City of Tualatin
www.tualatinoregon.gov

NOTICE OF ADOPTION

On November 13, 2017, the City of Tualatin adopted **Ordinance No. 1406-17** changing the review authority for conditional use permits from the Tualatin City Council to the Tualatin Planning Commission (TPC), and amending Tualatin Development Code (TDC) Chapters 2, 31, and 32 (PTA-17-01). The Ordinance would allow for increased public involvement in local land use decisions.

A copy of the Ordinance is attached to this Notice. Copies also are available for review at the following locations:

- Tualatin Planning Department located at 18876 SW Martinazzi Avenue from 8 a.m. to 5 p.m., Monday through Friday
- Online at https://www.tualatinoregon.gov/planning/pta-17-0001-review-authority-conditional-use-permits.

Review of land use decisions is commenced by filing a Notice of Intent to Appeal with the Land Use Board of Appeals as provided in ORS 197.830 to 197.845. The notice of intent to appeal a land use decision must be filed within 21 days of the date the decision is mailed to parties entitled notice under ORS 197.615.

Date notice mailed: November 20, 2017

DLCD FORM 2

NOTICE OF ADOPTED CHANGE TO A COMPREHENSIVE PLAN OR LAND USE REGULATION

FOR DLCD USE
File No.:
Received:

Local governments are required to send notice of an adopted change to a comprehensive plan or land use regulation **no more than 20 days after the adoption**. (*See* OAR 660-018-0040). The rules require that the notice include a completed copy of this form. **This notice form is not for submittal of a completed periodic review task or a plan amendment reviewed in the manner of periodic review.** Use Form 4 for an adopted urban growth boundary including over 50 acres by a city with a population greater than 2,500 within the UGB or an urban growth boundary amendment over 100 acres adopted by a metropolitan service district. Use Form 5 for an adopted urban reserve designation, or amendment to add over 50 acres, by a city with a population greater than 2,500 within the UGB. Use Form 6 with submittal of an adopted periodic review task.

Jurisdiction: City of Tualatin

Local file no.: **PTA-17-01**

Date of adoption: 11/13/2017 Date sent: 11/20/2017

Was Notice of a Proposed Change (Form 1) submitted to DLCD?

Yes: Date (use the date of last revision if a revised Form 1was submitted): 09/14/2017

No

Is the adopted change different from what was described in the Notice of Proposed Change? Yes **No**

If yes, describe how the adoption differs from the proposal:

Local contact (name and title): Charles H. Benson, III, AICP, Associate Planner

Phone: 503-691-3029 E-mail: cbenson@tualatin.gov

Street address: 18880 SW Martinazzi Avenue City: Tualatin Zip: 97062-

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PLEASE COMPLETE ALL OF THE FOLLOWING SECTIONS THAT APPLY

For a change to comprehensive plan text:

Identify the sections of the plan that were added or amended and which statewide planning goals those sections implement, if any:

Tualatin Development Code (TDC) Sections: 2.060; 2.070; 31.068; 31.076; 32.030; 32.040; 32.070; 32.080; and 32.090. Statewide Goals addressed: Goals 1 and 2.

For a change to a comprehensive plan map:

Identify the former and new map designations and the area affected:

Change from	to	acres.	A goal exception was required for this change.
Change from	to	acres.	A goal exception was required for this change.
Change from	to	acres.	A goal exception was required for this change.
Change from	to	acres.	A goal exception was required for this change.

Location of affected property (T, R, Sec., TL and address):

The subject property is entirely within an urban growth boundary

The subject property is partially within an urban growth boundary

If the comprehensive plan map change is a UGB amendment including less than 50 acres and/or by a city with a population less than 2,500 in the urban area, indicate the number of acres of the former rural plan designation, by type, included in the boundary.

Exclusive Farm Use – Acres:	Non-resource – Acres:
Forest – Acres:	Marginal Lands – Acres:
Rural Residential – Acres:	Natural Resource/Coastal/Open Space – Acres:
Rural Commercial or Industrial – Acres:	Other: – Acres:

If the comprehensive plan map change is an urban reserve amendment including less than 50 acres, or establishment or amendment of an urban reserve by a city with a population less than 2,500 in the urban area, indicate the number of acres, by plan designation, included in the boundary.

Exclusive Farm Use – Acres:	Non-resource – Acres:
Forest – Acres:	Marginal Lands – Acres:
Rural Residential – Acres:	Natural Resource/Coastal/Open Space – Acres:
Rural Commercial or Industrial – Acres:	Other: – Acres:

For a change to the text of an ordinance or code:
Identify the sections of the ordinance or code that were added or amended by title and number:

Tualatin Development Code (TDC) Sections: 2.060; 2.070; 31.068; 31.076; 32.030; 32.040; 32.070; 32.080; and 32.090.

For a change to a zoning map:
Identify the former and new base zone designations and the area affected:

Change from	to	Acres:
Change from	to	Acres:
Change from	to	Acres:
Change from	to	Acres:

Identify additions to or removal from an overlay zone designation and the area affected:

Overlay zone designation:	Acres added:	Acres removed:

Location of affected property (T, R, Sec., TL and address):

List affected state or federal agencies, local governments and special districts: City of Tualatin

Identify supplemental information that is included because it may be useful to inform DLCD or members of the public of the effect of the actual change that has been submitted with this Notice of Adopted Change, if any. If the submittal, including supplementary materials, exceeds 100 pages, include a summary of the amendment briefly describing its purpose and requirements.

NOTICE OF ADOPTED CHANGE – SUBMITTAL INSTRUCTIONS

1. A Notice of Adopted Change must be received by DLCD no later than 20 days after the ordinance(s) implementing the change has been signed by the public official designated by the jurisdiction to sign the approved ordinance(s) as provided in ORS 197.615 and OAR 660-018-0040.

2. A Notice of Adopted Change must be submitted by a local government (city, county, or metropolitan service district). DLCD will not accept a Notice of Adopted Change submitted by an individual or private firm or organization.

3. **Hard-copy submittal:** When submitting a Notice of Adopted Change on paper, via the US Postal Service or hand-delivery, print a completed copy of this Form 2 on light green paper if available. Submit **one copy** of the proposed change, including this form and other required materials to:

Attention: Plan Amendment Specialist
Dept. of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, OR 97301-2540

This form is available here:
http://www.oregon.gov/LCD/forms.shtml

4. **Electronic submittals** of up to 20MB may be sent via e-mail. Address e-mails to plan.amendments@ state.or.us with the subject line "Notice of Adopted Amendment."

Submittals may also be uploaded to DLCD's FTP site at http://www.oregon.gov/LCD/Pages/papa_submittal.aspx.

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E-mails with attachments that exceed 20MB will not be received, and therefore FTP must be used for these electronic submittals. **The FTP site must be used for all .zip files** regardless of size. The maximum file size for uploading via FTP is 150MB.

Include this Form 2 as the first pages of a combined file or as a separate file.

5. **File format:** When submitting a Notice of Adopted Change via e-mail or FTP, or on a digital disc, attach all materials in one of the following formats: Adobe .pdf (preferred); Microsoft Office (for example, Word .doc or docx or Excel .xls or xlsx); or ESRI .mxd, .gdb, or. mpk. For other file formats, please contact the plan amendment specialist at 503-934-0017 or plan.amendments@state.or.us.

