

ORDINANCE NO. 1339-12

AN ORDINANCE CHANGING TUALATIN PLANNING ADVISORY COMMITTEE INTO A PLANNING COMMISSION AND GRANTING DECISION-MAKING AUTHORITY OVER SPECIFIED LAND USE APPLICATIONS; AND AMENDING TDC 1, 2, 31, 33, 34, 35, AND 37 (PTA-11-11)

WHEREAS upon the application of Community Development Department, a public hearing was held before the City Council of the City of Tualatin on January 9, 2012, related to a Plan Text Amendment of the Tualatin Development Code (TDC); and amending TDC 1, 2, 31, 33, 34, 35, and 37 (PTA-11-11); and

WHEREAS notice of public hearing was given as required under the Tualatin Development Code by publication 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 January 9, 2012, 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 [5-0] with Councilors Truax and Beikman absent; and

WHEREAS based upon the evidence and testimony heard and considered by the Council and especially the City staff report dated January 9, 2012, 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.

THE CITY OF TUALATIN ORDAINS AS FOLLOWS:

Section 1. The following definitions are amended or added to TDC 1.020 in alphabetical order to read as follows:

TPAC. Tualatin Planning Advisory Committee, the predecessor to the Tualatin Planning Commission.

TPC. The Tualatin Planning Commission.

Section 2. TDC 1.030 is amended to read as follows:

(1) An amendment to the Text or the Plan Map of the Tualatin Community Plan may be initiated by the City Council, City staff or by a property owner or a person authorized in writing by the property owner.

(2) An applicant for an amendment to the Text or Plan Map shall discuss the proposed amendment with the Community Development Director in a pre-application conference prior to submitting an application. An application for an amendment to the Text or Plan Map shall be on forms provided by the Community Development Department, and the application shall be accompanied by an amendment fee as established by City Council resolution. An applicant for a Plan Map or Text Amendment for a specific property shall conduct a Neighborhood/Developer Meeting subject to TDC 31.063. The application submittal shall include information on the Neighborhood/Developer meeting specified in TDC 31.063(10). If a railroad-highway grade crossing provides or will provide the only access to the subject property, the applicant must indicate that fact in the application, and the City must notify the ODOT Rail Division and the railroad company that the application has been received.

(3) Amendments to the Text or Plan Map shall be considered by the Council at any regular or special meeting.

(4) During the month of April, 1984, the Council shall hold a public hearing for the purpose of conducting a comprehensive review of the Plan Text and Plan Map. During the month of April of each fifth year thereafter, the Council shall hold a public hearing for a comprehensive review of said Text and Plan Map. Notice of said public hearings for comprehensive review shall be the same as required in TDC 1.031(1) and (2) below for amendments to the Tualatin Community Plan.

(5) Notwithstanding the foregoing provisions, the Council shall conduct a public hearing at any time it is necessary to consider an amendment or amendments to the Plan Text or Plan Map when it is required to comply with the rules, regulations, goals, guidelines or other legal actions of any governmental agency having jurisdiction over matters contained in said Plan Map or Plan Text. Publication in a newspaper of general circulation in the City, as herein provided by TDC 1.031(1) and (2), shall be the only type of notice required for this type of amendment.

(6) Properties located outside of the City's corporate limits and inside of the City's acknowledged Urban Growth Boundary shall automatically become subject to the planning district specified by the Tualatin Comprehensive Plan Map and applicable provisions of the Development Code immediately upon the effective date such property or portion thereof is annexed to the City. No additional action by the City, including publication and mailing of notices, public hearings, ~~or~~ consideration and

recommendation by the Tualatin Planning Advisory Committee Commission and consideration and decision by the City Council shall be required. This provision shall satisfy ORS 215.130(2)(a) which requires the City to provide for a transition from County planning and zoning to City planning and zoning upon annexation. The effective date of annexation shall be the date stated on the final order of the Portland Metropolitan Area Local Government Boundary Commission or any successor agency or court exercising jurisdiction in the matter, or the date any election results are certified by the County Elections Official, whichever is applicable.

Section 3. TDC 2.050 is amended to read as follows:

(1) The first Statewide Planning Goal is the Citizen Involvement Goal. This goal provides that each community must adopt, implement and periodically review a citizen involvement program. In 1976 the Tualatin City Council appointed a 7-member Committee for Citizen Involvement (CCI) to draft a Citizen Involvement Program. This program was adopted by the City Council on April 12, 1976, and has been the basis for the City's citizen involvement activities. After the adoption of the Citizen Involvement Program, the City Council formed two new advisory committees to provide recommendations to the Council on planning matters. These new groups were the Tualatin Planning Advisory Committee (TPAC), which became the Planning Commission in 2012, and the Urban Renewal Advisory Committee (URAC). URAC provides planning assistance to the Tualatin Development Commission on matters within the Urban Renewal Area, and TPAC the Planning Commission provides planning recommendations for the general community.

(2) The City Council transferred the Citizen Involvement Program responsibility to the Tualatin Planning Advisory Committee in 1976. This responsibility was transferred to the Tualatin Planning Commission in 2012.

(3) Another advisory group influencing the plan is the Tualatin Park Advisory Committee (TPARK). This committee oversees the City's park and recreation programs and thus has an interest in the park and recreation element of the Public Facilities Plan, which is also reflected on the community's General Land Use Plan. Both TPAC (changed to the Tualatin Planning Commission) and TPARK have met regularly to review the plan proposals and to take actions recommending this plan to the City Council. Meeting minutes and tape recordings are available for public review at the Tualatin City Hall. The powers, duties and organizational structure of TPAC the Planning Commission and TPARK are described below.

Section 4. TDC 2.060 is amended to read as follows:

(1) Number of members: 7.

