEREAS after the conclusion of the public hearing, the Council vote resulted in approval of the application by a vote of [4-0], with Councilor Beikman, Councilor Barhyte, and Councilor Harris absent.

WHEREAS based upon the evidence and testimony heard and considered by the Council and especially the City staff report dated March 23, 2009, the Council makes and adopts as its Findings of Fact the findings and analysis in the staff report attached as "Exhibit C," which are incorporated by this reference; and

WHEREAS based upon the foregoing Findings of Fact, the City Council finds that it is in the best interest of the residents and inhabitants of the City and the public; the public interest will be served by adopting the amendment at this time; and the amendment conforms with the Tualatin Community Plan; and therefore, the Tualatin Development Code should be amended. Therefore,

THE CITY OF TUALATIN, OREGON ORDAINS AS FOLLOWS:

Section 1. TDC Section 34.200 is amended to read as follows:

Section 34.200 Tree Removal Without Architectural Review, Subdivision or Partition Approval, or Tree Removal Permit Prohibited.

(1) (1) Except as provided in TDC 34.200(3), no person shall remove a tree within the City limits **except as follows:**

(a) For a tree on private property, the person must without first obtaining a Tree Removal Permit from the City, or obtaining approval through the Architectural Review, Subdivision Review, or Partition Review process;

(b) For a street tree or tree within a public right-of-way, the person must obtain approval in accordance with TDC 74.705. Incentives for tree retention are found in TDC Chapter 73, Community Design Standards. Any property owner who removes, or causes to be removed, one or more trees in violation of applicable TDC provisions, shall pay an enforcement fee and a restoration fee to the City of Tualatin, as set forth in TDC 34.220(3), in addition to civil penalties set forth in TDC 31.111.

(2) As used in this ordinance, “park” means a City-owned parcel, lot or tract of land, designated and used by the public for active and passive recreation.

(3) The following exemptions apply to tree removal:

(a) General Exemption. Four or fewer trees may be removed within a single calendar year from a single parcel of property or contiguous parcels of property under the same ownership without a permit, except when the tree to be removed:

(i) Is located in the Natural Resource Protection Overlay District (NRPO);

(ii) Is located in the Wetlands Protection Area (WPA) of the Wetlands Protection District (WPD);

(iii) Is a Heritage Tree;

(iv) ~~The tree was~~ previously required to be retained under an approved Architectural Review of the ~~Tualatin Development Code~~ decision.

(b) Parks and golf courses are exempt if both the following are met:

(i) The property’s owner or owner’s agent has submitted a tree management plan to the Community Development Director and has received approval from the Director. The tree management plan shall be approved for a five year period, after which the property owner or owner’s agent must submit a new tree management plan for approval or comply with requirements set out in the applicable Architectural Review decision.

(ii) This exemption supersedes the Architectural Review requirements with regard to tree removal except as provided in subsection (i) of this section.

(c) Forest Harvesting Exemption. The harvesting of forest tree species for the commercial value of the timber is permitted subject to the following:

(i) The property from which the forest species are to be harvested must be in a property tax deferred status based on agricultural or forest use under any or some combination of the following:

- Farm Deferral according to state law.
- Forest Land Deferral according to state law.
- Small Woodlands Deferral according to state law.

(ii) The property from which the forest species are to be harvested must have been in property tax deferred status on the effective date of this

ordinance or at the time of annexation of the property by the City, whichever occurs later.

(iii) Revocation of the Forest Harvesting Exemption. Property, or portion of the property exempted under TDC, 34.200(3)(c) shall cease to be exempted from the provisions of this ordinance immediately upon the filing of an application for any of the following land use actions:

- Subdivision or Partition review;
- Conditional Use;
- Architectural Review.

(iv) Reinstatement of the Forest Harvesting Exemption. Property or portions of the property previously exempted under TDC 34.200(3)(c) and revoked in accordance with TDC 34.200(3)(c)(iii) will be considered reinstated if the property remains tax deferred in accordance with TDC 34.200(3)(c)(i) and 34.200(3)(c)(ii), and one or more of the following criteria are met:

- The land use action that affected the revocation was denied and the appeals period has expired; or
- The land use action that affected the revocation was approved, and the proposed development ~~which~~ **that** affected the filing of the land use action did not occur; and the approval, ~~that~~ **which** was granted, including extensions has expired.