6. **Content:** An administrative rule lists required content of a submittal of an adopted change (OAR 660-018-0040(3)). By completing this form and including the materials listed in the checklist below, the notice will include the required contents.

Where the amendments or new land use regulations, including supplementary materials, exceed 100 pages, include a summary of the amendment briefly describing its purpose and requirements.

7. Remember to notify persons who participated in the local proceedings and requested notice of the final decision. (ORS 197.615)

If you have any questions or would like assistance, please contact your DLCD regional representative or the DLCD Salem office at 503-934-0017 or e-mail plan.amendments@state.or.us.

Notice checklist. Include all that apply:

Completed Form 2

A copy of the final decision (including the signed ordinance(s)). This must include city *and* county decisions for UGB and urban reserve adoptions

The findings and the text of the change to the comprehensive plan or land use regulation

If a comprehensive plan map or zoning map is created or altered by the proposed change:
- A map showing the area changed and applicable designations, and
- Electronic files containing geospatial data showing the area changed, as specified in OAR 660-018-0040(5), if applicable

Any supplemental information that may be useful to inform DLCD or members of the public of the effect of the actual change

PTA-17-01

PROPOSED AMENDING TEXT

Section 1. Tualatin Development Code (TDC) Section 2.060 (Planning Commission) and Section 2.070 (Tualatin Parks Advisory Commission) are deleted in their entirety, as these entities exist and are governed by the Tualatin Municipal Code Chapters 11-01 (Planning Commission) and 11-02 (Parks Advisory Commission).

Section 2. TDC Chapter 31.068 is created to read as follows:

TDC 31.068 Jurisdiction of the Planning Commission.

(1) The Planning Commission is the hearing body for the following land use applications:

(a) Conditional Use Permits (CUP);
(b) Industrial Master Plan (IMP);
(c) Reinstatement of Use;
(d) Sign Variance (SVAR);
(e) Transitional Use Permit (TRP); and
(f) Variance (VAR).

(2) The Planning Commission will use the quasi-judicial hearing process in TDC 31.077 to make all decisions.

(3) Request for Review of Planning Commission decisions must be made to the City Council and follow the Requests for Review process in TDC 31.076 and TDC 31.078.

Section 3. TDC 31.076 is amended to read as follows:

Section 31.076 Requests for Review.

(1) Upon receipt of a request for review, the ~~Community Development Director~~ City Manager ~~shall~~ must 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~~ must be accompanied by a fee as established by City Council resolution.

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

(a) Architectural Review Board. The Architectural Review Board is the hearing body if the request for review is an appeal from a staff level Architectural Features decision.

(b) City Council. City Council is the hearing body if the request for review is an appeal of any one of the following:

(i) Utility Facilities decision;
(ii) Architectural Review Board decision;
(iii) An interpretation of Code under TDC 31.070;
(iv) A minor variance under TDC Chapter 33;
(v) A tree removal permit under TDC Chapter 34;
(vi) A temporary use decision under TDC Chapter 34;
(vii) A decision on the demolition, relocation, alteration, or new construction involving an historic landmark under TDC Chapter 68;
(viii) A decision on a partition or subdivision under TDC Chapter 36;
(ix) A decision on a minor variance involving a property line adjustment under TDC Chapter 36;
(x) A decision on a request for access onto an arterial street under TDC Chapter 75;
(xi) A decision on a floodplain development permit under TDC Chapter 70;
(xii) A decision on a permit within the Wetlands Protection District under TDC Chapter 71;
(xiii) A final decision by the Planning Commission; or
(xiv) Any other decision not listed in this subsection.

~~(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 a Conditional Use Permit (TDC Chapter 32), an Industrial Master Plan (TDC Chapter 37).), 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~~ City Manager 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 4. TDC Chapter 32.030 is amended to read as follows:

Section 32.030 Planning Commission to Conduct Hearing on ~~Criteria for Review of~~ Conditional Uses; Criteria.

(1) The Planning Commission is the hearing body for determining conditional use applications.

(2) The ~~City Council~~ Planning Commission may allow a conditional use, after a hearing conducted pursuant to TDC 32.070, provided that the applicant provides evidence substantiating that all the requirements of this Code relative to the proposed use are satisfied, and further provided that the applicant demonstrates that the proposed use also satisfies the following criteria:

~~(1)~~(a) The use is listed as a conditional use in the underlying planning district.

~~(2)~~(b) The characteristics of the site are suitable for the proposed use, considering size, shape, location, topography, existence of improvements and natural features.

~~(3)~~(c) The proposed development is timely, considering the adequacy of transportation systems, public facilities, and services existing or planned for the area affected by the use.

~~(4)~~(d) The proposed use will not alter the character of the surrounding area in any manner that substantially limits, impairs, or precludes the use of surrounding properties for the primary uses listed in the underlying planning district.

~~(5)~~(e) The proposal satisfies those objectives and policies of the Tualatin Community Plan that are applicable to the proposed use.

Section 5. TDC Chapter 32.040 is amended to read as follows:

Section 32.040 Authority and ~~City Council~~ Planning Commission Action.

(1) The ~~City Council~~ Planning Commission may approve, approve with conditions, or deny the application for a conditional use permit.

(2) In permitting a conditional use, 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. ~~The conditions may include requirements 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 and improvement of additional right-of-way, increasing the number of off-street parking or loading spaces required, limiting the coverage or height of buildings because of obstruction of view or reduction of light or air to adjacent property, limiting the hours of operation, requiring sight obscuring fencing and landscaping, requiring construction of sound barriers such as earth berms or masonry walls, allowing co-location of antenna systems or platforms on a wireless communication support structure, requiring monopole design for wireless communication support structures, specifying the type of architectural treatment for wireless communication support structures to be compatible with its surrounding, requiring that obsolete or unused wireless communication support structures and associated equipment and antennas be removed within 12 months of cessation of operations at a site, and requiring any future enlargement or alteration of the use to be reviewed by the City Council~~.

(3) The ~~City Council~~ Planning Commission may also require a review of the conditional use by the ~~City Council~~ Planning Commission on or before a specified date and may upon such review impose further conditions consistent with this Chapter. In no event ~~shall~~ can this Chapter be used as a means to exclude multi-family housing from the City.

Section 6. TDC Chapter 32.070 is amended to read as follows:

Section 32.070 Public Hearing for a Conditional Use. Before acting on a request for a conditional use permit, a proposed conditional use ~~shall~~ must 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 recess a hearing on a request for a conditional use permit 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 ~~City Council~~ Planning Commission ~~shall~~ must announce the time, place and date when the hearing will be resumed.

Section 7. TDC Chapter 32.080 is amended to read as follows:

Section 32.080 Revocation of Conditional Use Permit.

