



MEMORANDUM CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

FROM: Sherilyn Lombos, City Manager

DATE: January 28, 2019

SUBJECT: Work Session for January 28, 2019

5:00 p.m. (45 min) – Introduction of Tualatin 2040. Tualatin 2040 is the policy prioritization phase of the Development Code update, building on the recent success of the Development Code modernization project. Tualatin 2040 will have robust and inclusive engagement to help identify policy areas of importance to the community, based on the goals previously identified in the Tualatin Tomorrow Vision. Tualatin 2040 will start with a Housing Needs Analysis and companion Economic Opportunities Analysis, which will update the City's inventory of buildable lands, providing potential policy recommendations in these areas. Tualatin 2040 will result in a plan that establishes priority areas for future policy and development code updates.

5:45 p.m. (30 min) – Public Sector Bargaining – a Briefing. The Human Resources Director will give a high-level briefing about public sector bargaining.

6:15 p.m. (30 min) – Public Hearings – a Briefing. The City Attorney will give an informational briefing about hearings, specifically land use hearings (legislative and quasi-judicial). He will cover information about the process for each type of hearing, appeals, ex parte communication, and bias, all to provide you useful tools to use in your role as the City's policy makers.

6:45 p.m. (10 min) – Council Meeting Agenda Review, Communications & Roundtable. Council will review the agenda for the January 28th City Council meeting and brief the Council on issues of mutual interest.



MEMORANDUM

CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos, City Manager

FROM: Aquilla Hurd-Ravich, Community Development Director
Community Development Staff

DATE: 01/28/2019

SUBJECT: Introduction to Tualatin 2040

ISSUE BEFORE THE COUNCIL:

Staff is pleased to introduce Tualatin 2040, which includes the next phase of the Development Code update plus a Housing Needs Analysis and an Economic Opportunities Analysis.

POLICY CONSIDERATIONS:

Tualatin 2040 will, in the future, include a review of and recommendations on a variety of potential changes to City policies, the Comprehensive Plan, and the Development Code.

EXECUTIVE SUMMARY:

Tualatin 2040 is the policy prioritization phase of the Development Code update, building on the recent success of the Development Code modernization project. Tualatin 2040 will have robust and inclusive engagement to help identify policy areas of importance to the community, based on the goals previously identified in the Tualatin Tomorrow Vision. Tualatin 2040 will start with a Housing Needs Analysis and companion Economic Opportunities Analysis, which will update the City's inventory of buildable lands, providing potential policy recommendations in these areas. Tualatin 2040 will result in a plan that establishes priority areas for future policy and development code updates.

DISCUSSION:

Tualatin 2040 is the combination of three projects resulting in one product. It includes the next phase of the Development Code Update which is Policy Identification. We are building on early visioning work completed during Tualatin Tomorrow and the recent success of the Development Code modernization project, which was a policy neutral update. As City staff embarked on the modernization project, we heard from community members that housing policies were a real concern. Rather than wait until the end of the Policy Identification phase to start looking at housing, staff will embark on a Housing Needs Analysis at the beginning of the policy identification phase. In tandem with a Housing Needs Analysis, we are also embarking on an Economic Opportunities Analysis. These two technical exercises work together because they

both use the same buildable lands inventory and policies from one can influence the policies of the other. The end product of Tualatin 2040 is a policy prioritization plan that incorporates community feedback, audits of the City's existing policy documents, and policy alternatives based on findings from the three projects.

Public Engagement for Tualatin 2040 includes providing multiple opportunities for diverse and representative engagement from a cross-section of the community by having a Community Advisory Committee for the specific policy areas of housing and economy, as well as conducting stakeholder interviews for other policy areas identified in the Tualatin Tomorrow vision. The greater community will have opportunities to engage with open houses, advisory body meetings, and public comment opportunities. A project specific webpage will also be established. Included below is a description of each project.

- **Policy Identification:** This project is intended to identify community priorities for updates to the Tualatin Development Code gathered from the public engagement described above. This project is expected to identify a wide range of issues from relatively minor localized concerns to fundamental, city-wide issues. This project will be limited to issue identification, no plan or code amendments will be completed during this project.
- **Housing Needs Analysis:** Will result in an updated inventory of buildable residential land and will examine existing conditions and demographic trends to determine whether the City can accommodate the appropriate housing needs for Tualatin in the next 20 years. This technical analysis will form the basis for potential housing policy and development code changes.
- **Economic Opportunities Analysis:** Will result in an updated inventory of commercial and industrial land and will examine community priorities and opportunities and future development demand. This technical analysis will form the basis for potential changes to the City's economic development strategic plan, as well as potential economic policy and development code changes.
- **Policy Prioritization Plan:** Feedback generated from public engagement will inform the Council as to what policy areas are most important to the community. Updated housing and economic data also will serve as a basis for potential policy changes. Combining these elements, staff will develop a draft plan for Council adoption that establishes priority areas for future policy and development code updates.

