



# Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

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## NOTICE OF ADOPTED AMENDMENT

February 23, 2007

TO: Subscribers to Notice of Adopted Plan  
or Land Use Regulation Amendments

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Tualatin Plan Amendment  
DLCD File Number 003-06



The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Due to the size of amended material submitted, a complete copy has not been attached. A copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures\*

### **DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: March 9, 2007**

This amendment was submitted to DLCD for review 45 days prior to adoption. Pursuant to ORS 197.830 (2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

**\*NOTE: THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD. AS A RESULT YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.**

Cc: Gloria Gardiner, DLCD Urban Planning Specialist  
Stacy Humphrey, DLCD Regional Representative  
Mark Darienzo, DLCD Flood Map Modernization Program Coordinator  
Melissa Hardy, City of Tualatin

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**FORM 2 Notice of Adoption**

THIS FORM **MUST BE MAILED** TO DLCD  
**WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION**  
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18



Jurisdiction: City of Tualatin Local file number: PTA 06-01  
Date of Adoption: 2/12/2007 Date Mailed: 2/16/2007  
Date original Notice of Proposed Amendment was mailed to DLCD: 4/25/2006

- Comprehensive Plan Text Amendment
- Land Use Regulation Amendment
- New Land Use Regulation
- Comprehensive Plan Map Amendment
- Zoning Map Amendment
- Other: \_\_\_\_\_

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".  
**Comp. Plan Text Amendment and Land Use Regulation Text Amendment to revise the City's existing tree preservation regulations. The amendments result in changes to application submittal requirements, increased violation fine, new violation fees, and removal of an exemption for tree removal in concert with construction of a single-family dwelling.**

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write "SAME". If you did not give Notice for the Proposed Amendment, write "N/A".  
**The final adopted amendments are scaled back and re-worded somewhat from the original proposed amendments, but the new violation fees were not in the original proposed amendment language.**

Plan Map Changed from: n/a to: n/a  
Zone Map Changed from: n/a to: n/a  
Location: n/a Acres Involved: n/a  
Specify Density: Previous: n/a New: n/a  
Applicable Statewide Planning Goals: 1, 2, 4, and 5  
Was and Exception Adopted?  YES  NO

DLCD File No.: 003-06 (15184)



Did the Department of Land Conservation and Development receive a Notice of Proposed Amendment.....

- Forty-five (45) days prior to first evidentiary hearing?  Yes  No  
If no, do the statewide planning goals apply?  Yes  No  
If no, did Emergency Circumstances require immediate adoption?  Yes  No

Affected State or Federal Agencies, Local Governments or Special Districts:

**Amendments applicable to all property within city's jurisdictional boundaries.**

Local Contact: **Melissa Hardy, Asst.Planner** Phone: **(503) 691-3024** Extension: \_\_\_\_\_

Address: **18880 SW Martinazzi Avenue** City: **Tualatin**

Zip Code + 4: **97062-** Email Address: **mhardy@ci.tualatin.or.us**

### ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**  
per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and TWO (2) Copies of the Adopted Amendment to:

**ATTENTION: PLAN AMENDMENT SPECIALIST  
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT  
635 CAPITOL STREET NE, SUITE 150  
SALEM, OREGON 97301-2540**

2. Submit **TWO (2) copies** the adopted material, if copies are bounded please submit **TWO (2) complete copies** of documents and maps.
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can copy this form on to 8-1/2x11 green paper only; or call the DLCD Office at (503) 373-0050; or Fax your request to:(503) 378-5518; or Email your request to **mara.ulloa@state.or.us** - ATTENTION: PLAN AMENDMENT SPECIALIST.