(1) Any previously granted conditional use permit may be revoked by the ~~City Council~~ Planning Commission, after a hearing conducted in the manner required for approval of a conditional use permit initially, upon the following grounds:
   (a) Failure to comply with the conditions of approval.
   (b) Discontinuance of the use for a period in excess of two years.
   (c) Failure to comply with other applicable provisions of the Tualatin Community Plan regarding design, dimensional or use requirements.
   (d) A change in the Tualatin Community Plan or Planning District Standards of the planning district within which the use is located that have the effect of no longer allowing a new conditional use permit application to be considered in such planning district.

(2) Revocations initiated under TDC 32.080(1)(a) or (b) above shall not be initiated for at least 6 months after approval of the conditional use permit. Revocations initiated under TDC 32.080(1)(a), (b) and (c) above shall have the effect of making the previously granted conditional use permit void until a new application is submitted and granted. Revocations initiated under TDC 32.080(d) above shall have the effect of making the previously granted conditional use a nonconforming use.

Section 8. TDC Chapter 32.090 is amended to read as follows:

Section 32.090 Automatic Termination of Conditional Use; Request for Extension.

(1) Unless otherwise provided by the ~~City Council~~ Planning Commission in the ~~resolution~~ written decision granting approval of the conditional use permit, a conditional use permit ~~shall~~ automatically ~~become~~ is null and void two (2) years after the effective date upon which it was granted, unless the applicant, or successor in interest, has done one of the following within two (2) years of the effective date of the conditional use permit ~~events occur~~:
   (a) ~~The applicant or his successor in interest has~~ secured a building permit ~~within said two-year period~~, ~~if a building permit is required,~~ and ~~has actually~~ commenced construction of the building or structure in conformance of the building permit and conditional use permit ~~authorized by the permit within said two-year period~~.
   (b) ~~The applicant or his successor in interest has~~ commenced the activity or installation of the facility or structure authorized by the conditional use permit ~~within said two-year period~~.

   ~~(2)~~(c) ~~The applicant may submit a written request to the City Council for~~ submit a request for an extension of time on the conditional use permit to avoid the permit~~'s~~ becoming null and void.

(2) A ~~The~~ request for an extension must be submitted prior to the expiration date of ~~the times established by Subsection (1) above~~ the conditional use permit, as established by the Planning Commission in granting the conditional use permit.

(3) Upon receipt of the request for an extension of time, the Planning Commission will hear the matter under the quasi-judicial procedures in TDC 31.077. The Planning Commission may grant or deny the extension of time, provided the extension of time does not exceed two (2) years. ~~The City Council may, in the resolution granting such conditional use permit, provide for an extension of time beyond 1 year.~~

ORDINANCE NO. 1406-17

AN ORDINANCE RELATING TO THE PLANNING COMMISSION; AND AMENDING TUALATIN DEVELOPMENT CODE CHAPTERS 2, 31, AND 32.

WHEREAS, the Community Development Director initiated Plan Text Amendment PTA 17-01;

WHEREAS, the City provided notice of PTA 17-01 to the Oregon Department of Land Conservation and Development, as provided by ORS 197.610;

WHEREAS, the City provided notice of the public hearing as required by Tualatin Development Code (TDC) 1.031; and

WHEREAS, Council approved PTA 17-01 after a public hearing was held where Council heard and considered the testimony and evidence presented by City staff, and those appearing at the public hearing.

THE CITY OF TUALATIN ORDAINS AS FOLLOWS:

Section 1. TDC Section 2.060 (Planning Commission) and Section 2.070 (Tualatin Parks Advisory Commission) are deleted in their entirety, as these entities exist and are governed by the Tualatin Municipal Code Chapters 11-01 (Planning Commission) and 11-02 (Parks Advisory Commission).

Section 2. TDC Chapter 31.068 is created to read as follows:

Section 31.068 Jurisdiction of the Planning Commission.

(1) The Planning Commission is the hearing body for the following land use applications:

(a) Conditional Use Permits (CUP);

(b) Industrial Master Plan (IMP);

(c) Reinstatement of Use;

(d) Sign Variance (SVAR);

(e) Transitional Use Permit (TRP); and

(f) Variance (VAR).

(2) The Planning Commission will use the quasi-judicial hearing process in TDC 31.077 to make all decisions.

(3) Request for Review of Planning Commission decisions must be made to the City Council and follow the Requests for Review process in TDC 31.076 and TDC 31.078.

Section 3. TDC 31.076 is amended to read as follows:

Section 31.076 Requests for Review.

(1) Upon receipt of a request for review, the ~~Community Development Director~~ City Manager ~~shall~~ must 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~~ must be accompanied by a fee as established by City Council resolution.

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

(a) Architectural Review Board. The Architectural Review Board is the hearing body if the request for review is an appeal from a staff level Architectural Features decision.

(b) City Council. City Council is the hearing body if the request for review is an appeal of any one of the following:

(i) Utility Facilities decision;

(ii) Architectural Review Board decision;

(iii) An interpretation of Code under TDC 31.070;

(iv) A minor variance under TDC Chapter 33;

(v) A tree removal permit under TDC Chapter 34;

(vi) A temporary use decision under TDC Chapter 34;

(vii) A decision on the demolition, relocation, alteration, or new construction involving an historic landmark under TDC Chapter 68;

(viii) A decision on a partition or subdivision under TDC Chapter 36;

(ix) A decision on a minor variance involving a property line adjustment under TDC Chapter 36;

(x) A decision on a request for access onto an arterial street under TDC Chapter 75;

(xi) A decision on a floodplain development permit under TDC Chapter 70;

(xii) A decision on a permit within the Wetlands Protection District under TDC Chapter 71;

(xiii) A final decision by the Planning Commission; or

(xiv) Any other decision not listed in this subsection.

~~(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 a Conditional Use Permit (TDC Chapter 32), an Industrial Master Plan (TDC Chapter 37).), 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~~ City Manager 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 4. TDC Chapter 32.030 is amended to read as follows:

Section 32.030 Planning Commission to Conduct Hearing on ~~Criteria for Review of~~ Conditional Uses; Criteria.

(1) The Planning Commission is the hearing body for determining conditional use applications.

(2) The ~~City Council~~ Planning Commission may allow a conditional use, after a hearing conducted pursuant to TDC 32.070, provided that the applicant provides evidence substantiating that all the requirements of this Code relative to the proposed use are satisfied, and further provided that the applicant demonstrates that the proposed use also satisfies the following criteria:

~~(1)~~(a) The use is listed as a conditional use in the underlying planning district.

~~(2)~~(b) The characteristics of the site are suitable for the proposed use, considering size, shape, location, topography, existence of improvements and natural features.

~~(3)~~(c) The proposed development is timely, considering the adequacy of transportation systems, public facilities, and services existing or planned for the area affected by the use.

~~(4)~~(d) The proposed use will not alter the character of the surrounding area in any manner that substantially limits, impairs, or precludes the use of surrounding properties for the primary uses listed in the underlying planning district.

~~(5)~~(e) The proposal satisfies those objectives and policies of the Tualatin Community Plan that are applicable to the proposed use.

Section 5. TDC Chapter 32.040 is amended to read as follows:

Section 32.040 Authority and ~~City Council~~ Planning Commission Action.

(1) The ~~City Council~~ Planning Commission may approve, approve with conditions, or deny the application for a conditional use permit.