(2) Selection criteria: good geographic balance; no more than three members with same occupation; no more than two members engaged in the real estate development profession; reside within City except for those members allowed to live outside the City who must reside within the Urban Growth Area.

(3) Term of office: Each ~~committee~~ commission member shall serve three years per term. The City Council may reappoint a member continually or appoint a successor.

(4) Powers and duties – Decisions: The Planning Commission shall hear and decide the following land use applications using the quasi-judicial evidentiary hearing procedures in TDC 31.077:

- (a) Industrial Master Plan (IMP)
- (b) Reinstatement of Use
- (c) Sign Variance (SVAR)
- (d) Transitional Use Permit (TRP)
- (e) Variance (VAR)

(5) Request for Review of Planning Commission decisions shall be to the City Council and follow the Requests for Review process set forth in TDC 31.078.

(46) Powers and duties (Recommendations): recommend and make suggestions to the Council regarding preparation and revision of plans for the growth, development, and beautification of areas both inside the corporate limits of Tualatin and within the City's Urban Growth Boundary, such plans to incorporate elements and subelements, including but not limited to the following:

- (a) Land Use, including through Plan Map and Plan Text Amendment (PMA and PTA)
- (b) Economic Development
Housing
Commercial and Industrial
- (c) Public Facilities
Transportation
Water Supply
Sewerage
Drainage
Parks and Open Space
Institutions

(d) Historic Resources

(e) Recommend and make suggestions to the Council regarding preparation and revision of community development ordinances, including but not limited to the following:

Tualatin Development Code
Tualatin Sign Ordinance
Tree Planting Regulations

(f) Study and propose in general such measures as may be advisable for promotion of public interest, health, morals, safety, comfort, convenience, and welfare of the City and of the area within the City's Urban Growth Boundary.

Section 5. TDC 31.076 is amended to read as follows:

(1) Upon receipt of a request for review, the Community Development Director shall indicate the date of receipt, determine the appropriate hearing body to conduct review, schedule the hearing and give notice of the hearing in accordance with this section. A request for review shall be accompanied by a fee as established by City Council resolution.

(2) The Community Development Director shall determine the appropriate hearing body to conduct review as follows:

(a) If the request for review raises issues regarding the design or conditions in the Architectural Features decision or an application of standards relating to preservation of a historic structure and the Architectural Review Board has not already held a hearing and issued a decision on the matter, then the Architectural Review Board is the appropriate hearing body for such subject matter.

(b) If the request for review raises issues regarding the design or conditions for both the Architectural Features and Utility Facilities, and if the Architectural Review Board has not already conducted a hearing and issued a decision on the matter, then the Architectural Review Board is the appropriate hearing body for the Architectural Features decision and the City Council is the appropriate hearing body for the Utility Facilities review; otherwise the City Council is the appropriate hearing body for both.

(c) If the request for review raises issues regarding the design or conditions relating to the Utility Facilities Decision then the City Council is the appropriate hearing body.

(d) If the request for review involves a final decision by the Architectural Review Board, an interpretation of Code provisions under TDC 31.070, a decision of the Community Development Director with regard to a minor variance (TDC Chapter 33),

tree removal (TDC Chapter 34), temporary use (TDC Chapter 34), a decision on demolition, relocation, alteration or new construction of a landmark (TDC Chapter 68), a decision of the City Engineer on a minor variance (TDC Chapter 33), partition or subdivision (TDC Chapter 36), property line adjustment with a minor variance (TDC Chapter 36), request for access onto an arterial street (TDC Chapter 75), an application for development within the flood plain (TDC Chapter 70), a decision on a permit within the Wetlands Protection District (TDC Chapter 71), or other application not listed in this subsection, then the City Council is the appropriate hearing body.

(e) If the request for review involves a final decision by the Planning Commission for an Industrial Master Plan (TDC Chapter 27), Reinstatement of Use (TDC Chapter 35), Sign Variance (TDC Chapter 33), Transitional Use Permit (TDC Chapter 34), and Variances (TDC Chapter 33) the City Council is the appropriate hearing body in TDC 31.078.

(3) Where a request for review is directed to the Architectural Review Board, a meeting of the Board shall be scheduled for a meeting date which is not less than seven nor more than 21 days from the expiration date of the request for review period. Except as provided herein, the Architectural Review Board shall conduct a hearing in accordance with TDC 31.077. The review conducted by the Board shall be limited to the applicable criteria, i.e. architectural features. The decision of the Architectural Review Board shall be adopted by a majority of the Board following the conclusion of the hearing. Within 14 calendar days of the decision, the Planning Department shall place the Architectural Review Board decision together with findings in support of the decision and other necessary information in a written form. The written materials prepared by the Planning Department shall be approved and signed by the Chair or Acting Chair of the Board, and thereafter such materials shall be the final decision of the Board. The written decision of the Architectural Review Board shall become final 14 calendar days after notice of the decision is given, unless within the 14 calendar days a written request for review to the City Council is received at the City offices by 5:00 p.m. on the 14th day. Notice of the final decision of the Architectural Review Board decision may be provided to any person, but shall be mailed by first class mail to:

(a) Recipients pursuant to TDC 31.064(1) and those owners of property within the vicinity of the subject property as described in TDC 31.064(1)(c) who commented on the proposal;

(b) City Council members;

(c) potentially affected governmental agencies such as: school districts, fire district, Clean Water Services, where the project site either adjoins or directly affects a state highway, the Oregon Department of Transportation and where the project site would access a county road or otherwise be subject to review by the county, then the County; and

(d) members of the Architectural Review Board.

(4) Where a request for review is directed only to the City Council, the review hearing shall be scheduled for a Council meeting date. The City Council shall conduct a hearing in accordance with quasi-judicial evidentiary hearing procedures in TDC 31.077.