City of Tualatin, Oregon  
COUNCIL AGENDA STATEMENT

Meeting Date February 12, 2007

Agenda Item No. \_\_\_\_\_

**Item Title** AN ORDINANCE RELATING TO TREE PRESERVATION; AND AMENDING TDC CHAPTERS 10, 31, 34 AND 73. (PTA 06-01)

**Prepared by** Brenda Braden *BB*

**Department** Legal Services

**Explanation**

The City Council held a public hearing December 11, 2006 concerning proposed Phase I amendments to the Tualatin Development Code (TDC) for tree removal. The Council directed staff to return with amendments to address three issues:

1. Explore increasing violation fines to the maximum amount enforceable;
2. Exclude portions of property outside developable area from tree mapping, tagging, and arborist report requirements; and
3. At time of property division, identify all trees that will be removed as a result of the division and as a result of future potential development on the property.

On January 22, 2007, Council reached a general consensus that the TDC amendments should include the fine increase to address issue no. 1 and not include staff's proposal to address issue no. 3. Council also directed staff to include a modification to provide that if a single-family dwelling exists on a property where trees must be removed to accommodate expansion of the existing structure or construction of an additional or replacement structure, then the tree mapping, tagging, and arborist report requirements should apply only to trees proposed for removal.

The attached ordinance includes these provisions.

**Special Issues** None

**Financial Statement** Not applicable

**Account No.** Not applicable

**Recommendation** Pass the ordinance

**Board/Commission Recommendation** Not applicable



**Attachments** (Listed Below)

Ordinance  
Affidavit of Publication (Exhibit A)  
Affidavit of Posting (Exhibit B)  
Affidavit of Mailing (Exhibit C)  
Staff Report Dated December 11, 2006 (Exhibit D)  
Staff Memorandum Dated January 22, 2007 (Exhibit E)

Approved By Tualatin City Council

Date 2-12-07

Recording Secretary *U. Smith*



ORDINANCE NUMBER 1227-07

AN ORDINANCE RELATING TO TREE PRESERVATION;  
AND AMENDING TDC 10, 31, 34, AND 73 (PTA 06-01)

WHEREAS upon initiation by the City of Tualatin, a public hearing was held before the City Council of the City of Tualatin on December 11, 2006, relating to tree preservation; amending TDC 10, 31, 34, and 73 (PTA 06-01); and

WHEREAS notice of public hearing was given as required under the Tualatin Community Plan by publication on November 23, 2006, in *The Times*, a newspaper of general circulation within the City which is evidenced by the Affidavit of Publication marked "Exhibit A," attached and incorporated by this reference; by posting a copy of the notice in two public and conspicuous places within the City, which is evidenced by the Affidavit of Posting, marked "Exhibit B," attached and incorporated by this reference; by mailing to all potentially affected property owners and to all neighborhood organizations recognized by the City Council which is evidenced by the Affidavits of Mailing, marked "Exhibit C" attached and incorporated by this reference; and

WHEREAS the Council conducted a public hearing on December 11, 2006, and heard and considered the testimony and evidence presented by the City staff and those appearing at the public hearing; and

WHEREAS after the conclusion of the public hearing the Council, with all members present, directed staff to bring back an ordinance with amended language; and

WHEREAS based upon the evidence and testimony heard and considered by the Council and especially the City staff report, the Council makes and adopts as its Findings of Fact the findings and analysis in the staff report attached as "Exhibit D" and Staff Memorandum dated January 22, 2007, attached as "Exhibit E," which are incorporated by this reference, and

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

THE CITY OF TUALATIN ORDAINS AS FOLLOWS:

**Section 1. TDC 10.050 is amended to read as follows:**

**Section 10.050 Tree ~~Cutting~~ Preservation and Street Tree Objectives.**

*This section describes the purpose of tree preservation and street tree provisions in the Planning District Standards.*

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

*(a) Tualatin's tree preservation goal is consistent with the general purpose of the Tualatin Community Plan, which is to guide the physical development of the City so as to preserve the*

*natural beauty of the area while accommodating economic growth.*

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

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

**Section 2. TDC 31.030 is amended to read as follows:**

(1) No building, structure, or land shall hereafter be used, possessed or occupied, and no building, structure, or any part thereof shall hereafter be erected, constructed, reconstructed, moved, or structurally altered contrary to the provisions of Chapters 31-74 of the City of Tualatin Community Development Code. Any use of land or existing structures which is not in conformity with the provisions of the applicable Planning District Standards at the time of the adoption of the City of Tualatin Community Development Code shall be nonconforming uses and structures subject to the provisions herein described by TDC Chapter 35.