(2) In permitting a conditional use, 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. ~~The conditions may include requirements 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 and improvement of additional right-of-way, increasing the number of off-street parking or loading spaces required, limiting the coverage or height of buildings because of obstruction of view or reduction of light or air to adjacent property, limiting the hours of operation, requiring sight obscuring fencing and landscaping, requiring construction of sound barriers such as earth berms or masonry walls, allowing co-location of antenna systems or platforms on a wireless communication support structure, requiring monopole design for wireless communication support structures, specifying the type of architectural treatment for wireless communication support structures to be compatible with its surrounding, requiring that obsolete or unused wireless communication support structures and associated equipment and antennas be removed within 12 months of cessation of operations at a site, and requiring any future enlargement or alteration of the use to be reviewed by the City Council.~~

(3) The ~~City Council~~ Planning Commission may also require a review of the conditional use by the ~~City Council~~ Planning Commission on or before a specified date and may upon such review impose further conditions consistent with this Chapter. In no event ~~shall~~ can this Chapter be used as a means to exclude multi-family housing from the City.

Section 6. TDC Chapter 32.070 is amended to read as follows:

Section 32.070 Public Hearing for a Conditional Use. Before acting on a request for a conditional use permit, a proposed conditional use ~~shall~~ must 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 recess a hearing on a request for a conditional use permit 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 ~~City Council~~ Planning Commission ~~shall~~ must announce the time, place and date when the hearing will be resumed.

Section 7. TDC Chapter 32.080 is amended to read as follows:

Section 32.080 Revocation of Conditional Use Permit.

(1) Any previously granted conditional use permit may be revoked by the ~~City Council~~ Planning Commission, after a hearing conducted in the manner required for approval of a conditional use permit initially, upon the following grounds:
   (a) Failure to comply with the conditions of approval.

   (b) Discontinuance of the use for a period in excess of two years.

   (c) Failure to comply with other applicable provisions of the Tualatin Community Plan regarding design, dimensional or use requirements.

   (d) A change in the Tualatin Community Plan or Planning District Standards of the planning district within which the use is located that have the effect of no longer allowing a new conditional use permit application to be considered in such planning district.

(2) Revocations initiated under TDC 32.080(1)(a) or (b) above shall not be initiated for at least 6 months after approval of the conditional use permit. Revocations initiated under TDC 32.080(1)(a), (b) and (c) above shall have the effect of making the previously granted conditional use permit void until a new application is submitted and granted. Revocations initiated under TDC 32.080(d) above shall have the effect of making the previously granted conditional use a nonconforming use.

Section 8. TDC Chapter 32.090 is amended to read as follows:

Section 32.090 Automatic Termination of Conditional Use; Request for Extension.

(1) Unless otherwise provided by the ~~City Council~~ Planning Commission in the ~~resolution~~ written decision granting approval of the conditional use permit, a conditional use permit ~~shall~~ automatically ~~become~~ is null and void two (2) years after the effective date upon which it was granted, unless the applicant, or successor in interest, has done one of the following within two (2) years of the effective date of the conditional use permit ~~events occur~~:

   (a) ~~The applicant or his successor in interest has~~ secured a building permit ~~within said two-year period, if a building permit is required,~~ and ~~has actually~~ commenced construction of the building or structure in conformance of the building permit and conditional use permit ~~authorized by the permit within said two-year period~~.

   (b) ~~The applicant or his successor in interest has~~ commenced the activity or installation of the facility or structure authorized by the conditional use permit ~~within said two-year period~~.

~~(2)~~(c) ~~The applicant may submit a written request to the City Council for~~ submit a request for an extension of time on the conditional use permit to avoid the permit~~'s~~ becoming null and void.

(2) A ~~The~~ request for an extension must be submitted prior to the expiration date of ~~the times established by Subsection (1) above~~ the conditional use permit, as established by the Planning Commission in granting the conditional use permit.

(3) Upon receipt of the request for an extension of time, the Planning Commission will hear the matter under the quasi-judicial procedures in TDC 31.077. The Planning Commission may grant or deny the extension of time, provided the extension of time does not exceed two (2) years. ~~The City Council may, in the resolution granting such conditional use permit, provide for an extension of time beyond 1 year.~~

Section 9. Findings. The Council adopts as its findings the *Analysis and Findings* set forth in Exhibit 1, which is attached and incorporated by reference.

Section 10. Severability. Each section of this ordinance, and any part thereof, is severable. If any part of this ordinance is held invalid by a court of competent jurisdiction, the remainder of this ordinance remains in full force and effect.

Adopted by the City Council this 13th day of November, 2017.

CITY OF TUALATIN, OREGON

BY _____
Mayor

APPROVED AS TO FORM

BY _____
City Attorney

ATTEST:

BY _____
City Recorder

Exhibit 1

Ordinance No. 1406-17

PTA-17-01
ANALYSIS & FINDINGS

Plan Text Amendment 17-01 (PTA17-01) amends the Tualatin Development Code (TDC) to change the review authority for conditional use permits from the Tualatin City Council to the Tualatin Planning Commission (TPC) to allow for increased public involvement in local land use decisions; TPC decisions on conditional use permits may be appealed locally to the City Council. No other changes to TPC responsibilities or authorities are proposed.

The Analysis and Findings presented here pertain only to the Plan Text Amendment (PTA) proposed to amend language in TDC Chapters 2, 31, and 32 (see Attachment 101, "Proposed Amending Text").

Plan Amendment Criteria (TDC Section 1.032)

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; and
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.

TDC Section 2.050 Citizen Involvement, part of the Tualatin Comprehensive Plan (Comp Plan), originally designated the Tualatin Planning Advisory Committee (TPAC) as a citizen body responsible for fulfilling the Statewide Planning Goal 1 "Citizen Involvement." TPAC was solely an advisory committee until 2012 when the City Council transformed this body into the Tualatin Planning Commission (TPC) and granted this newly-formed commission the authority to render decisions on the following land use applications:

1. Industrial Master Plans (IMP);
2. Reinstatements of Use;
3. Sign Variances (SVAR);
4. Transitional Use Permits (TRP); and
5. Variances (VAR).

The objective of the amendment is to add conditional use permits (CUP) to this list. TPC will remain the decision-making body for the five (5) land use application types listed above, and will retain the responsibility for recommendations other applicable

land use applications and continue to provide for citizen involvement. The proposed amendment will add another level of local review to appropriate land use applications; appeals of TPC decisions will still be heard by the City Council.

The suggestion of transferring the decision-making authority for conditional use permits from the City Council to the TPC was made by the TPC Chair at the conclusion of the presentation of the *Planning Commission Annual Report* at the City Council meeting on April 10, 2017. The TPC Chair noted that TPC has presided over minimal quasi-judicial decisions in the past year, and allowing TPC to review conditional use permits would lessen some of the land use caseload of the City Council; in addition, appeals would remain local rather than going to the Land Use Board of Appeals (LUBA). Both the Mayor and the City Council stated they were open to further discussion on this transfer of authority at a future City Council work session.