Tualatin 2040 Timeline

- **Previously Completed:**
 - Tualatin Tomorrow Visioning; Code Update - Modernization
- **Winter 2019:**
 - Tualatin 2040 kickoff; Community Advisory Committee kickoff; City Advisory Committee outreach and decision maker outreach
- **Spring 2019:**
 - Public engagement via interviews for Policy Identification
- **Summer 2019:**
 - Open houses and public engagement; final policy audit
- **Fall 2019:**
 - Draft policy prioritization plan
- **Winter 2019/2020:**
 - Council action to acknowledge Tualatin 2040 work and endorse the Final Policy Prioritization Plan.

Attachments: [Attachment A - Presentation](#)



Tualatin 2040
Overview
Council Work Session
January 28, 2019



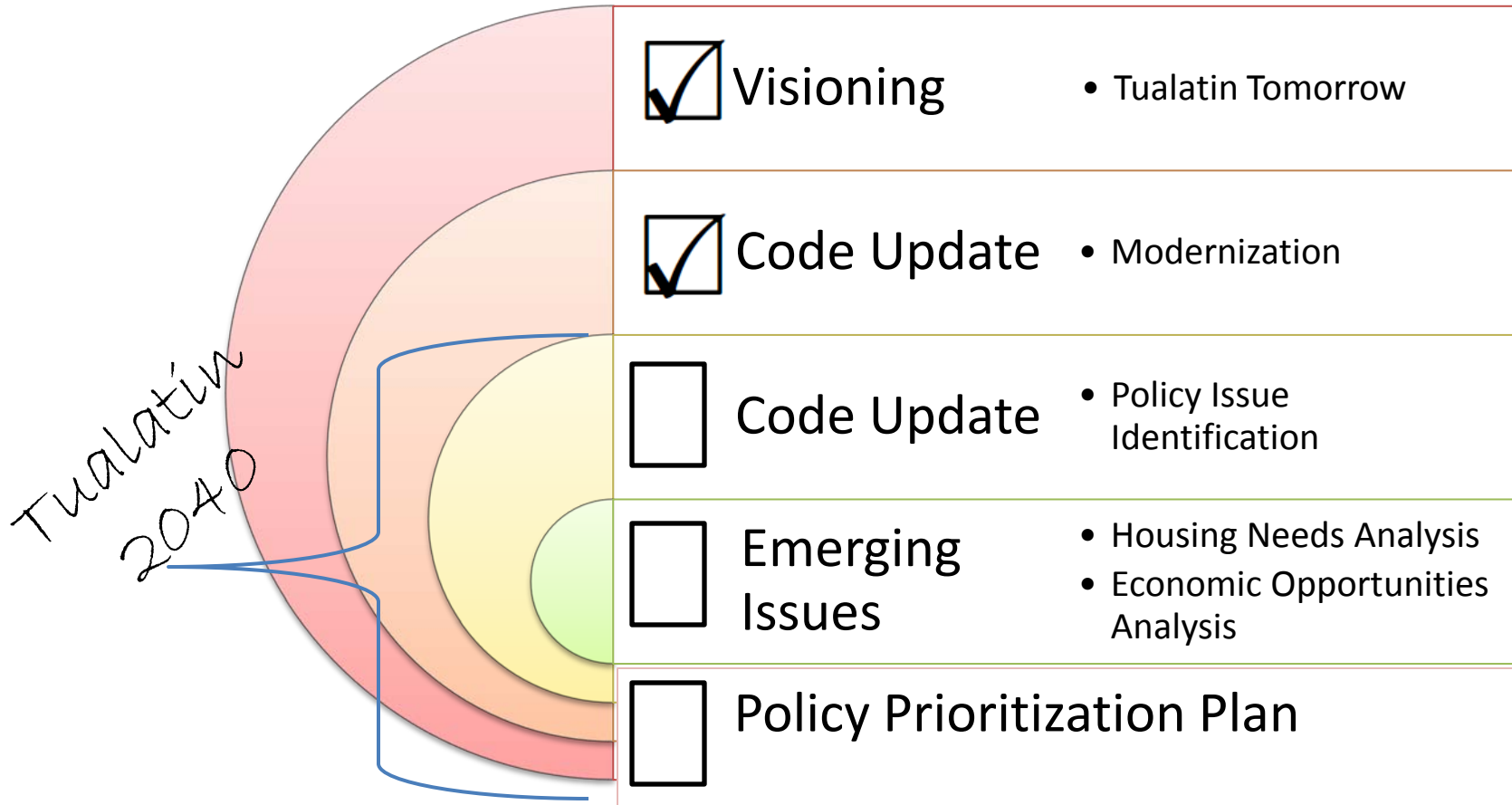
What is Tualatin 2040?