(2) *No single-family dwelling building permit application shall be submitted to the City until all required land use approvals have been obtained by the property owner.*

**Section 3. TDC 31.060 is amended to add new definitions in alphabetical order and delete a definition to read as follows:**

***Arborist, Qualified.*** *A professional in the field of arboriculture who provides professional consultation about trees and other woody plants regarding damage, diseases, and afflictions which affect them; their health and care; and their value. The arborist must demonstrate proficiency and credibility through documentation of one or more of the following:*

(1) *Current Certification as either a Master Arborist or an Arborist-Municipal Specialist by the International Society of Arboriculture (ISA); or*

(2) *Current Certification as a Registered Consulting Arborist by the American Society of Consulting Arborists (ASCA); or*

(3) *Any combination of one or more of the following, as deemed acceptable by the City, to demonstrate qualification for inclusion on a list of acceptable qualified arborists:*

(a) *Professional certification, pertinent academic degree, or other form of professional training, other than that detailed in (1) or (2) above;*

(b) *Substantial and regular experience as an arborist;*

(c) *Referential record of practice in the field as an arborist through examples of a variety of arboricultural consultation problem-solving situations.*

~~Cutting (trees). Falling or removing a tree, or an act by a person, above or below ground, the natural result of which is to cause the death or substantial destruction of a tree. Cutting does not include measures performed in accordance with sound arboriculture practice such as trimming, pruning or, in the case of conifers, topping.~~

~~Qualified Arborist. A professional in the field of arboriculture who provides professional consultation about trees and other woody plants regarding damage, diseases, and afflictions which affect them; their health and care; and their value. The arborist must be able to demonstrate proficiency and credibility through evidence of either of the following:~~

~~(1) Membership in the American Society of Consulting Arborists, or~~

~~(2) Qualification for inclusion on a list of acceptable qualified arborists by the City through documentation of any or all of the following:~~

~~(a) Substantial and regular experience as an arborist.~~



- (b) Pertinent academic degree or other forms of certified training;
- (c) Referential record of practice in the field as an arborist through examples of a variety of arboricultural consultation problem-solving situations. (See "Arborist, Qualified")

***Tree Removal.*** To remove or cut down a tree, or to damage a tree so as to cause the tree to die. Damage which constitutes removal includes, but is not limited to, topping or removing a significant portion of the tree crown; application or injection of a substance toxic to the tree; damage inflicted upon the root system by root cutting, grading, paving, or storing materials or equipment in the tree's root zone; disrupting bark functions by stripping bark or girdling tree trunks or limbs with rope or wire.

**Section 4. TDC 31.076 is amended to read as follows:**

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

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

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

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

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

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

(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) the applicant and owner of the subject property;
- (b) owners of property (fee title) within 300 feet of the entire contiguous site who commented on the proposal;
- (c) recognized neighborhood associations whose boundaries include the site;
- (d) City Council members;
- (e) 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
- (f) members of the Architectural Review Board.

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

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

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

**Section 5. TDC 31.111 is amended to read as follows:**

Violation of any provision of the Tualatin Development Code is punishable upon conviction by:

(1) A fine of not more than \$500.00 for each day of violation when the violation is a continuing violation, but such fine shall not exceed \$10,000.00. *If the violation is not a continuing violation, the fine shall not exceed \$2,500.00.*

(2) ~~A fine of not more than \$2,500.00 when the violation is not a continuing violation~~ *When the violation is removal of one or more trees under TDC Chapter 34 standards, a fine of not more than \$1,000.00 for each tree removed.*

**Section 6. TDC 34.200 is amended to read as follows:**

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

(1) Except as provided in TDC 34.200(53), no person shall ~~cut~~remove a tree within the City limits without first obtaining a *Tree Removal* Permit from the City or *obtaining* approval through the Architectural Review, Subdivision *Review*, or Partition Review process. Incentives for tree retention



are found in TDC Chapter 73, Community Design Standards. *Any property owner who removes, or causes to be removed, one or more trees in violation of applicable TDC provisions, shall pay an enforcement fee and a restoration fee to the City of Tualatin, as set forth in TDC 34.220(3), in addition to civil penalties set forth in TDC 31.111.*