(5) Where a request for review is directed by the Community Development Director to both the City Council on a Utility Facilities decision and the Architectural Review Board for an Architectural Features decision, the review hearing conducted by the City Council shall be stayed pending a final decision of the Architectural Review Board. The Council may consolidate evidentiary hearings on matters subject to direct review by the Council with related matters appealed to the Council from the Architectural Review Board. Quasi-judicial evidentiary hearing procedures shall be followed.

(6) Upon review, the decision shall be to approve, approve with conditions or deny the application under review. The decision shall be in writing and include findings of fact and conclusions for the particular aspects of the decision, which shall be based upon applicable criteria. At a minimum, the decision shall identify the Architectural Review Plan, if any, the applicant or a person to be contacted on behalf of the applicant, the date of the decision, the decision, an explanation of the rights to request a review of the decision, and any time frame or conditions to which the decision is subject.

Section 6. TDC 31.078 is amended to read as follows:

(1) The applicant or any person who submitted written comments or testified orally or in writing at the Architectural Review Board hearing or Planning Commission hearing and who may be adversely affected by the Board's or Planning Commission's decision may file a request for review of the final decision of the Architectural Review Board or Planning Commission to the City Council.

(2) The review of the Architectural Review Board decision or the Planning Commission decision to the Council shall be accomplished in accordance with this section. Failure by a person to follow the procedures described in this section may preclude that person from requesting a review by the City Council.

(3) A final decision of the Architectural Review Board or Planning Commission shall be final for the purposes of review requests, unless a written request for review is received at the City offices within 14 calendar days of the date notice of the final decision is given; or unless prior to the date a member of the City Council or the City Manager requests a review of the decision.

(4) The request for review shall contain:

(a) a description of the subject property or the proposed name of the project;

(b) the date on which the request for review is filed at the City offices;

(c) the specific matters raised for Council consideration on review and the specific reason the appellant contends the Architectural Review Board decision or Planning Commission decision is allegedly not in conformance with applicable Code requirements and reason the person is adversely affected by the decision. This requirement shall not be used to limit the matters actually considered by the City Council.

(5) The request shall be accompanied by the required fee unless it is made by a member of the City Council or the City Manager, in which case no fee shall be required.

(6) Filing a request shall automatically stay the effective date of the Architectural Features decision or a decision by the Planning Commission as described in TDC 2.060(4) until either:

(a) a hearing on the request for review is conducted and a final decision is issued; or

(b) a written withdrawal of the request for review is received by the Community Development Director from the person filing the appeal before any hearing on the request is conducted and the 14 calendar day time frame for a review request has otherwise passed.

(7) The City Council members, prior to the hearing, shall announce any potential or existing conflict of interest, bias or ex parte contacts. A Council member's right to sit may be challenged in the same manner as provided in TDC 31.077(7)(c).

(8) The City Council's consideration of the Architectural Review Board's decision or the Planning Commission decision shall follow the procedures set forth in TDC 31.077 and shall be de novo. The record of proceedings presented before the Architectural Review Board or the Planning Commission shall be presented to the City Council and shall include:

(a) all materials, pleadings, memoranda, stipulations, exhibits and motions submitted during the proceeding and received or considered by the Architectural Review Board or Planning Commission;

(b) all materials submitted by the City staff with respect to the application;

(c) the minutes of the hearing below;

(d) the order or decision of the Architectural Review Board or Planning Commission;

(e) the request for review;

(f) a person who wishes to submit for Council consideration and as part of the record a verbatim transcript of the Architectural Review Board proceedings or Planning Commission proceedings shall be provided an opportunity to do so in a timely fashion and at the person's own expense, but a transcript shall not be required.

(9) Notice of the City Council's hearing shall be given in the manner set forth in TDC 31.077(5).

(10) The Council may affirm, revise, modify or reverse the action of the Architectural Review Board or the Planning Commission in all or in part. The Council may also remand the matter back to the Architectural Review Board or the Planning Commission for further consideration. The Council may order material defects in the earlier proceedings, to be corrected, while retaining jurisdiction of the matter so that the proceedings will have been conducted in a fair and impartial manner.

(11) The Council shall adopt a written order that clearly states the basis for its decision. Where an application is approved, the terms of the approval shall be specified, including any restrictions and conditions. A proposed order submitted by the Community Development Director or any other person may be adopted by the City Council. The written order is the final decision on the matter and the date of the order is the date it is signed certifying the approval by the City Council. Unless otherwise directed by the Council, no publication or other notice of the final decision shall be required.

Section 7. TDC 33.010 is amended to read as follows:

(1) Variances may be granted under the requirements of the TDC as follows when it can be shown that, owing to special and unusual circumstances related to a specific piece of property, the literal interpretation of the TDC would cause an undue or unnecessary hardship:

(a) ~~The City Council~~ Planning Commission may grant variances, including ~~The City Council grants~~ variances that are part of a Subdivision, or a Partition Application. The City Council may grant minor variances in conjunction with a Subdivision, Partition or Property Line Adjustment that the City Engineer, without reaching a decision on the application, has forwarded to the City Council for review, or that has been appealed to the City Council.

(b) The City Engineer may grant minor variances when they are part of a Subdivision, Partition or Property Line Adjustment Application.

(c) The Community Development Director may grant minor variances that are not part of a Subdivision, Partition or Property Line Adjustment Application.

(2) Variances may be requested to TDC Chapters 40-69 and 71-73 and the Sign Standards, TDC 38.100, 38.110, 38.120 and 38.140-38.240, except that variances to the Level I (Clear and Objective) Single-family Architectural Review standards referenced in TDC 40.140 and 41.130 and set forth in TDC 73.190(1)(a) shall be prohibited. Variances to the requirements of TDC Chapter 70, Floodplain District, shall be in accordance with TDC 70.160.