(v) The Community Development Director shall prepare a listing of properties exempted under this section upon the effective date of this ordinance and update the list annually.

(d) Orchards. Tree removal is permitted in orchards of commercial agricultural production.

(e) Public Right-of-Way. Trees within public right-of-way shall be governed by TDC Chapter 74, Public Improvement Requirements.

(f) Federal, state, county, or City road, water, sanitary sewer, or storm sewer improvements and maintenance of City owned property are exempt from this ordinance.

(4) As provided under TDC 31.030, no single-family dwelling building permit application shall be submitted to the City until all required land use approvals, including any required Tree Removal Permit, have been obtained by the property owner.

Section 2. TDC 73.410 is amended to read as follows:

Section 73.410 ~~Streets. [Reserved for Street Tree Plan.]~~ **A person who desires to plant a street tree shall comply with TDC 74.765, which comprises the street tree plan.**

Section 3. TDC 74.705 is amended to read as follows:

Section 74.705 ~~Permit to Remove or Destroy Trees~~ **Street Tree Removal Permit.**

(1) A person who desires to remove or destroy a tree, **as defined in TDC 31.060**, in or upon any public right-of-way shall make application to the Operations Director on **City forms**. ~~furnished by the City.~~

(2) ~~The application applicant must provide:~~

(a) ~~the applicant's name and contact information and if applicable that of the applicant's contractor;~~

(b) ~~the number and species of all street trees the applicant desires to remove;~~

(c) ~~a clear description of the street trees' location to allow City staff to accurately identify the, including the nearest street address;~~

(d) ~~the date of removal; must state the number and kind of trees to be removed, the name of permittee and contractor, if applicable, the time the proposed work is to be done, and such~~

(e) ~~the reason(s) for removal; and~~

(f) ~~other information as the Operations Director deems necessary.~~

~~other information as the Operations Director deems pertinent. Work done under the written permit must be performed in strict accordance with the permit terms and this chapter, and with the approval of the Operations Director.~~

(3) Upon the Operations Director approving the removal of a street tree, the applicant or designated contractor shall replace each removed tree on a one-for-one basis by fulfilling the following requirements;

(a) Remove both the tree and stump prior to planting a replacement tree, or request the City to remove the tree and stump and pay the applicable fee(s) established in TDC 74.706; and

(b) Replace the removed tree by planting a species of street tree permitted by Schedule A of TDC Chapter 74 within the time period specified in writing by the Operations Director; or, the applicant may request within sixty (60) days of the permit approval date that the City replace the street tree and pay the applicable fee(s) established in TDC 74.706. If an applicant opts for the City to plant the replacement tree, the Operations Department may plant the tree on its usual tree-planting schedule. Planting done by the applicant or designated contractor shall comply with all applicable TDC sections and any additional requirements imposed by the Operations Director.

(c) The applicant shall comply with all applicable TDC sections and additional requirements imposed by the Operations Director. The Operations Director may:

i. Waive the one-for-one replacement requirement if he or she determines that the replacement would:

1. conflict with public improvements or utility facilities, including but not limited to fire hydrants, water meters and pipes, lighting fixtures, traffic control signs; private improvements or utility facilities – including but not limited to driveways and power, gas,

telephone, cable television lines; or, minimum vision clearance;

2. interfere with the existing canopy of adjacent trees, the maturation of the crown of the proposed replacement tree, or both; or
 3. cause a conflict by planting trees too close to each other, hurting their health;
- ii. limit the selection of species from Schedule A; and
 - iii. direct how to plant replacement tree(s).

(d) A person who fails to comply with TDC 74.705(3) shall pay an enforcement fee and a restoration fee to the City of Tualatin, as set forth in TDC 34.220(3), in addition to civil penalties in TDC 31.111.

Section 4. TDC 74.706 is added to read as follows:

Section 74.706 Street Tree Fees.

A person who applies to remove a street tree under TDC 74.705 shall pay all costs incurred by the City as reflected in the applicable fees listed in the city of Tualatin Fee Schedule. City actions and associated fees include but are not limited to inspection of a street tree requested for removal, removal of a street tree, removal of a stump, planting of a street tree, and inspection(s) to determine if the applicant has fulfilled permit requirements.

Section 5. TDC 74.707 is added to read as follows:

Section 74.707 Street Tree Voluntary Planting.