The consideration of TPC review of conditional use permit applications was discussed at the April 20, 2017 TPC meeting, ultimately leading to a unanimous vote at the May 18, 2017 TPC meeting to recommend that the City Council delegate approval authority for conditional use permits to TPC.

The amendment signals greater empowerment of the TPC and establishes incentive for increased member participation and public engagement. TPC will continue to meet Statewide Planning Goal 1 and principles (a) and (b) listed above.

As granting the amendment is in the public interest, Criterion "1" is met.

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

As discussed for Criterion "1" above, the objective of the proposed amendment is to assign an additional decision-making authority to the TPC and further the citizen participation aims of Oregon Statewide Planning Goal 1 "Citizen Involvement." Additionally, the most recent *Planning Commission Annual Report* identified a lack of actionable TPC agenda items and the transfer of the review of conditional use permits to this body will add to its sense of purpose, increase public engagement with the body, and lessen the land use caseload of the City Council and create a local appeal level. This proposed amendment is scheduled to be presented to the City Council at their October 23, 2017 work session. These conditions make the amendment timely.

Therefore, granting the amendment at this time best protects the public interest, and Criterion "2" is met.

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

As discussed in *TDC Section 2.050 Citizen Involvement*, the Citizen Involvement Program, the instrument used to fulfill Statewide Planning Goal 1 "Citizen Involvement," is and will remain under the authority of the TPC. The amendment does not interfere with the Tualatin Community Plan's citizen involvement objectives

but will increase citizen involvement by adding an additional level of local review for land use decisions.

Criterion "3" is met.

4. **The following factors were consciously considered:**

The various characteristics of the areas in the City.

The factor is not applicable as the proposed amendment pertains to TPC review authority citywide and does not specifically target any planning district designation or specific neighborhood/geographic area.

The suitability of the area for particular land uses and improvements.

The factor is not applicable as the proposed amendment pertains to TPC review authority citywide and does not specifically target any planning district designation or specific land use or improvement.

Trends in land improvement and development.

The factor is not applicable as the proposed amendment would not result in legislative changes that would affect trends in land improvement and/or development.

Property Values.

The factor is not applicable as the proposed change to the decision-making authority of an existing type of land use application will not affect property values.

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

The factor is not applicable as the proposed change to the decision-making authority of an existing type of land use application will not affect 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 applicable as the proposed amendment would not result in legislative changes that would affect rights-of-way and/or access; in addition, this PTA is citywide in scope and does not specifically target any planning district designation or specific sites within Tualatin.

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

The factor is not applicable as the proposed amendment would not directly affect natural resources—and the protection and conservation of said resources—nor would it result in changes to existing or proposed development that might result in indirect effects on said resources.

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

The factor is not applicable as the proposed amendment solely pertains to a change to the decision-making authority of an existing type of land use application will not affect the prospective requirements for the development of natural resources in the City.

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

The factor is not applicable as the proposed amendment would not affect City policy concerning the public need for healthful, safe, aesthetic surroundings and conditions.

Proof of change in a neighborhood or area.

The applicant does not assert proof of change in a neighborhood or area.

Mistake in the Plan Text or Plan Map.

The applicant does not assert a mistake in the Plan Text or Plan Map. The PTA is the next evolutionary step in the legislative authorities granted to the TPC, itself once titled the Tualatin Planning Advisory Committee (TPAC) without the authority to render decisions on the five (5) types of land use actions under its jurisdiction today. This PTA is intended to increase citizen involvement in the local planning process.

All of the above factors were consciously considered; therefore, Criterion "4" 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.**

As the PTA does not result in a change to plans or development regulations that would impact school facility capacity, Criterion "5" 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, staff determined that two goals are applicable to the proposed PTA: Goal 1 "Citizen Involvement" and Goal 2 "Land Use Planning."

Goal 1, "Citizen Involvement," is stated as **"to develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process."**

As discussed in the findings to criteria 1 through 3 above, the proposed amendment will transfer additional decision-making authority to the TPC, the body responsible for fulfilling the Statewide Planning Goal 1 "Citizen

Involvement." The proposed amendment will add another level of local review to conditional use permits, and the TPC will retain the responsibility for recommendations other applicable land use applications and continue to provide for citizen involvement.

This Goal is satisfied.

Goal 2, "Land Use Planning," is stated as **"to establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions."**

The Department of Land Conservation and Development (DLCD) has acknowledged the City's Comprehensive Plan as being consistent with the statewide planning goals. The proposed amendment will not result in a significant change to Tualatin's land use planning procedures and policy framework, but will serve as an appropriate transfer of decision-making authority from the City Council to the TPC, strengthening TPC involvement in the City's local planning process.

This Goal is satisfied.

The PTA is consistent with Statewide Planning Goals 1 and 2; therefore, Criterion "6" 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 administers its planning commission or equivalent; as such, Criterion "7" 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.**

As the PTA does not relate to vehicle trip generation, Criterion "8" is not applicable.

9. **Granting the amendment is consistent with the objectives and policies regarding potable water, sanitary sewer, and surface water management pursuant to TDC 12.020, water management issues are adequately addressed during development or redevelopment anticipated to follow the granting of a plan amendment.**

As the PTA does not relate to potable water, sanitary sewer, and surface water management, Criterion "9" is not applicable.

10. The applicant has entered into a development agreement.

(a) This criterion shall apply only to an amendment specific to property within the Urban Planning Area (UPA), also known as the Planning Area Boundary (PAB), as defined in both the Urban Growth Management Agreement (UGMA) with Clackamas County and the Urban Planning Area Agreement (UPAA) with Washington County. TDC Map 9-1 illustrates this area.

(b) This criterion is applicable to any issues about meeting the criterion within 1.032(9).

As the PTA is not property-specific and the applicant (the City of Tualatin) has not entered into an associated development agreement, Criterion "10" is not applicable.

STAFF REPORT
CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos, City Manager

FROM: Charles Benson, Associate Planner
Alice Cannon, Assistant City Manager

DATE: 10/23/2017

SUBJECT: Consideration of an Amendment to Tualatin Development Code Chapters 2, 31, and 32 to Revise Review Authority for Conditional Use Permits from the City Council to the Tualatin Planning Commission.

ISSUE BEFORE THE COUNCIL:

City Council consideration of a Plan Text Amendment (PTA 17-01) to Tualatin Development Code (TDC) Chapters 2, 31, and 32 to change the review authority for conditional use permits from the City Council to the Planning Commission. The City of Tualatin is the applicant of these proposed changes. PTA 17-01 is a legislative matter.

RECOMMENDATION:

At their meeting on September 21, 2017, the Tualatin Planning Commission reviewed the proposed Plan Text Amendment and recommended approval. (6-0)

Staff recommends the City Council consider the staff report, draft code language, and analysis and findings and provide direction on PTA-17-01.

EXECUTIVE SUMMARY:

Introduction and Background

The Tualatin Planning Commission was formerly the Tualatin Planning Advisory Committee. In 2011 the chair and members of what was then the advisory committee began a conversation with City Council about becoming a Planning Commission. The City Council and Planning Advisory Committee held a joint meeting to discuss what applications a newly formed Planning Commission could transfer from the Council's purview to that of the Planning Commission. Staff researched the number and type of quasi judicial applications received which Council and the Planning Advisory Committee used for discussion. Ultimately, they decided on a discrete set of quasi judicial applications including: Industrial Master Plans, Reinstatement of Use, Sign Variance, Variance and Transitional Use Permits.