- Next phase of the Development Code update
- Tualatin 2040:
 - Policy Identification
 - Housing Needs Analysis
 - Economic Opportunities Analysis
 - Policy Prioritization Plan





How did we get here?





Policy Identification

What is it?

- Identifies community priorities
- Interview: Broad range of community members, advisory committees, and decision makers
- Does the Community Plan and Code reflect the community visions?
- Identified issues influence policy analysis





Why is Tualatin doing an HNA?

A Housing Needs Analysis (HNA) will...

- Growth expected over the next 20-years?
- Available buildable land?
 - Vacant
 - Unconstrained physically or by policy
- Does buildable land to accommodate expected growth?
- What development patterns make sense?
- Informs future City actions and plans



Steps in an HNA

1. Project new housing units needed in the next 20 years, using Metro's adopted forecast
2. Understand demographic and socioeconomic trends related to housing need
3. Determine types of housing likely to be affordable based on household income
4. Inventory vacant and potentially redevelopable land
5. Determine whether Tualatin has enough land to accommodate growth by Zone.
6. Make recommendations for changes to housing policies



Opportunities for Needed Housing

Single-Family Detached

Single-family detached
Manufactured & mobile homes
Cottage Housing



Multifamily (2+ Units per Structure)

Duplexes
Tri- and 4-Plexes
Apartments – owner & renter occupied



Single-Family Attached





Why is Tualatin doing an EOA?

An Economic Opportunities Analysis (EOA) will...

- Inform if there is enough land to accommodate expected employment growth?
- What types of industries may grow here and what types of land do they need?
- Describe existing economic conditions and forecast future conditions to inform:
 - Land use policy
 - Economic development strategy
 - Coordination



What are the parts of an EOA?

- Inventory of buildable commercial and industrial land
 - Information about characteristics of vacant and potentially redevelopable land
- Forecast Employment Growth
 - Understand Tualatin's competitive advantages
 - Identify potential growth industries
 - Forecast employment and land needs
- Recommendations for economic development strategies and policies



Policy Prioritization

Policy Prioritization Plan:

- List of key issues from stake holder engagement and policy audit
- Categorized by key issue, degree of difficulty and benefit to the community
- Presentation to Planning Commission and City Council
- Will include findings from the Housing Needs Analysis and Economic Opportunities Analysis.





Council Action

- Resolution to acknowledge Tualatin 2040 work and endorse the final Policy Prioritization Plan



Schedule

Complete	Complete		Winter 2019	Spring 2019	Summer 2019	Fall 2019	Fall 2019/ Winter 2020
Visioning- Tualatin Tomorrow	Code Update- Modernization	Code Update- Policy Identification:	City Advisory Committee outreach	Small group outreach	Final Policy Audit		
		Housing Needs Analysis & Economic Opportunities Analysis	<ul style="list-style-type: none"> • Kickoff • First Advisory Committee 		<ul style="list-style-type: none"> • Open houses • Public engagement 		
		Policy Prioritization:					Draft Plan



**QUESTIONS
DISCUSSION
RECOMMENDATIONS**



STAFF REPORT

CITY OF TUALATIN

City Council Work Session

Meeting Date: 01/28/2019

Subject: Public Sector Bargaining

Through: Sherilyn Lombos, Administration

Handout

Labor Negotiations Work Session – 1.28.2019 **Overview of the Public Employee Collective Bargaining Process**

What is Collective Bargaining and why do we engage in this process?

The term “collective bargaining” generally refers to the process by which a union and City engage in a series of negotiations to create a finalized contract that will govern the subjects of bargaining.