A person who desires to plant a tree in or upon a public right-of-way may plant or have the City plant a species of street tree permitted by TDC Chapter 74 Schedule A without a City permit, if the tree is not a replacement for a tree that the person has removed. Such a person may submit a request to the City with payment of fee(s) so that the City may plant a street tree. If a stump exists where a street tree is to be planted, the person shall remove the stump or pay a fee to the City as established in TDC 74.706 so that the City may remove the stump on behalf of the person. In all instances, a person who desires to plant a tree shall comply with other applicable TDC sections and any additional requirements of the Operations Director.

Section 6. TDC 74.708 is added to read as follows:

Section 74.708 Street Tree Emergencies.

(1) If emergency conditions occur that require the immediate cutting or removal of street trees to avoid danger or hazard to persons or property, the Operations Director shall issue emergency permits without payment of fees and formal applications. If the Operations Director is unavailable, the adjacent property owners may proceed to cut the trees without permits to the extent necessary to eliminate the immediate danger or hazard. If a

street tree is cut under this section without filing of an application with the Operations Director, the person doing so shall report the action to the Operations Director within two City business days without payment of fee and shall provide such information and evidence as may be reasonably required by the Operations Director to explain and justify the removal.

(2) In all instances, a person who removes a street tree as a result of an emergency must replace it within sixty (60) days of notifying the Operations Director. The City reserves the right to waive this requirement.

(3) A person who fails to comply with TDC 74.708 shall pay an enforcement fee and a restoration fee to the City of Tualatin, as set forth in TDC 34.220(3), in addition to civil penalties in TDC 31.111.

(4) If no emergency is found to exist, no person shall cut or remove a street tree without complying with the requirement of the Tualatin Development Code.

Section 7. TDC 74.765 is amended to read as follows:

Section 74.765 Street Tree Species and Planting Locations. ~~of Plantings.~~

All trees, plants or shrubs planted in the right-of-way of the City shall conform in species and location and in accordance with the street tree plan in Schedule A. **If the Operations Director determines that none of the species in Schedule A is appropriate or finds appropriate a species not listed, the Director may substitute an unlisted species.**

Section 8. TDC Schedule A is amended to read as follows:

Schedule A: Street Tree Species

The following street trees are authorized for planting in the City of Tualatin. Please refer to Map 74-1 to reference locations of the following species of trees:

Species Common Name	Planting Strip Width			Powerline Compatible	Spacing on center (feet)
	(feet)	(feet)	(feet)		
<u>Zone 1</u>	4	5	6+		
Leprechaun Ash	✓	✓	✓		30
Purple Beech	✓	✓	✓		30
European Hornbeam	✓	✓	✓	✓	30
Armstrong Maple	✓	✓	✓		30
Scanlon/Bowhall Maple	✓	✓	✓		30
Skyrocket English Oak	✓	✓	✓		30
Capital Flowering Pear	✓	✓	✓		30
Persian Parrotia	✓	✓	✓		30
Eastern Redbud	✓	✓	✓		30
Zelkova Musashino	✓	✓	✓		30
Autumn Applause Ash		✓	✓		30
Shademaster Honey Locust		✓	✓		30
<u>Zone 2</u>					

Golden Desert Ash	✓	✓	✓	✓	30
Leprechaun Ash	✓	✓	✓		30
Purple Beech	✓	✓	✓		30
Goldenrain	✓	✓	✓		30
European Hornbeam	✓	✓	✓	✓	30
Ivory Japanese Lilac	✓	✓	✓	✓	30
Amur Maackia	✓	✓	✓	✓	30
Amur Maple	✓	✓	✓	✓	30
Crimson Sentry Maple	✓	✓	✓	✓	30
Trident Maple	✓	✓	✓	✓	30
Skyrocket English Oak	✓	✓	✓		30
Persain Parrotia	✓	✓	✓		30
Eastern Redbud	✓	✓	✓		30
Yellowwood	✓	✓	✓		30
Raywood Ash		✓	✓	✓	30
Urbanite Ash		✓	✓		30
Ginko		✓	✓		30
Greenspire Linden		✓	✓		30
Crimson King Maple		✓	✓		30
Tri-Color Beech			✓		60
Frontier Elm			✓		60
Globe Sugar Maple			✓		60
Red Sunset Maple			✓		60
Red Oak			✓		60
Scarlet Oak			✓		60

Schedule A

~~TREE PLANTINGS IN THE CITY OF TUALATIN~~

The following street trees are authorized for planting in the City of Tualatin. Please refer to Map 74-1 to reference locations of the following types of trees:

Zone 1 _____ Zone 2

- | | |
|----------------------------------|------------------------|
| 4-Foot Planter Strips: | 4-Foot Planter Strips: |
| — Armstrong Maple | *Golden Desert Ash |
| — *European Hornbeam | *Amur Maple |
| — Scanlon/Bowhall Maple | *Crimson Sentry Maple |
| — Chanticlear Pear | *Ivory Japanese Lilac |
| — Columnar Maple | *European Hornbeam |
| — Zelkova | *Maackia |
| — Planted 30-Foot on Center | *Trident Maple |
| | Yellowwood |
| 5 to 6-Foot Planter Strips: | Goldenrain |
| — Any of the listing above, plus | Zelkova |

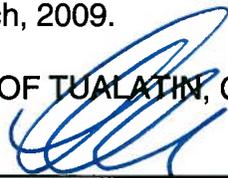
~~Shademaster Honey Locust~~ ~~Planted 30-Foot on Center~~
~~Autumn Applause Ash~~
~~Planted 30-Foot on Center~~ ~~5 to 6-Foot Planter Strips~~
~~Any of the listing above, plus~~
~~6-Foot or More Planter Strips:~~ ~~Crimson King Maple~~
~~Any of the listings above~~ ~~Ginke~~
~~Planted 30-Foot on Center~~ ~~*Raywood Ash~~
~~Greenspire Linden~~
~~Urbanite Ash~~
~~Planted 30-Foot on Center~~

~~6-Foot or More Planter Strips:~~
~~Any of the listing above, plus~~
~~Red Sunset Maple~~
~~Scarlet Oak~~
~~Tri-Color Beech~~
~~Globe Sugar Maple~~
~~Red Oak~~
~~Frontier Elm~~
~~Planted 60-Foot on Center~~

*Powerline Compatible

INTRODUCED AND ADOPTED this 23rd day of March, 2009.

CITY OF TUALATIN, Oregon

BY  _____
Mayor

ATTEST:

BY  _____
City Recorder

APPROVED AS TO LEGAL FORM


CITY ATTORNEY



6605 SE Lake Road, Portland, OR 97222 • PO Box 22108 Portland OR 97208-2108
 Phone: 503-684-0380 Fax: 503-620-3433
 Email: legal@commnewspapers.com

AFFIDAVIT OF PUBLICATION

State of Oregon, County of Washington, SS I, Charlotte Allsop, being the first duly sworn, depose and say that I am the Accounting Manager of *The Times* (serving Tigard, Tualatin & Sherwood), a newspaper of general circulation, published at Beaverton, in the aforesaid county and state, as defined by ORS 193.010 and 193.020, that

City of Tualatin
 Notice of Hearing
 TT11262

A copy of which is hereto annexed, was published in the entire issue of said newspaper for

1
 week in the following issue:
March 5, 2009

Charlotte Allsop

Charlotte Allsop (Accounting Manager)

Subscribed and sworn to before me this
 March 5, 2009.

Robert A. Bugans

NOTARY PUBLIC FOR OREGON
 My commission expires

Acct #108462
 Attn: Stacy Crawford
 City of Tualatin
 18880 SW Martinazzi Ave
 Tualatin, OR 97062

Size: 2 x 7.25
 Amount Due \$131.23*
 *Please remit to address above.

**NOTICE OF HEARING
 CITY OF TUALATIN, OREGON**

NOTICE IS HEREBY GIVEN that a public hearing will be held before the City of Tualatin City Council at 7:00 p.m., March 23, 2009, at the Council Building, Tualatin City Center, at 18880 SW Martinazzi Avenue, to consider:

**PLAN TEXT AMENDMENT (PTA) 0804
 — STREET TREE REMOVAL AND REPLACEMENT**

Before granting the proposed amendments, the City Council must find that: (1) Granting the amendments is in the public interest; (2) The public interest is best protected by granting the amendments at this time; (3) The proposed amendments are in conformity with the applicable objectives of the Tualatin Community Plan; (4) The factors listed in Section 1.032(4) were consciously considered; (5) The Tigard Tualatin School District Facility Plan was considered; (6) The amendments are consistent with the Statewide Planning Goals; (7) The amendments are consistent with the Metro Urban Growth Management Functional Plan; and (8) The amendments are consistent with Level of Service F for the PM peak hour and E for the one-half hour before and after the PM peak hour for the Town Center 2040 Design Type and E/E for the rest of the 2040 Design Types in the City's planning area.