(3) Minor variances may be requested to the lot area, lot width, building coverage, setbacks, projections into required yards and structure height development standards for permitted uses in the Residential Low Density Planning District (RL) and single family dwellings in Small Lot Subdivisions in the RL and Residential Medium to Low Density Planning District (RML). Minor variances may not be requested, nor approved, for more than 10% of the lot area and for no more than 20% of the lot width, building coverage, setback, projections into required yards, structure height, and the small lot location standards in TDC 40.055(3).

(4) Minor variances shall not be requested, nor shall they be approved, to the regulations in TDC Chapter 38, Sign Regulations.

(5) Variances and minor variances shall not be requested, nor shall they be approved, to allow a use of land that is not allowed in a planning district.

Section 8. TDC 33.020 is amended to read as follows:

No variance shall be granted by the ~~City Council~~ Planning Commission unless it can be shown that criterion (1) is met and three of the four approval criteria (2)-(5) are met for non-sign requests:

(1) A hardship is created by exceptional or extraordinary conditions applying to the property that do not apply generally to other properties in the same planning district or vicinity and the conditions are a result of lot size or shape, topography, or other physical circumstances applying to the property over which the applicant or owner has no control.

(2) The hardship does not result from actions of the applicant, owner or previous owner, or from personal circumstances or financial situation of the applicant or owner, or from regional economic conditions.

(3) The variance is necessary for the preservation of a property right of the applicant or owner substantially the same as is possessed by owners of other property in the same planning district or vicinity.

(4) The variance shall not be detrimental to the applicable objectives of the Tualatin Community Plan and shall not be injurious to property in the planning district or vicinity in which the property is located.

(5) The variance is the minimum remedy necessary to alleviate the hardship.

Section 9. TDC 33.022 is amended to read as follows:

No sign variance shall be granted by the City Council Planning Commission unless it can be shown that approval criteria (1)-(6) are met:

(1) A hardship is created by exceptional or extraordinary conditions applying to the property that do not apply generally to other properties in the same planning district, and the conditions are a result of lot size or shape or topography over which the applicant or owner has no control.

(2) The hardship does not result from actions of the applicant, owner or previous owner, or from personal circumstances or from the financial situation of the applicant or owner or the company, or from regional economic conditions.

(3) The variance is the minimum remedy necessary to eliminate the hardship.

(4) The variance is necessary for the preservation of a property right of the owner substantially the same as is possessed by owners of other property in the same planning district, however, nonconforming or illegal signs on the subject property or on nearby properties shall not constitute justification to support a variance request.

(5) The variance shall not be detrimental to the general public health, safety and welfare, and not be injurious to properties or improvements in the vicinity.

(6) The variance shall not be detrimental to the applicable Sign Design Objectives, TDC 20.030.

Section 10. TDC 33.024 is amended to read as follows:

No minor variance shall be granted by the Community Development Director, City Engineer or the City Council Planning Commission unless the application shows the following approval criteria are met:

(1) A hardship is created by an unusual situation that is the result of lot size, lot shape, topography, development circumstances or being able to use the land or public infrastructure more efficiently.

(2) The hardship does not result from regional economic conditions.

(3) The minor variance will not be injurious to property abutting the subject property.

(4) The minor variance is the minimum remedy necessary to alleviate the hardship.

Section 11. TDC 33.025 is amended to read as follows:

No variance to the separation or height requirements for wireless communication facilities shall be granted by the City Council Planning Commission unless it can be shown that the following criteria are met. The criteria for granting a variance to the separation or height requirements for wireless communication facilities shall be limited to this section, and shall not include the standard variance criteria of Section 33.020, Conditions for Granting a Variance that is not for a Sign or a Wireless Communication Facility.

(1) The City may grant a variance from the provisions of TDC 73.470(9), which requires a 1500-foot separation between WCFs, providing the applicant demonstrates compliance with (a) or (b) below.

(a) coverage and capacity.

(i) It is technically not practicable to provide the needed capacity or coverage the tower is intended to provide and locate the proposed tower on available sites more than 1,500 feet from an existing wireless communication facility or from the proposed location of a wireless communication facility for which an application has been filed and not denied. The needed capacity or coverage shall be documented with a Radio Frequency report;

(ii) The collocation report, required as part of the Architectural Review submittal, shall document that the existing WCFs within 1500 feet of the proposed WCF, or a WCF within 1500 feet of the proposed WCF for which application has been filed and not denied, cannot be modified to accommodate another provider; and,

(iii) There are no available buildings, light or utility poles, or water towers on which antennas may be located and still provide the approximate coverage the tower is intended to provide.

(b) site characteristics. The proposed monopole location includes tall, dense evergreen trees that will screen at least 50% of the proposed monopole from the RL District or from a small lot subdivision in the RML District.

(2) The City may grant a variance to the maximum allowable height for a WCF if the applicant demonstrates:

(a) It is technically not practicable to provide the needed capacity or coverage the tower is intended to provide at a height that meets the TDC requirements. The needed capacity or coverage shall be documented with a Radio Frequency report; and,

(b) The collocation report, required as part of the Architectural Review submittal, shall document that existing WCFs, or a WCF for which an application has been filed and not denied, cannot be modified to provide the capacity or coverage the tower is intended to provide.

Section 12. TDC 33.050 is amended to read as follows:

The ~~City Council~~ Planning Commission may recess a hearing to obtain additional information or to serve further notice upon other property owners or persons who it decides may be interested in or affected by the proposal. Upon recessing for this purpose, the ~~Council~~ Planning Commission shall announce the time, date and place when the hearing will be resumed.