Bargaining in Good Faith

For public sector employers, the statute that governs collective bargaining is called the Public Employee Collective Bargaining Act (PECBA). First established in 1973, the PECBA gives Oregon public employees the right to form, join and participate in labor unions. Under PECBA, a public employer and the union representing the public employees are initially required to meet and bargain directly with each other (ORS 243.712(1)). PECBA requires that the parties participate in good faith negotiations for at least 150 calendar days before either party may unilaterally request the assignment of a mediator. Bargaining in good faith means that you agree to meet regularly at reasonable times and places; Endeavor to reach agreement; consider and respond to proposals; do not bypass the authorized bargaining agent; or otherwise undermine the other side’s representative. Good faith does not require you to make concessions, change your proposal, or agree to any particular union proposal to reach agreement.

Effective bargaining is based on ideals that resonate with both workers and employers, such as working together to solve problems and treating each other with respect. Bargaining allows both the Union and the City to exchange views and resolve the issues being bargained.

The Bargaining Process Overview

To start the bargaining process, close to the termination of the current contract, the Management Team and the Union team have an initial meeting and typically agree on ground rules for negotiations and discuss meeting dates into the future. State law and court cases determine the mandatory, permissive, and prohibited subjects of bargaining. Mandatory subjects are those that directly impact – wages, hours or working conditions (or terms and conditions of employment). These are subjects over which the parties must bargain if a proposal is made by either party.

After each article has either been opened and tentatively agreed upon or remains unopened (status quo for next contract), this is known as reaching tentative agreement. The contract remains tentative until it has been formally approved by the union’s members and then ratified by Council.

If the two teams are not able to reach agreement, they can pursue impasse options provided in state law that may lead to a settlement. There may be four impasse options, (mediation, fact-finding, interest arbitration, or strike) and one or all can be used to settle a dispute. Exception: TPOA is strike prohibited because they are safety.

If the tentative agreement is ratified by both sides, then the parties have a new (or successor) agreement. If the tentative contract agreement is not ratified—by either party—the teams usually go back to the bargaining table and continue negotiations. They negotiate until they are able to bring back a new tentative agreement for a vote.

Once a contract is finalized, the union and City are responsible to abide by the terms covered in the contract for the duration of the contract.

The ULP

A ULP is an Unfair Labor Practice. An unfair labor practice in US labor law refers to certain actions taken by employers or unions that violate the National Labor Relations Act of 1935 29 U.S.C. § 151–169 and other legislation. Such acts are investigated by the National Labor Relations Board.

The National Labor Relations Board (NLRB) has created an extensive listing of employer actions that it considers would unduly interfere with an individual employee's labor rights. The National Labor Relations Act (NLRA) has defined five categories of unfair labor practices (ULP) that are prohibited for employers. These include:

1. **Interference, restraint, or coercion.** An employer cannot interfere with, restrain, or coerce employees in the exercise of their rights.
2. **Employer domination or support of a labor organization.** An employer may not try to dominate or interfere with the formation or administration of any labor organization
3. **Discrimination on the basis of labor activity.** An employer may not discriminate against an employee in hiring, or tenure of employment, or any term or condition of employment in order to encourage or to discourage membership in any labor organization.
4. **Discrimination in retaliation for going to the NLRB.** An employer may not discharge or otherwise discriminate against an employee in terms and conditions of employment because he or she has filed charges or given testimony.
5. **Refusal to bargain.** An employer will be in violation of the NLRA if the company (a) refuses to bargain collectively with the representatives of the employees, (b) refuses to recognize a majority union, (c) takes unilateral actions, (d) refuses to provide necessary information to union representatives, (e) refuses to sign a written contract once an agreement is reached, (e) or imposes conditions on its willingness to bargain.

Why should Council be concerned about ULPs?

The short answer: End runs during Council meetings or side bargaining from the union.

Any individual from the Union may approach you and want to discuss the bargaining process. As negotiations continue, the union may seek meetings with individual elected official(s) to discuss the agency's bargaining position. As with any group of constituents, an elected official can choose to meet with them or not. If an elected official does meet with union officials, the official should be clear that the official is not speaking on behalf of the governing body. Such meetings can lead to an unfair labor practice accusation of "direct dealing." Avoid any action that makes it appear that the agency is interfering in the union's relationship with the employees it

represents. If the elected official meets with union representatives, it is helpful to share the conversation with the agency's bargaining representatives. The conversation may provide insights that will help the agency's negotiators move the process forward.

So, now that you have the basics of how we bargain, what is your role in the process?