At the time the Council decided that Conditional Use Permits should remain in their purview mainly because they felt responsible to surrounding property owners who could be impacted by the Conditional Use. At the Council meeting on April 10, 2017 at the conclusion of the

presentation of the Planning Commission Annual Report, Chair Bill Beers suggested the possibility of revisiting this topic. The Mayor and Council were open to discuss this transfer of purview over Conditional Use Permits.

Staff prepared background information to help frame the Planning Commission conversation, which took place at Planning Commission meetings on April 20, 2017 and May 18, 2017. This information included a historic account of conditional use permits since 2007 (see Attachment B, "Recent CUP History"), a detailed discussion of the approval criteria, common conditions of approval, and recently completed conditional use permit applications for reference. The Planning Commission debated the pros and cons of accepting this responsibility, delving into questions regarding the decision-making processes including appeals, the potential effects on City Council workload, and the common practices of neighboring jurisdictions regarding conditional use permits.

At the Planning Commission meeting on September 21, 2017, the Planning Commission unanimously voted to recommend changing approval authority of conditional use permits from the City Council to the Planning Commission. The Planning Commission noted several benefits to accepting this responsibility -- noting that quasi-judicial land use decisions are most commonly decided by other metro area planning commissions -- which would allow for a second level of local review should such rulings be appealed (as opposed to going to the State of Oregon Land Use Board of Appeals [LUBA]) and also allow the City Council to focus on other items.

A complete accounting of Planning Commission deliberations on the proposed Plan Text Amendment are included in Attachment C.

Proposed Plan Text Amendments

The proposed Plan Text Amendment would result in changes to Tualatin Development Code (TDC) Chapters 2, 31, and 32 as follows:

New TDC Section 31.068 **Jurisdiction of the Planning Commission.** This new section lists the six (6) land use applications that are heard by the Planning Commission, establishes the quasi-judicial hearing process of such proceedings, and reiterates the City Council as the appellant body of Planning Commission decisions.

Delete TDC Sections 2.060 and 2.070. TDC Sections 2.060 and 2.070 reference the Planning Commission and the Tualatin Parks Advisory Commission, respectively, and these entities exist and are governed by Tualatin Municipal Code (TMC) Chapters 11-01 (Planning Commission) and 11-02 (Parks Advisory Commission). TMC Chapter 11-01 will be amended under a separate ordinance; a draft of that amendment is included in Attachment D.

Amendments to the following TDC sections:

32.030 **Planning Commission to Conduct Hearing on Conditional Uses; Criteria** Amendments include replacing "City Council" with "Planning Commission" as the hearing body for conditional use permits.

32.040 **Authority and Planning Commission Action**. Amendments include replacing "City Council" with "Planning Commission" regarding the list of actions pertaining to conditional use permit applications.

32.070 **Public Hearing for a Conditional Use** . Amendments include replacing "City Council" with "Planning Commission" regarding public hearing provisions for conditional use permits.

32.080 **Revocation of Conditional Use Permit**. Amendments include replacing "City Council" with "Planning Commission" in reference to revocation powers of conditional use permits.

32.090 **Automatic Termination of Conditional Use; Request for Extension**. Amendments include replacing "City Council" with "Planning Commission" in reference to automatic termination of conditional use and requests for extension.The proposed TDC amendments in their entirety are included as Attachment B.

31.076 **Requests for Review.** Amendments include replacing "Community Development Director" with "City Manager" and establishing hearing bodies for requests for review.

Plan Text Amendment Approval Criteria

The approval criteria of the TDC Section 1.032, must be met if the proposed Plan Text Amendment is to be granted. Staff has reviewed this proposal and finds the proposed amendment meets all applicable approval criteria. The Analysis and Findings are included as Attachment E.

Next Steps

If approved at tonight's public hearing, staff anticipates bringing an ordinance to City Council on November 13, 2017.

OUTCOMES OF DECISION:

A recommendation to approve PTA-17-01 would change the review authority of conditional use permits from the City Council to the Planning Commission and would result in the following:

- The deletion of TDC Sections 2.060 and 2.070;
- The creation of TDC Section 31.068; and
- Revisions to TDC Sections 31.067, 32.030, 32.040, 32.070, 32.080, and 32.090.

A denial of PTA-17-01 would result in no TDC amendments and the City Council would retain its review authority of conditional use permits.

If Council approves PTA-17-01, staff will also bring back draft amendment to TMC Chapter 11-01 for consideration at its next meeting.

ALTERNATIVES TO RECOMMENDATION:

The City Council has three options:

1. Approve the proposed Plan Text Amendment as drafted;
2. Approve the proposed Plan Text Amendment with Council amendments; or
3. Deny the proposed Plan Text Amendment.

FINANCIAL IMPLICATIONS:

The FY 2017/18 budget accounts for the cost of City-initiated land use applications.

Attachments: Attachment A - PowerPoint Presentation
Attachment B - Recent CUP History
Attachment C - Related TPC Supplemental Materials
Attachment D - TMC Chapters 11-01 and 11-02
Attachment E - Analysis & Findings and Amending Text

PTA-17-01

ANALYSIS & FINDINGS

Plan Text Amendment 17-01 (PTA17-01) amends the Tualatin Development Code (TDC) to change the review authority for conditional use permits from the Tualatin City Council to the Tualatin Planning Commission (TPC) to allow for increased public involvement in local land use decisions; TPC decisions on conditional use permits may be appealed locally to the City Council. No other changes to TPC responsibilities or authorities are proposed.

The Analysis and Findings presented here pertain only to the Plan Text Amendment (PTA) proposed to amend language in TDC Chapters 2, 31, and 32 (see Attachment 101, "Proposed Amending Text").

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a) maintain or increase the influence of public involvement in city planning; and
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.

TDC Section 2.050 Citizen Involvement, part of the Tualatin Comprehensive Plan (Comp Plan), originally designated the Tualatin Planning Advisory Committee (TPAC) as a citizen body responsible for fulfilling the Statewide Planning Goal 1 "Citizen Involvement." TPAC was solely an advisory committee until 2012 when the City Council transformed this body into the Tualatin Planning Commission (TPC) and granted this newly-formed commission the authority to render decisions on the following land use applications:

1. Industrial Master Plans (IMP);
2. Reinstatements of Use;
3. Sign Variances (SVAR);
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5. Variances (VAR).

The objective of the amendment is to add conditional use permits (CUP) to this list. TPC will remain the decision-making body for the five (5) land use application types listed above, and will retain the responsibility for recommendations other applicable land use applications and continue to provide for citizen involvement. The proposed amendment will add another level of local review to appropriate land use applications; appeals of TPC decisions will still be heard by the City Council.