Section 13. TDC 34.183 is amended to read as follows:

No Transitional Use Permit shall be granted unless the ~~City Council~~ Planning Commission finds that all the following standards are met:

(1) The use or structure must be consistent with the long-term objectives and spirit of the Tualatin Community Plan.

(2) The use or structure must not create unreasonable adverse impact on abutting or surrounding properties;

(3) By its nature, the use must be one which can be terminated and removed upon expiration of the Transitional Use Permit;

(4) Relative to the prior use, the use or existing structures may not be intensified or expanded except for uses or structures in the ML or MG Planning Districts. This is applicable to original applications, renewals and substitute uses. In addition, no new structures except for structures in the ML or MG Planning Districts may be placed upon the subject property which may prolong or increase the economic hardship of the developer at the time of the expiration of the permit. Nothing contained in this section shall be construed as limiting the authority of the ~~City Council~~ Planning Commission to require improvements to be made as conditions on which the permit is granted.

(5) The permit shall be associated only with the specific structures in question and with the particular use or operation for which the application is made. In order to provide effective notice of the Transitional Use status and not as a condition upon which the effectiveness of the Transitional Use Permit depends, the City may record the resolution or decision approving a Transitional Use Permit in the Recorder's Office of the County in which the use is located.

(6) Uses and operations which may be considered nuisances due to smoke, glare, vibrations, odors, or unsightliness, shall not be permitted.

Section 14. TDC 34.184 is amended to read as follows:

The ~~City Council~~ Planning Commission may impose any number of conditions on applications to ensure that disturbance of surrounding properties is minimized and that the objectives of the Community Plan are met. The conditions may include, but shall not be limited to time restrictions, hours of operation, periodic review above and beyond what is required by this Code, increasing the required lot size or yard dimensions, controlling the location and number of vehicular access points to the property, increasing street width, requiring dedication of additional right-of-way and improvement of the same, increasing the number of off-street parking or loading spaces required, limiting the coverage or height of buildings because of obstruction to view or reduction of light or air to adjacent property and requiring sight-obscuring fencing and landscaping where appropriate to reduce noise or glare, maintain the property in a character in keeping with the surrounding area, or for aesthetic reasons.

Section 15. TDC 34.185 is amended to read as follows:

(1) A transitional use permit shall be issued for a period of time determined to be appropriate by the ~~City Council~~ Planning Commission.

(2) A permit may be renewed by the ~~Council~~ Planning Commission at the end of the time period previously approved. An application for renewal shall be required to meet the eligibility criteria for an original application contained in TDC 34.183 and 34.182. However, the applicant for renewal need not establish that the use being proposed for renewal is more compatible with surrounding uses than the current use.

(3) Where the life span of eligibility for the structure has been determined or established by the City through an earlier Transitional Use Permit, such life span is presumed to be accurate and shall not be renewed or extended unless the ~~Council~~ Planning Commission finds by clear and convincing evidence that the current applicant meets the eligibility criteria. Where the life span of eligibility for the structure is renewed or extended, a new life span shall be established.

(4) All applications shall be made jointly by the recorded contract purchaser or owner of the property as well as the lessee or proposed user of the property and structure. The transfer of a permit shall only be permitted where the underlying property or business ownership is transferred, so long as the use of the structure remains unchanged. The Community Development Director shall determine whether a new application and permit is required and such determination may be appealed to the Council Planning Commission. Each tenant of a structure shall submit a separate application.

(5) All Transitional Use Permits shall become void without a hearing if any of the following occur:

- (a) The permit has not been exercised for 12 months;
- (b) The use approved is discontinued for 12 months; or
- (c) The period of time for which the permit has been granted expires without a renewal.

Section 16. TDC 34.186 is amended to read as follows:

(1) A request for a Transitional Use Permit is subject to a Neighborhood/Developer Meeting pursuant to TDC 31.063.

(2) Sign Posting: The applicant shall post a sign pursuant to TDC 31.064(2).

(3) All permit requests shall be submitted on forms prescribed by the Community Development Director. The applicant shall submit a list of mailing recipients pursuant to TDC 31.064(1) and a site plan, drawn to scale, showing the dimensions and arrangement of the proposed use, the application fee established by City Council resolution, a written explanation demonstrating compliance with the provisions of this section and other relevant characteristics. In addition, the applicant shall adequately describe the hardship associated with strict code interpretation and the ways in which impacts upon nearby properties and uses are to be alleviated. The Community Development Director shall prepare a staff report recommending a tentative decision to the Council Planning Commission.

(4) Before acting on a request for a transitional use permit, the City Council Planning Commission shall consider the request at a public hearing conducted in the manner provided for in TDC 31.077. The City Council Planning Commission must find that the eligibility criteria are met before an application is approved.

(5) In a case where a Transitional use terminates or relocates before the expiration of the life span of eligibility established for the structure, a new transitional use, if approved by Council Planning Commission, may occupy the structure under prescribed conditions for no more than the previously approved life span of eligibility for the structure.

(6) The ~~Council~~ Planning Commission may approve, approve with conditions, or deny a transitional use permit application based on the criteria listed above. The ~~Council~~ Planning Commission shall, in addition, place a specific time limit on the permit.

(7) An original application may include a single lot or part thereof or more than one adjacent tax lots.

Section 17. TDC 35.040 is amended to read as follows:

(1) If a nonconforming structure or use of land is discontinued for more than 12 months, it shall not be re-established unless specifically approved by the ~~City Council~~ Planning Commission. ~~Approval by the City Council shall be granted or denied~~ The Planning Commission shall grant or deny approval only after conducting a public hearing is conducted on the proposed continuance. Notice of such public hearing shall be given in the manner required in pursuant to TDC 31.077.