Individuals wishing to comment may do so in writing to the Planning Division prior to the hearing and/or present written and/or verbal testimony to the City Council at the hearing. Hearings begin with a staff presentation, followed by testimony by proponents, testimony by opponents, and rebuttal. The time of individual testimony may be limited. If a participant requests, before the hearing is closed, the record shall remain open for at least 7 days after the hearing. The failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to the decision maker to respond to the issue precludes an action for damages in circuit court.

Copies of the application, all documents and evidence relied upon by the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost. A copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing, and will be provided at reasonable cost. **For information contact Colin Cortes at (503) 691-3024.** This meeting and any materials being considered can be made accessible upon request.

CITY OF TUALATIN, OREGON
 By: Sherilyn Lombos, City Recorder
 Publish 03/05/2009.

TT11262

EXHIBIT A



City of Tualatin

www.ci.tualatin.or.us

NOTICE OF HEARING CITY OF TUALATIN, OREGON

NOTICE IS HEREBY GIVEN that a public hearing will be held before the City of Tualatin City Council at 7:00 p.m., March 23, 2009, at the Council Building, Tualatin City Center, at 18880 SW Martinazzi Avenue, to consider:

PLAN TEXT AMENDMENT (PTA) 08-04 — STREET TREE REMOVAL AND REPLACEMENT

Before granting the proposed amendments, the City Council must find that: (1) Granting the amendments is in the public interest; (2) The public interest is best protected by granting the amendments at this time; (3) The proposed amendments are in conformity with the applicable objectives of the Tualatin Community Plan; (4) The factors listed in Section 1.032(4) were consciously considered; (5) The Tigard Tualatin School District Facility Plan was considered; (6) The amendments are consistent with the Statewide Planning Goals; (7) The amendments are consistent with the Metro Urban Growth Management Functional Plan; and (8) The amendments are consistent with Level of Service F for the PM peak hour and E for the one-half hour before and after the PM peak hour for the Town Center 2040 Design Type and E/E for the rest of the 2040 Design Types in the City's planning area.

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CITY OF TUALATIN, OREGON

By: Sherilyn Lombos
City Recorder

NOTICE TO THE TUALATIN TIMES: Please publish in the TUALATIN TIMES on
March 5, 2009

AFFIDAVIT OF POSTING

STATE OF OREGON)
) SS
COUNTY OF WASHINGTON)

I, Colin Cortes, being first duly sworn, depose and say:

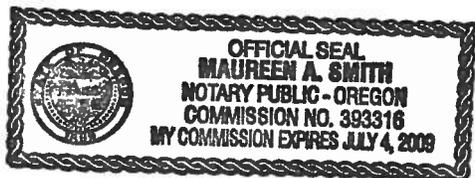
That at the request of Sherilyn Lombos, City Recorder for the City of Tualatin, Oregon; that I posted two copies of the Notice of Hearing on the 10th day of March, 2009, a copy of which Notice is attached hereto; and that I posted said copies in two public and conspicuous places within the City, to wit:

1. City of Tualatin Library Building Development Services Lobby
2. City of Tualatin City Center Building

Dated this 10th day of March, 2009.

Colin Cortes
Colin Cortes

Subscribed and sworn to before me this 10th day of March, 2009.



Maureen A Smith
Notary Public for Oregon
My Commission expires: July 4, 2009

RE: PLAN TEXT AMENDMENT (PTA) 0804—ORDINANCE RELATING TO STREET TREE REMOVAL AND REPLACEMENT; AMENDING TDC SECTIONS 34.200, 73.410, 74.705, AND 74.765 AND CREATING TDC SECTIONS 74.706 THROUGH 708.