The City Council's Role.

- Meet in executive session with its negotiator to discuss matters related to negotiations
 - Negotiator value: to distance each independent elected official; to set parameters of authority for the bargaining team
- During executive session, I will come to you with updates and recommendations and to look to you for guidance to management team on economic and other issues; where to draw the line and when to incur arbitration/fact-finding expenses
- Determines service levels and priorities in conjunction with managers. Managers report back to Councilors about the face-to-face negotiations' progress and any impediments to reaching agreement.
- Reserves final ratification authority
 - The tentative agreement will be brought before Council to formally ratify the contract
- Avoiding end runs (public meetings; private meetings)
- Speaking privately with union leadership during bargaining



STAFF REPORT

CITY OF TUALATIN

City Council Work Session

Meeting Date: 01/28/2019

Subject: Public Hearing Briefing

Through: Sherilyn Lombos, Administration

PowerPoint



City of Tualatin

Land Use Hearings

CITY COUNCIL WORK SESSION

JANUARY 28, 2019

Sean Brady
City Attorney

Overview

- Land Use Hearings
- Ex Parte Contacts
- Bias
- Conflicts of Interest



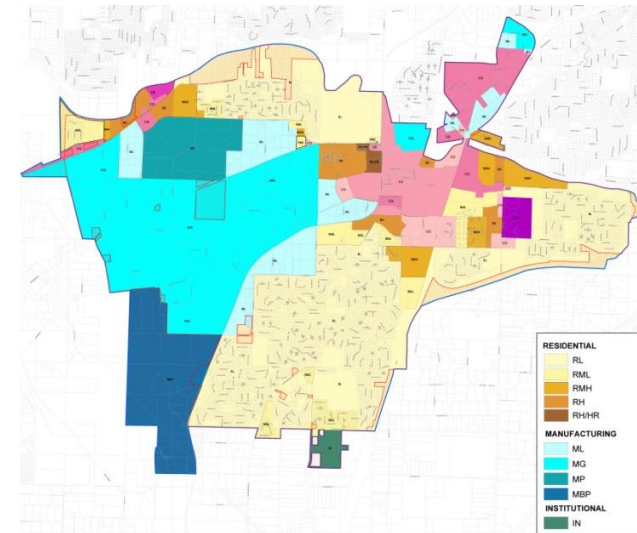
Land Use Hearings

- Two Types of Land Use Hearings
 - Legislative
 - Sitting as a Legislator
 - Enacting a law that broadly applies
 - No Requirement to Enact the Law
 - Quasi-Judicial
 - Sitting as a Judge
 - Considering and Applying Evidence to Criteria in the Code
 - Site-specific Zoning or Map Changes
 - Must Issue a Written Decision within 120-days



Legislative Hearings Process

- Notice of Public Hearing to Public and DLCD
- Conduct Public Hearing
- Ordinance Enacted
 - ▣ Includes Legislative Findings and Conclusions
 - Compliance with State Land Use Laws
 - City Comprehensive Plan and Master Plans
 - Metro Urban Growth Management Plan
- Staff Notifies DLCD of Final Action



Quasi-Judicial Hearings Process

- Provide Notice of Public Hearing
- Mayor Reads the Script
- Disclose
 - Ex Parte Communications
 - Bias
 - Conflicts
- Evidentiary Portion of Hearing
- Close Hearing, Deliberations, and Vote
- Direct Staff to Bring back a Final Written Decision at Future Meeting
- At Future Meeting, Council votes on Resolution or Ordinance, which includes Findings



Land Use Appeals

- Legislative – Appeal to LUBA
 - Challenge whether Legislative Action Complied with
 - State Land Use Laws
 - City Comprehensive Plan and Master Plans
 - Metro Urban Growth Management Plan
- Quasi-Judicial – Appeal to LUBA
 - Challenge Criteria
 - Challenge Application of the Criteria
 - Challenge Sufficiency of the Evidence



Ex Parte Contacts

- Applies To Quasi-Judicial Not Legislative Decisions
- Origins in Due Process
 - Right to Be Heard
 - Right to Impartial Tribunal
 - Present and Rebut Evidence

Ex Parte Communication

- Elements:

- 1) Communication;

- Written

- Oral

- Electronic

- 2) Made to a Decision-Maker;

- 3) Outside of the Quasi-Judicial Hearing;