(2) Any nonconforming retail commercial, retail service or professional service use that is discontinued for more than 12 months, is located on land designated Industrial Area on Map 9-4, and has been specifically approved by the ~~City Council~~ Planning Commission to be re-established shall conform to the size limitations of the Manufacturing Planning District in which it is located, and also subject to the following two exemptions:

(a) Commercial uses within the Special Setbacks for Commercial Uses Area, shown generally on Map 9-5 and as specified in TDC 60.035 or 61.035, as applicable.

(b) Development approved through the application of the Industrial Business Park Overlay District, as specified in TDC Chapter 69.

(3) See TDC 35.200 for signs.

Section 18. TDC 35.050 is amended to read as follows:

(1) If a nonconforming structure or a structure containing a nonconforming use is destroyed or damaged by any cause to an extent requiring the discontinuance of the use for more than 6 months while making repairs, a future structure or use on the property shall conform to the provisions of the Tualatin Community Plan unless reinstatement of the nonconforming structure or use is approved by the ~~Council~~ Planning Commission in accordance with TDC 35.040, except for warehouse and distribution center uses existing on April 12, 2000 in the Manufacturing Park District which are not required to be reinstated.

(2) See TDC 35.200 for signs.

Section 19. TDC 35.060 is amended to read as follows:

(1) No reinstatement of a nonconforming structure or use shall be granted by the ~~City Council~~ Planning Commission unless it can be shown that all of the following conditions exist:

(a) The nonconforming structure or use, if reinstated, will not be materially detrimental to the objectives of the Tualatin Community Plan.

(b) The nonconforming structure or use, if re-instated, will not have an unreasonable detrimental effect upon the value or use of property located within 300 feet of the exterior boundaries of the property on which the reinstated nonconforming use or structure is sought.

(c) The request for reinstatement of a nonconforming structure or use was filed with the Planning Department not more than 6 months from the date on which the nonconforming structure or use was discontinued.

(2) The ~~City Council~~ Planning Commission may attach conditions to the reinstatement that it finds necessary to protect the best interests of the surrounding property including, but not limited to, compliance with those provisions of the Tualatin Community Plan that are necessary to protect the health, peace, safety and welfare of the public.

(3) See TDC 35.200 for signs.

Section 20. TDC 35.080 is amended to read as follows:

(1) The ~~Council~~ Planning Commission may recess a hearing on a request for reinstatement to obtain additional information or to serve further notice upon other property owners who it decides may be interested or affected by the proposed reinstatement. Upon recessing for this purpose, the ~~Council~~ Planning Commission shall announce the time, place and date when the hearing will be resumed.

(2) See TDC 35.200 for signs.

Section 21. TDC 37.010 is amended to read as follows:

The Tualatin ~~City Council~~ Planning Commission may approve an Industrial Master Plan within the Manufacturing Business Park (MBP) Planning District or the Manufacturing Park Planning District that sets particular standards for development within the Industrial Master Plan Area defined by such plan, in accordance with the

Tualatin Community Plan, the Southwest Tualatin Concept Plan (SWCP) and the Leveton Tax Increment Plan. Such approved plans are intended to achieve a campus-like setting within an Industrial Master Plan Area, while allowing development to occur independently on a number of smaller parcels within that area. It is the intent of this chapter to provide procedures and criteria for the submission and review of such Industrial Master Plan applications.

Section 22. TDC 37.030 is amended to read as follows:

The ~~City Council~~ Planning Commission shall approve an Industrial Master Plan, after a hearing conducted pursuant to TDC 327.040, provided that the applicant demonstrates that the following criteria are met:

(1) Public facilities and services, including transportation, existing or planned, for the area affected by the use are capable of supporting the proposed development or will be made capable by the time development is completed.

(2) The location, design, size, color and materials of the exterior of all structures for the proposed development and use is compatible with the character of other developments within the same general vicinity.

(3) The internal circulation, building location and orientation, street frontage, parking, setbacks, building height, lot size, and access are in accordance with TDC Chapter 62 for the MP Planning District and TDC Chapter 64 for the MBP Planning District unless otherwise approved through the Industrial Master Plan process.

Section 23. TDC 37.040 is amended to read as follows:

(1) Before acting on a request for an Industrial Master Plan, the application shall be considered by the ~~City Council~~ Planning Commission at a public hearing conducted in the manner provided for in TDC 31.077. The ~~City Council~~ Planning Commission may continue a hearing in order to obtain additional information or serve further notices upon property owners or persons who it decides may be interested in or affected by the proposed conditional use. Upon recessing for this purpose, the ~~Council~~ Planning Commission shall announce the time, place and date when the hearing will be resumed.

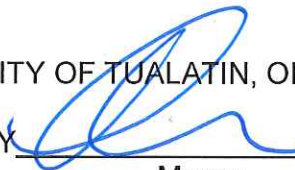
(2) The ~~City Council~~ Planning Commission may approve, approve with conditions, or deny the application for an Industrial Master Plan. The ~~City Council~~ Planning Commission may impose, in addition to the regulations and standards expressly specified in this chapter, other conditions found necessary to protect the best

interests of the surrounding property or neighborhood or the City as a whole and for compliance with the Metro UGMFP Title IV policies and requirements.

INTRODUCED AND ADOPTED this 23rd Day of January, 2012.