EXHIBIT B



City of Tualatin

www.ci.tualatin.or.us

NOTICE OF HEARING CITY OF TUALATIN, OREGON

NOTICE IS HEREBY GIVEN that a public hearing will be held before the City of Tualatin City Council at 7:00 p.m., March 23, 2009, at the Council Building, Tualatin City Center, at 18880 SW Martinazzi Avenue, to consider:

PLAN TEXT AMENDMENT (PTA) 0804 — STREET TREE REMOVAL AND REPLACEMENT

Before granting the proposed amendments, the City Council must find that: (1) Granting the amendments is in the public interest; (2) The public interest is best protected by granting the amendments at this time; (3) The proposed amendments are in conformity with the applicable objectives of the Tualatin Community Plan; (4) The factors listed in Section 1.032(4) were consciously considered; (5) The Tigard Tualatin School District Facility Plan was considered; (6) The amendments are consistent with the Statewide Planning Goals; (7) The amendments are consistent with the Metro Urban Growth Management Functional Plan; and (8) The amendments are consistent with Level of Service F for the PM peak hour and E for the one-half hour before and after the PM peak hour for the Town Center 2040 Design Type and E/E for the rest of the 2040 Design Types in the City's planning area.

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CITY OF TUALATIN, OREGON

By: Sherilyn Lombos
City Recorder

NOTICE TO THE TUALATIN TIMES: Please publish in the TUALATIN TIMES on
March 5, 2009



Approved By Tualatin City Council
Date March 23, 2009
Recording Secretary J. Kirby

STAFF REPORT CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos, City Manager

FROM: Paul Hennon, Community Services Department *Paul Hennon*
Abigail Elder, Library Manager *AEU*

DATE: March 23, 2009

SUBJECT: 2008 ANNUAL REPORT OF THE TUALATIN LIBRARY
ADVISORY COMMITTEE

ISSUE BEFORE THE COUNCIL:

The Council will accept the 2008 Annual Report of the Tualatin Library Advisory Committee (TLAC).

RECOMMENDATIONS:

- 1) Accept the annual report, and
- 2) Continue to support the library with designated library revenues from Washington County and the General Fund contributions that enable the city to provide outstanding library services to meet community expectations in the new library.
- 3) Ensure continued library service to Tualatin residents living in Clackamas County.

EXECUTIVE SUMMARY:

- Since the committee made its last annual report to council in February 2008, the library-building project has been completed. The Library celebrated its grand opening on August 9, 2008. It has won the hearts of the community.
- For the first part of the year, TLAC continued its involvement with various aspects of the new library and provided valuable comments and perspectives on the building design, floor plan, and furniture. In addition, two members of the Committee served on the Ad Hoc Library Art Selection Committee.

STAFF REPORT: Tualatin Library Advisory Committee 2008 Annual Report

March 23, 2008

Page 2 of 3

- The new facilities are being used almost to their maximum, thus requiring the Committee to review many of the policies and procedures of room use and making a recommendation to Council. The Committee has also reviewed and recommended needed changes for the Library Rules of Conduct in the Tualatin Municipal Code.
- The Committee continues to seek ways to ensure funding that is adequate to allow the library to realize its expanded potential and to provide the outstanding library services expected by the Tualatin community. To this end, the committee has encouraged efforts to create a Tualatin Library Foundation. The Tualatin Library Foundation has been incorporated by the State of Oregon and has received its 503(c)3 status.
- Immediately after the grand opening, Darrel Condra retired as Library Manager. The Advisory Committee welcomed Abigail Elder as the new Library Manager.
- Each month the Library Manager has updated the TLAC on library activities and statistics. The exponential growth in circulation, door counts, computer use, and library card requests is noted each month, along with patron comments both pro and con.
- The Committee is monitoring developments in the Clackamas County library service district, and how that might impact Tualatin residents.
- The committee has a member closely involved in Tualatin Tomorrow, two members who serve on the Foundation Board, and one member who is active in the Friends of the Library.
- Although the committee has not been at full strength for some time, we are expecting two members to be named soon.
- Members of the TLAC wish to recognize and thank the City Council for its continuing support of the library through the years with adequate and stable funding for its operations.

BACKGROUND:

The Tualatin Library Advisory Committee (TLAC) was established by Ordinance 758-88, adopted by Council on October 10, 1988 and incorporated into the Tualatin Municipal Code as Chapter 1-25.

The role of the TLAC is to consult with and advise the Library Manager, make recommendations to the City Council, and hear and consider complaints about City Library policies and materials. The committee consists of seven members appointed by

Council. The Library Manager provides the TLAC with staff support. The TLAC meets monthly or more often as needed.

Members of the 2008 TLAC were: Frank Bubenik, Marge Congress (Chairperson), Marissa Houlberg, Terry Novak, Elizabeth (Tibby) O'Brien, Alexander Pierce (through May 2008) and Willie Stephan. There are currently two vacancies.