- 4) Concerning the subject matter of the Quasi-Judicial Hearing; and

- 5) Occurs While a Matter is Pending

- After a formal application is filed

- Before Final Decision



Contacts with Staff

- Communication with Staff
 - Not Ex Parte When:
 - Consulting regarding the evidence presented
 - Concerning interpretations or application of code
 - Is Ex Parte If:
 - Communication with Staff presents new evidence; and
 - Decision-maker wants to rely on that evidence, in whole or in part, as a basis to make the decision



Other Contacts

- Attorneys
 - City Attorney
 - Not Ex Parte
 - Party Attorney
 - Ex Parte
- Site Visits
 - Ex Parte
- Newspaper Articles
 - Ex Parte if:
 - Urge a Result; and
 - Discuss a Fact at issue in the pending matter



Other Contacts (Cont.)

- Recess of Hearing
 - Discussions with audience members about substance of hearing during a recess
 - Ex Parte
- After Close of Hearing
 - Contacts relating to substance of hearing after hearing closed, but before final written decision issued
 - Ex Parte
 - Contacts while case on Appeal to LUBA
 - Ex Parte if case is remanded from LUBA

How to Cure Ex Parte Contact

- 1) Announce that an Ex Parte contact has occurred:
 - ▣ At the next public hearing immediately after contact occurs
 - ▣ Before the public hearing begins or resumes
- 2) State the **nature** and **substance** of the contact
 - ▣ Specific enough to allow the parties to respond or offer evidence in rebuttal
- 3) Decision-making body allows all parties to the proceeding to:
 - ▣ Opportunity to question the decision-maker to clarify the contact; and
 - ▣ Present evidence and argument to rebut the substance of what was discussed outside of the hearing

Risks If Do Not Cure

- Violates Substantial Rights of Parties
 - ▣ Right to Be Heard
 - ▣ Right to Impartial Tribunal
 - ▣ Present and Rebut Evidence
- Basis for Invalidating the Decision



Bias

- A decision-maker that substantially impairs a party's ability to receive a full and fair hearing.
 - Can be in favor or against
- Actual Bias
 - Prejudice or prejudgment of the case to such a degree that the decision-maker is incapable of making a decision on the merits
 - Personal bias
 - Personal prejudice
 - Interest in the outcome



Bias

- Established through:
 - Explicit statements, pledges, or commitments that the elected local official has prejudged the specific matter before the tribunal.
- Insufficient:
 - Circumstantial Evidence based on Prior Acts
 - Statements made in a campaign
 - Prior active appeal and opposition to a similar project
 - Prior praise for legislation opposing the project
 - Prior newspaper editorials about the project being a “bad idea”

Conflict of Interest

- Two Types of Conflicts
 - ▣ Actual Conflict
 - ▣ Potential Conflict



Actual Conflict of Interest

- Action, decision, or recommendation by a public official
- The Effect of which “**would be to the private pecuniary benefit or detriment**” of:
 - Public Official
 - Relative of the Public Official
 - Business with which the Public Official is Associated
 - Business with which a relative of the Public Official is associated.
- Business Does Not Include Non-profit - 501(c) corporations if:
 - Member of a Nonprofit
 - Position on Board of Directors; or
 - Association is unpaid relationship

ORS 244.020(1)

Required Action if Actual Conflict

- Disclose the nature of the conflict and reason for abstention
 - Abstention alone is insufficient
 - Must give reasons
- Refrain from Discussions
- Refrain from Voting



Potential Conflict of Interest

- Action, decision, or recommendation by a public official
- The Effect of which “**could be to the private pecuniary benefit or detriment**” of:
 - Public Official
 - Relative of the Public Official
 - Business with which the Public Official is Associated
 - Business with which a relative of the Public Official is associated.
- Business Does Not Include Non-profit - 501(c) corporations if:
 - Member of a Nonprofit
 - Position on Board of Directors; or
 - Association is unpaid relationship

ORS 244.120(13)

Required Action if Potential Conflict

- Disclose nature of the conflict
 - Stating “I have a conflict” is insufficient
- May participate in Discussions
- May participate in Voting
 - May still choose recusal, but not required



Fail to Disclose Conflicts

- Fail to disclose nature of the conflict and/or reason for abstention
 - Personal Liability under ORS 244
 - Jurisdiction of the Oregon Government Ethics Commission
 - Decision may be Voided
 - Depends on the Circumstances

Question Whether Conflict Exists

- Consult with Oregon Government Ethics Commission (OGEC)
- City Attorney
 - ▣ Assist through Process



Questions on Land Use Hearings