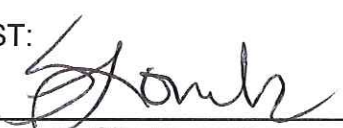
CITY OF TUALATIN, OREGON

BY

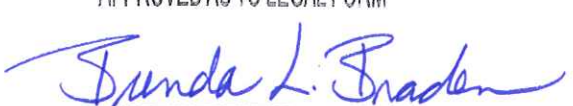

Mayor

ATTEST:

BY


City Recorder

APPROVED AS TO LEGAL FORM


CITY ATTORNEY

ITEMS REFERRED TO AS EXHIBITS IN THE FOREGOING ORDINANCE ARE ATTACHED TO THE ORIGINAL. THEY HAVE BEEN OMITTED FROM THE COUNCIL PACKET AS A CONSERVATION MEASURE. IF THESE EXHIBITS NEED TO BE EXAMINED, PLEASE CONTACT THE CITY RECORDER.



8605 SE Lake Road, Portland, OR 97222 • PO Box 22109 Portland OR 97209-2109
Phone: 503-684-0360 Fax: 503-620-3433
E-mail: legals@communitynewspapers.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 Public Hearing/PTA 11-11
TT11618

A copy of which is hereto annexed, was published
in the entire issue of said newspaper for
1

week in the following issue:
December 22, 2011

Charlotte Allsop

Charlotte Allsop (Accounting Manager)
Subscribed and sworn to before me this
December 22, 2011.

Jerrin L. Sipe
NOTARY PUBLIC FOR OREGON
My commission expires *Sept 1, 2015*

Acct #108462
Attn: Lynette Sanford
City of Tualatin, Planning Department
18880 SW Martinazzi Ave
Tualatin, OR 97062

Size: 2 x 4.75"
Amount Due: \$85.97*
*Please remit to the address above.



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., Monday, January 9, 2012 at the Council Building at 18880 SW Martinazzi Avenue to consider:

PLAN TEXT AMENDMENT (PTA) 11-11—AN ORDINANCE AMENDING THE TUALATIN PLANNING ADVISORY COMMITTEE (TPAC) INTO A PLANNING COMMISSION; AND AMENDING TDC 1.020, 1.030, 1.031, 2.050, 2.060, 33.010, 33.020, 33.022, 33.024, 33.025, 33.040, 33.050, 34.183, 34.184, 34.185, 34.186, 35.040, 35.050, 35.060, 35.080, 37.010, 37.030, AND 37.040 (PTA-11-11)

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 more information contact Colin Cortes, AICP, CNU-A, Assistant Planner at ccortes@ci.tualatin.or.us or 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 12/22/2011. TT11618

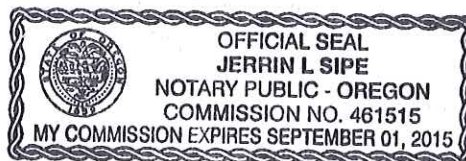


EXHIBIT A



AFFIDAVIT OF POSTING

STATE OF OREGON)
) SS
COUNTY OF WASHINGTON)

I, Lynette Sanford, 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 12 day of December 2011, 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 – Council Building
2. City of Tualatin – Development Services Building

Dated this 20 day of December, 2011

Lynette Sanford
Lynette Sanford

Subscribed and sworn to before me this 20th day of December, 2011.

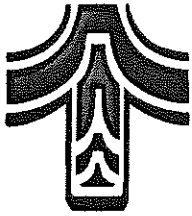
Cortney Rae Cox
Notary Public for Oregon

My Commission expires: Sept. 21, 2015



RE: PLAN TEXT AMENDMENT (PTA) 11-11—AN ORDINANCE AMENDING THE TUALATIN PLANNING ADVISORY COMMITTEE (TPAC) INTO A PLANNING COMMISSION; AND AMENDING TDC 1.020, 1.030, 1.031, 2.050, 2.060, 33.010, 33.020, 33.022, 33.024, 33.025, 33.040, 33.050, 34.183, 34.184, 34.185, 34.186, 35.040, 35.050, 35.060, 35.080, 37.010, 37.030, AND 37.040 (PTA-11-11)

EXHIBIT B



City of Tualatin

www.ci.tualatin.or.us

NOTICE OF HEARING CITY OF TUALATIN, OREGON

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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 more information contact Colin Cortes, AICP, CNU-A, Assistant Planner at ccortes@ci.tualatin.or.us or 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

NOTICE TO THE TUALATIN TIMES: Please publish in the *Tualatin Times* on
December 22, 2011

PTA-11-11 ATTACHMENT F:

ANALYSIS & FINDINGS

The approval criteria of the Tualatin Development Code (TDC), Section 1.032, must be met if the proposed PTA is to be granted. The plan amendment criteria are addressed below:

1. Granting the amendment is in the public interest.

Staff identifies that it is in the public interest to:

- a) maintain or increase the influence of public involvement in city planning
- b) maintain or increase the efficacy of bodies designated by the City Council to examine in the public interest issues of like kind such as those grouped under city planning, recommend actions to the Council, and support bridging the public and the Council on issues related to city planning.

Tualatin Development Code (TDC) 2.050, part of the City's comprehensive plan, designates the Tualatin Planning Advisory Committee (TPAC) as a citizen body responsible for fulfilling Goal 1 "Citizen Involvement." TPAC is the advisory committee dedicated to issues of city planning for the general community.

The objective of the amendment is to change TPAC into a Planning Commission and assign decision-making authority over five land use application types. The Planning Commission will retain the responsibility for recommendations and continue to provide for citizen involvement.

The goal is to increase and maintain incentive for members to join, attend, and serve the body that the Council had tasked with planning recommendations for the general community and that serves Oregon Statewide Planning Goal 1 "Citizen Involvement." This also serves principles (a) and (b) listed above.

TPAC members want to help streamline land use decisions. They and the Council discussed the topic of increasing and maintaining incentive for members to join, attend, and serve TPAC in the service of public involvement during the March 28, 2011 Council meeting in the context of the TPAC Annual Report and a July 27, 2011 special Council work session. TPAC identified reasons to have a planning commission, including that it would motivate members and facilitate recognition of their value and contribution and that it would lessen some of the land use caseload of the Council. During the October 10, 2011 Council work session, TPAC and the Council discussed and agreed to this amendment that is a sensible outgrowth of previous discussions about volunteer membership in TPAC and public involvement in general.