The Tualatin Public Library Advisory Committee last reported to the City Council on February 25, 2008.

FINANCIAL IMPLICATIONS:

The TLAC strongly supports providing sufficient operating funds for the expanded library. Library use has increased dramatically in the new facility and placed increased demands on the staff and collection. The TLAC therefore recommends that the Council maintain the level of service support currently provided for the library for fiscal year 2009/2010.

c: Members of Tualatin Library Advisory Committee
Dick Dreyfus, President, Friends of Tualatin Library



Approved By Tualatin City Council
Date March 23, 2009
Recording Secretary J. Kirby

STAFF REPORT CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos, City Manager *[Signature]*

FROM: Daniel J. Boss, Operations Director *[Signature]*
Kathy Kaatz, Program Coordinator

DATE: March 23, 2009

SUBJECT: ORDINANCE RELATING TO MANDATORY RECYCLING FOR BUSINESSES; ADDING NEW SECTIONS 9-6-050, 9-6-010, 9-6-020 and 9-6-030 TO THE TUALATIN MUNICIPAL CODE

ISSUE BEFORE THE COUNCIL:

The issue before the Council is adoption of the attached Ordinance to comply with Metro's requirement to implement mandatory Business Recycling Requirements.

RECOMMENDATION:

Council directed staff to draft an Ordinance to place the City of Tualatin in compliance with Metro's newly-mandated Business Recycling Requirements, including development of code language, a compliance program, and annual reporting. Staff respectfully recommends Council adopt this Ordinance.

EXECUTIVE SUMMARY:

For the past eight years, Metro and local government, including Tualatin, have participated in a free education and technical assistance program called Recycle at Work (RAW). Metro and local jurisdictions targeted the business community by providing assistance in development and implementation of recycling programs. Although progress has been made as a result of this program, it has been noted that 100,000 tons of recyclable paper continue to be disposed of by local area businesses. For the most part, businesses in the region are already recycling, so this new requirement would basically formalize this process.

In addition to the existing funding of \$600,000 for the Recycle at Work Program (RAW), Metro is supporting the new program requirements with an additional \$400,000, bringing the total program costs to \$1 million regionally. Tualatin's existing portion of \$16,229 is currently allocated to Washington County for implementation and reporting. Tualatin's portion of the new \$400,000 will be \$9,291. The options for these additional funds

would be either to enter into an IGA with Metro for implementation and compliance or keep the funding and manage the program internally.

A business or property manager will be in compliance by doing the following:

- Providing recycling containers for employees;
- Posting signs and instructions on how to recycle; and
- Recycling paper and containers.

OUTCOMES OF DECISION:

If Council moves forward and adopts this Ordinance, Tualatin will comply with Metro's requirement for mandatory business recycling. Choosing not to adopt such an Ordinance will place the City in a situation of being non-compliant with this new requirement, as outlined in Metro Code Chapter 5.10.

FINANCIAL IMPLICATIONS:

Upon adoption of this Ordinance, the City will have the following options for utilizing the additional funding (\$9,291):

- Use funds internally for compliance, education, direct business assistance, and resources; or
- Direct funding to Metro to provide for services, compliance and reporting.

DISCUSSION:

The goal of the Washington County Recycle at Work Program is to increase commercial recycling opportunities for the businesses in the Washington County Cooperative Recycling Program. During fiscal year 08/09, RAW field staff provides direct technical assistance to businesses. This technical assistance focuses on identifying potential waste reduction practices and establishing new recycling programs or improving existing ones. Individual business needs shape the type and level of assistance provided. The new mandatory Business Recycling Requirements (BRR) will provide the following:

- The requirement will apply to all commercial businesses in the City of Tualatin. The City may exempt a business from some or all of the business recycling requirement as long as they provide access for a site visit and it is determined during this visit that the business cannot comply with the requirement.
- The City will use its existing business licensing process to inform businesses of the recycling requirements and how to successfully comply with the program. When obtaining or renewing a city business license, businesses will be required to self-report on their recycling efforts.
- Businesses shall ensure that recycling containers for internal maintenance of work areas are provided where recyclable materials may be collected, stored, or both.