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noted that TPC has presided over minimal quasi-judicial decisions in the past year, and allowing TPC to review conditional use permits would lessen some of the land use caseload of the City Council; in addition, appeals would remain local rather than going to the Land Use Board of Appeals (LUBA). Both the Mayor and the City Council stated they were open to further discussion on this transfer of authority at a future City Council work session.

The consideration of TPC review of conditional use permit applications was discussed at the April 20, 2017 TPC meeting, ultimately leading to a unanimous vote at the May 18, 2017 TPC meeting to recommend that the City Council delegate approval authority for conditional use permits to TPC.

The amendment signals greater empowerment of the TPC and establishes incentive for increased member participation and public engagement. TPC will continue to meet Statewide Planning Goal 1 and principles (a) and (b) listed above.

As granting the amendment is in the public interest, Criterion "1" is met.

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

As discussed for Criterion "1" above, the objective of the proposed amendment is to assign an additional decision-making authority to the TPC and further the citizen participation aims of Oregon Statewide Planning Goal 1 "Citizen Involvement." Additionally, the most recent *Planning Commission Annual Report* identified a lack of actionable TPC agenda items and the transfer of the review of conditional use permits to this body will add to its sense of purpose, increase public engagement with the body, and lessen the land use caseload of the City Council and create a local appeal level. This proposed amendment is scheduled to be presented to the City Council at their October 23, 2017 work session. These conditions make the amendment timely.

Therefore, granting the amendment at this time best protects the public interest, and Criterion "2" is met.

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

As discussed in *TDC Section 2.050 Citizen Involvement*, the Citizen Involvement Program, the instrument used to fulfill Statewide Planning Goal 1 "Citizen Involvement," is and will remain under the authority of the TPC. The amendment does not interfere with the Tualatin Community Plan's citizen involvement objectives but will increase citizen involvement by adding an additional level of local review for land use decisions.

Criterion "3" is met.

4. The following factors were consciously considered:

The various characteristics of the areas in the City.

The factor is not applicable as the proposed amendment pertains to TPC review authority citywide and does not specifically target any planning district designation or specific neighborhood/geographic area.

The suitability of the area for particular land uses and improvements.

The factor is not applicable as the proposed amendment pertains to TPC review authority citywide and does not specifically target any planning district designation or specific land use or improvement.

Trends in land improvement and development.

The factor is not applicable as the proposed amendment would not result in legislative changes that would affect trends in land improvement and/or development.

Property Values.

The factor is not applicable as the proposed change to the decision-making authority of an existing type of land use application will not affect property values.

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

The factor is not applicable as the proposed change to the decision-making authority of an existing type of land use application will not affect 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 applicable as the proposed amendment would not result in legislative changes that would affect rights-of-way and/or access; in addition, this PTA is citywide in scope and does not specifically target any planning district designation or specific sites within Tualatin.

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

The factor is not applicable as the proposed amendment would not directly affect natural resources—and the protection and conservation of said resources—nor would it result in changes to existing or proposed development that might result in indirect effects on said resources.

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

The factor is not applicable as the proposed amendment solely pertains to a change to the decision-making authority of an existing type of land use application will not affect the prospective requirements for the development of natural resources in the City.

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

The factor is not applicable as the proposed amendment would not affect City policy concerning the public need for healthful, safe, aesthetic surroundings and conditions.

Proof of change in a neighborhood or area.

The applicant does not assert proof of change in a neighborhood or area.

Mistake in the Plan Text or Plan Map.

The applicant does not assert a mistake in the Plan Text or Plan Map. The PTA is the next

evolutionary step in the legislative authorities granted to the TPC, itself once titled the Tualatin Planning Advisory Committee (TPAC) without the authority to render decisions on the five (5) types of land use actions under its jurisdiction today. This PTA is intended to increase citizen involvement in the local planning process.

All of the above factors were consciously considered; therefore, Criterion "4" 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.

As the PTA does not result in a change to plans or development regulations that would impact school facility capacity, Criterion "5" 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, staff determined that two goals are applicable to the proposed PTA: Goal 1 "Citizen Involvement" and Goal 2 "Land Use Planning."

Goal 1, "Citizen Involvement," is stated as **"to develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process."**

As discussed in the findings to criteria 1 through 3 above, the proposed amendment will transfer additional decision-making authority to the TPC, the body responsible for fulfilling the Statewide Planning Goal 1 "Citizen Involvement." The proposed amendment will add another level of local review to conditional use permits, and the TPC will retain the responsibility for recommendations other applicable land use applications and continue to provide for citizen involvement.

This Goal is satisfied.

Goal 2, "Land Use Planning," is stated as **"to establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions."**

The Department of Land Conservation and Development (DLCD) has acknowledged the City's Comprehensive Plan as being consistent with the statewide planning goals. The proposed amendment will not result in a significant change to Tualatin's land use planning procedures and policy framework, but will serve as an appropriate transfer of decision-making authority from the City Council to the TPC, strengthening TPC involvement in the City's local planning process.

This Goal is satisfied.

The PTA is consistent with Statewide Planning Goals 1 and 2; therefore, Criterion "6" 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 administers its planning commission or equivalent; as such, Criterion "7" 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.

As the PTA does not relate to vehicle trip generation, Criterion "8" is not applicable.

9. Granting the amendment is consistent with the objectives and policies regarding potable water, sanitary sewer, and surface water management pursuant to TDC 12.020, water management issues are adequately addressed during development or redevelopment anticipated to follow the granting of a plan amendment.

As the PTA does not relate to potable water, sanitary sewer, and surface water management, Criterion "9" is not applicable.

10. The applicant has entered into a development agreement.

(a) This criterion shall apply only to an amendment specific to property within the Urban Planning Area (UPA), also known as the Planning Area Boundary (PAB), as defined in both the Urban Growth Management Agreement (UGMA) with Clackamas County and the Urban Planning Area Agreement (UPAA) with Washington County. TDC Map 9-1 illustrates this area.

(b) This criterion is applicable to any issues about meeting the criterion within 1.032(9).

As the PTA is not property-specific and the applicant (the City of Tualatin) has not entered into an associated development agreement, Criterion "10" is not applicable.

PTA-17-01

PROPOSED AMENDING TEXT

Section 1. Tualatin Development Code (TDC) Section 2.060 (Planning Commission) and Section 2.070 (Tualatin Parks Advisory Commission) are deleted in their entirety, as these entities exist and are governed by the Tualatin Municipal Code Chapters 11-01 (Planning Commission) and 11-02 (Parks Advisory Commission).

Section 2. TDC Chapter 31.068 is created to read as follows:

TDC 31.068 Jurisdiction of the Planning Commission.

(1) The Planning Commission is the hearing body for the following land use applications:

(a) Conditional Use Permits (CUP);
(b) Industrial Master Plan (IMP);
(c) Reinstatement of Use;
(d) Sign Variance (SVAR);
(e) Transitional Use Permit (TRP); and
(f) Variance (VAR).

(2) The Planning Commission will use the quasi-judicial hearing process in TDC 31.077 to make all decisions.

(3) Request for Review of Planning Commission decisions must be made to the City Council and follow the Requests for Review process in TDC 31.076 and TDC 31.078.

Section 3. TDC 31.076 is amended to read as follows:

Section 31.076 Requests for Review.