The amendment makes TPAC into a Planning Commission and grants decision-making authority over five (5) land use application types:

- Industrial Master Plan (IMP)
- Reinstatement of Use
- Sign Variance (SVAR)
- Transitional Use Permit (TRP)
- Variance (VAR) (Note: TDC 33.010(1)(a) allows for the City Council to review a Minor Variance [MVAR] associated with a partition, property line adjustment, or subdivision if staff elevates it or it's appealed. The amendment substitutes the Planning Commission for the City Council.)

The amendment signals greater empowerment of the body that the Council had tasked with planning recommendations for the general community and establishes incentive for members to participate more, new members to seek to join, and for the public to engage the body more. The Planning Commission will continue to meet Goal 1 and principles (a) and (b) listed above.

Granting the amendment is in the public interest. Criterion "A" is met.

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

As examined for Criterion A, the objective of the amendment is to change TPAC into a Planning Commission and assign decision-making authority over five (5) land use application types. The goal is to increase and maintain incentive for members to join, attend, and serve the body that the Council had tasked with planning recommendations for the general community and that serves Oregon Statewide Planning Goal 1 "Citizen Involvement."

In recent years, TPAC has not been able to attain quorum for some meetings, including two consecutive meetings, delaying action items. Additionally, members have expressed a desire to have decision-making authority over some land use application types believing this would build morale, attract more members, and increase public engagement with the body. The Council assented to the idea during the October 10, 2011 work session. These conditions make the amendment timely.

Granting the amendment at this time best protects the public interest.

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

In 1976 Tualatin Development Code (TDC) 2.050 designated TPAC as a citizen body responsible for fulfilling Goal 1 "Citizen Involvement." The amendment does not interfere with the Plan objective of TPAC fulfilling Goal 1. The Plan will reference

the "Planning Commission" instead of the "Tualatin Planning Advisory Committee" or "TPAC."

The proposed amendment conforms with the objectives of the Tualatin Community Plan. Criterion "C" is met.

4. The following factors were consciously considered:

The various characteristics of the areas in the City.

The factor is not relevant to the proposed amendment because it does not affect any planning district designation or related regulation.

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

The factor is not relevant to the proposed amendment because it does not affect any planning district designation or related regulation.

Trends in land improvement and development.

The factor is not relevant to the proposed amendment because it does not relate to trends in land improvement and development.

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

The factor is not relevant to the proposed amendment because it does not relate to the needs of economic enterprises and the future development of the area.

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

The factor is not relevant to the proposed amendment because it does not relate to needed right-of-way and access for and to particular sites in the area.

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

The factor is not relevant to the proposed amendment because it does not relate to natural resources of the City and the protection and conservation of said resources.

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

The consideration of the previous factor applies here also.

And the public need for healthful, safe, aesthetic surroundings and conditions.

The factor is not relevant to the proposed amendment because it does not relate to the public need for healthful, safe, aesthetic surroundings and conditions.

Proof of change in a neighborhood or area

Neither the applicant nor staff assert proof of change in a neighborhood or area.

Mistake in the Plan Text or Plan Map.

Neither the applicant nor staff assert a mistake in the Plan Text or Plan Map.

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 the amendment does not relate to residential use, the criterion is not applicable.

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

Of the 19 statewide planning goals, the applicable ones are Goal 1 "Citizen Involvement" and Goal 2 "Land Use Planning."

The objective of the amendment is to change TPAC into a Planning Commission and assign decision-making authority over five (5) land use application types. The goal is to increase and maintain incentive for members to join, attend, and serve the body that the Council had tasked with planning recommendations for the general community and that serves Oregon Statewide Planning Goal 1 "Citizen Involvement."

The amendment does not interfere with the City Council designation of TPAC in Tualatin Development Code (TDC) 2.050 as a citizen body responsible for fulfilling Goal 1. The existing responsibilities of TPAC over land use will remain with the body in its form as the Planning Commission, continuing to meet Goal 2. The criterion is met.

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

The Urban Growth Management Functional Plan (UGMFP), codified in Metro Code 3.07, neither precludes the amendment nor regulates how a local government constitutes its planning commission or equivalent. 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 the amendment does not relate to vehicle trip generation at a land use level, the criterion is not applicable.



STAFF REPORT CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

FROM: Brenda Braden, City Attorney *BB*

DATE: 01/23/2012

SUBJECT: An Ordinance Creating the Tualatin Planning Commission to Replace the Tualatin Planning Advisory Committee; and Amending Chapter 11-1 of the Tualatin Municipal Code

ISSUE BEFORE THE COUNCIL:

Council will consider whether to change the Tualatin Planning Advisory Committee to the Tualatin Planning Commission.

RECOMMENDATION:

Staff recommends that Council approve the ordinance.

EXECUTIVE SUMMARY:

On January 9, 2012 the City Council held a public hearing to consider whether to change the Tualatin Planning Advisory Committee into the Tualatin Planning Commission. At the end of the hearing the Council voted in favor of the proposal. In order to make the change, it is necessary to amend both the Tualatin Development Code, which spells out the duties, and the Tualatin Municipal Code, which creates the Commission, its membership requirements and procedures. This ordinance will amend the Tualatin Municipal Code.

OUTCOMES OF DECISION:

If the Council approves the ordinance, the Tualatin Planning Advisory Committee will become the Tualatin Planning Commission.

If the Council does not approve the ordinance, the Tualatin Planning Advisory Committee will remain as is.

Attachments: A - Planning Commission Ordinance