- Businesses shall post accurate signs that describe the location where recyclable materials are collected, stored, or both; identify the materials that the business must source separate for reuse or recycling; and provide recycling instructions.
- In order to encourage maximum participation in the Business Recycling Program, the City's designee will offer technical assistance to businesses, upon request. Code enforcement and penalties will be used as a last resort and reserved for those few uncooperative businesses that refuse to improve their waste prevention recycling practices after technical assistance efforts. Code enforcement actions will be handled as follows:
 - (a) Businesses found out of compliance may receive a written notice of non-compliance that describes the violation, how the violation can be cured through the education process, and an offer of assistance.
 - (b) If the business does not cure the violation within the timeframe specified, the enforcement procedures and penalties found in TMC 9-1-080(1) may be used.
- Proof of compliance will be based on self-reported verification that Best Management Practices (BMPS) are being followed. These practices will assist businesses to improve their recycling ability and prevent generation of waste, rather than a quantitative measurement of business waste generation and recycling.
- The compliance strategy for this program will be assistance-driven. Recycle at Work and Allied Waste staff will continue to work with businesses to help them implement waste reduction and recycling programs, using free on-site assistance and educational materials crafted to individual business needs.

This new program will be phased into our current business license process beginning in January 2010.

PUBLIC INVOLVEMENT:

In early 2008, Metro met with local business groups and elected officials for input on a possible business recycling requirement. This program was adopted by Metro in July of 2008 and requires local businesses to recycle all types of paper and certain containers such as plastic bottles, aluminum cans, and glass.

Metro representative Marta McGuire, Senior Planner for Metro Sustainability Center, attended the work session on February 23, 2009, and presented information regarding program requirements and compliance issues.

Attachment: Ordinance

ORDINANCE NO. 1280-09

AN ORDINANCE RELATING TO MANDATORY RECYCLING FOR BUSINESSES; ADDING NEW SECTIONS 9-6-005, 9-6-010, 9-6-020 and 9-6-030 TO THE TUALATIN MUNICIPAL CODE.

THE CITY OF TUALATIN ORDAINS AS FOLLOWS:

Section 1. A new section, 9-6-005, is added to the Tualatin Municipal Code to read as follows:

Purpose and applicability.

- (1) The purpose of this Ordinance is to comply with the Business Recycling Requirements set forth in Metro Code Chapter 5.10 and to assist the Metro region in achieving waste reduction goals, conserving natural resources, and reducing greenhouse gas emissions by increasing business recycling.
- (2) This Ordinance applies to all businesses and business recycling service customers for which the principal office is not a residence.
- (3) The City may exempt a business from some or all of the Business Recycling Requirements if:
 - (a) The business provides access for a site visit; and
 - (b) The City or its designee determines during the site visit that the business cannot comply with the Business Recycling Requirement.

Section 2. A new section, 9-6-010, is added to the Tualatin Municipal Code to read as follows:

As used in this Ordinance, the following definitions apply:

- (1) "Business" means an entity of one or more persons, corporate or otherwise, engaged in commercial, professional, charitable, political, industrial, educational, or other activity that is non-residential in nature, including public bodies.
- (2) "Business recycling service customer" means a person who enters into a service agreement with a waste hauler or recycler for business recycling services.

Section 3. A new section, 9-6-020, is added to the Tualatin Municipal Code to read as follows:

- (1) Businesses shall ensure that recycling containers for internal maintenance of work areas are provided where recyclable materials may be collected, stored, or both.
- (2) Businesses and business recycling service customers shall post accurate signs that:
 - (a) Describe the location where recyclable materials are collected, stored, or both;
 - (b) Identify the materials that the business must source separate for reuse or recycling; and
 - (c) Provide recycling instructions.

Section 4. A new section, 9-6-030, is added to the Tualatin Municipal Code to read as follows:

- (1) In order to encourage maximum participation in the Business Recycling Program, the City or its designee will offer technical assistance to businesses, upon request. Code enforcement and penalties will be used as a last resort and reserved for those few uncooperative businesses that refuse to improve their waste prevention recycling practices after technical assistance efforts.
- (2) Code enforcement actions will be handled as follows:
 - (a) Businesses found out of compliance may receive a written notice of non-compliance that describes the violation, how the violation can be cured through the education process, and an offer of assistance.
 - (b) If the business does not cure the violation within the timeframe specified, the enforcement procedures and penalties found in TMC 9-1-080(1) may be used.

INTRODUCED AND ADOPTED this 23rd day of March 2009.

CITY OF TUALATIN

By  _____
Mayor

ATTEST:

By  _____
City Recorder

Approved as to legal form:


City Attorney