(1) Upon receipt of a request for review, the ~~Community Development Director~~ City Manager ~~shall~~ must 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~~ must be accompanied by a fee as established by City Council resolution.

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

(a) Architectural Review Board. The Architectural Review Board is the hearing body if the request for review is an appeal from a staff level Architectural Features decision.

(b) City Council. City Council is the hearing body if the request for review is an appeal of any one of the following:

(i) Utility Facilities decision;
(ii) Architectural Review Board decision;
(iii) An interpretation of Code under TDC 31.070;
(iv) A minor variance under TDC Chapter 33;
(v) A tree removal permit under TDC Chapter 34;
(vi) A temporary use decision under TDC Chapter 34;
(vii) A decision on the demolition, relocation, alteration, or new construction involving an historic landmark under TDC Chapter 68;
(viii) A decision on a partition or subdivision under TDC Chapter 36;
(ix) A decision on a minor variance involving a property line adjustment under TDC Chapter 36;
(x) A decision on a request for access onto an arterial street under TDC Chapter 75;
(xi) A decision on a floodplain development permit under TDC Chapter 70;
(xii) A decision on a permit within the Wetlands Protection District under TDC Chapter 71;
(xiii) A final decision by the Planning Commission; or
(xiv) Any other decision not listed in this subsection.

~~(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 a Conditional Use Permit (TDC Chapter 32), an Industrial Master Plan (TDC Chapter 37).), 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~~ City Manager 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 4. TDC Chapter 32.030 is amended to read as follows:

Section 32.030 Planning Commission to Conduct Hearing on ~~Criteria for Review of~~ Conditional Uses; Criteria.

(1) The Planning Commission is the hearing body for determining conditional use applications.

(2) The ~~City Council~~ Planning Commission may allow a conditional use, after a hearing conducted pursuant to TDC 32.070, provided that the applicant provides evidence substantiating that all the requirements of this Code relative to the proposed use are satisfied, and further provided that the applicant demonstrates that the proposed use also satisfies the following criteria:

~~(1)~~(a) The use is listed as a conditional use in the underlying planning district.

~~(2)~~(b) The characteristics of the site are suitable for the proposed use, considering size, shape, location, topography, existence of improvements and natural features.

~~(3)~~(c) The proposed development is timely, considering the adequacy of transportation systems, public facilities, and services existing or planned for the area affected by the use.

~~(4)~~(d) The proposed use will not alter the character of the surrounding area in any manner that substantially limits, impairs, or precludes the use of surrounding properties for the primary uses listed in the underlying planning district.

~~(5)~~(e) The proposal satisfies those objectives and policies of the Tualatin Community Plan that are applicable to the proposed use.

Section 5. TDC Chapter 32.040 is amended to read as follows:

Section 32.040 Authority and ~~City Council~~ Planning Commission Action.

(1) The ~~City Council~~ Planning Commission may approve, approve with conditions, or deny the application for a conditional use permit.

(2) In permitting a conditional use, 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. ~~The conditions may include requirements 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 and improvement of additional right-of-way, increasing the number of off-street parking or loading spaces required, limiting the coverage or height of buildings because of obstruction of view or reduction of light or air to adjacent property, limiting the hours of operation, requiring sight obscuring fencing and landscaping, requiring construction of sound barriers such as earth berms or masonry walls, allowing co-location of antenna systems or platforms on a wireless communication support structure, requiring monopole design for wireless communication support structures, specifying the type of architectural treatment for wireless communication support structures to be compatible with its surrounding, requiring that obsolete or unused wireless communication support structures and associated equipment and antennas be removed within 12 months of cessation of operations at a site, and requiring any future enlargement or alteration of the use to be reviewed by the City Council~~.

(3) The ~~City Council~~ Planning Commission may also require a review of the conditional use by the ~~City Council~~ Planning Commission on or before a specified date and may upon such review impose further conditions consistent with this Chapter. In no event ~~shall~~ can this Chapter be used as a means to exclude multi-family housing from the City.

Section 6. TDC Chapter 32.070 is amended to read as follows:

Section 32.070 Public Hearing for a Conditional Use. Before acting on a request for a conditional use permit, a proposed conditional use ~~shall~~ must 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 recess a hearing on a request for a conditional use permit 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 ~~City Council~~ Planning Commission ~~shall~~ must announce the time, place and date when the hearing will be resumed.

Section 7. TDC Chapter 32.080 is amended to read as follows:

Section 32.080 Revocation of Conditional Use Permit.

(1) Any previously granted conditional use permit may be revoked by the ~~City Council~~ Planning Commission, after a hearing conducted in the manner required for approval of a conditional use permit initially, upon the following grounds:
   (a) Failure to comply with the conditions of approval.
   (b) Discontinuance of the use for a period in excess of two years.
   (c) Failure to comply with other applicable provisions of the Tualatin Community Plan regarding design, dimensional or use requirements.
   (d) A change in the Tualatin Community Plan or Planning District Standards of the planning district within which the use is located that have the effect of no longer allowing a new conditional use permit application to be considered in such planning district.

(2) Revocations initiated under TDC 32.080(1)(a) or (b) above shall not be initiated for at least 6 months after approval of the conditional use permit. Revocations initiated under TDC 32.080(1)(a), (b) and (c) above shall have the effect of making the previously granted conditional use permit void until a new application is submitted and granted. Revocations initiated under TDC 32.080(d) above shall have the effect of making the previously granted conditional use a nonconforming use.

Section 8. TDC Chapter 32.090 is amended to read as follows:

Section 32.090 Automatic Termination of Conditional Use; Request for Extension.

(1) Unless otherwise provided by the ~~City Council~~ Planning Commission in the ~~resolution~~ written decision granting approval of the conditional use permit, a conditional use permit ~~shall~~ automatically ~~become~~ is null and void two (2) years after the effective date upon which it was granted, unless the applicant, or successor in interest, has done one of the following within two (2) years of the effective date of the conditional use permit ~~events occur~~:
   (a) ~~The applicant or his successor in interest has~~ secured a building permit ~~within said two-year period~~, ~~if a building permit is required,~~ and ~~has actually~~ commenced construction of the building or structure in conformance of the building permit and conditional use permit ~~authorized by the permit within said two-year period~~.
   (b) ~~The applicant or his successor in interest has~~ commenced the activity or installation of the facility or structure authorized by the conditional use permit ~~within said two-year period~~.

   ~~(2)~~(c) ~~The applicant may submit a written request to the City Council for~~ submit a request for an extension of time on the conditional use permit to avoid the permit~~'s~~ becoming null and void.

(2) A ~~The~~ request for an extension must be submitted prior to the expiration date of ~~the times established by Subsection (1) above~~ the conditional use permit, as established by the Planning Commission in granting the conditional use permit.

(3) Upon receipt of the request for an extension of time, the Planning Commission will hear the matter under the quasi-judicial procedures in TDC 31.077. The Planning Commission may grant or deny the extension of time, provided the extension of time does not exceed two (2) years. ~~The City Council may, in the resolution granting such conditional use permit, provide for an extension of time beyond 1 year.~~