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

(3) The following exemptions apply to tree ~~cutting~~removal:

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

(i) Is located in the ~~Greenway~~Natural Resource Protection Overlay District (GNRPO);

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

(iii) Is a Heritage Tree; or

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

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

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

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

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

(a) ~~The Forest Harvesting Exemption. All of the following criteria must be met in order for the exemption to exist:~~

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

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

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

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

- (i)- Subdivision or Partition review;
- (ii)- Conditional Use;
- (iii)- Architectural Review.

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

(i) ~~The property remains tax deferred in accordance with TDC 34.200(3)(a) and meets the~~



conditions of either TDC 34.200(3)(c)(ii) or 34.200(3)(c)(ii);

(ii)- The land use action that affected the revocation was denied and the appeals period has expired; or

(iii)- The land use action that affected the revocation was approved, and the proposed development which affected the filing of the land use action did not occur; and the approval that was granted, including extensions has expired.

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

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

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

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

(8) Building permits issued in connection with parcels approved for construction of single family dwellings are exempt from this ordinance.

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

**Section 7. TDC 34.210 is amended to read as follows:**

**Section 34.210 Application for Architectural Review, Subdivision or Partition Review, or Tree Removal Permit.**

(1) ***Architectural Review, Subdivision, or Partition.*** When a property owner wishes to cut~~remove~~ trees, in addition to those~~other than the exemptions~~ permitted under TDC 34.200(2)(a)(3), to develop property, and the development is subject to Architectural Review, Subdivision ~~Review,~~ or Partition Review ~~approval,~~ the property owner shall apply for approval to cut~~remove~~ trees as part of the Architectural Review, Subdivision ~~Review,~~ or Partition Review ~~application process.~~ The granting or denial of approval will be based on the criteria in TDC 34.230.

***(a) The application for tree removal shall include:***

***(i) A Tree Preservation Site Plan, drawn to a legible scale, showing the following information: a north arrow; existing and proposed property lines; existing and proposed topographical contour lines; existing and proposed structures, impervious surfaces, wells, septic systems, and stormwater retention/detention facilities; existing and proposed utility and access locations/easements; illustration of vision clearance areas; and illustration of all trees on-site that are eight inches or more in diameter (including size, species, and tag i.d. number). All trees proposed for removal and all trees proposed for preservation shall be indicated on the site plan as such by identifying symbols, except as follows:***

***(A) Where Clean Water Services (CWS) has issued a Service Provider Letter that addresses the proposed development currently under consideration, and***

***(B) Where CWS has approved delineation of a "sensitive area" or "vegetated corridor" on the subject property, and***

***(C) Where CWS has required dedication of an easement that prohibits encroachment into the delineated area, then***

***(D) All trees located within the CWS-required easement need not be individually identified on the Tree Preservation Site Plan if the CWS-required easement boundary is clearly illustrated and identified on the Tree Preservation Site Plan.***

***(ii) A tree assessment prepared by a qualified arborist, including the following information:***



*an analysis as to whether trees proposed for preservation can in fact be preserved in light of the development proposed, are healthy specimens, and do not pose an imminent hazard to persons or property if preserved; an analysis as to whether any trees proposed for removal could be reasonably preserved in light of the development proposed and health of the tree; a statement addressing the approval criteria set forth in TDC 34.230; and arborist's signature and contact information. The tree assessment report shall have been prepared and dated no more than one calendar year preceding the date the development application is deemed complete by the City. Where TDC 34.210(1)(a)(i)(A) through (D) are applicable, trees located within the CWS-required easement need not be included in the tree assessment report.*

*(iii) All trees on-site shall be physically identified and numbered in the field with an arborist-approved tagging system. The tag i.d. numbers shall correspond with the tag i.d. numbers illustrated on the site plan. Where TDC 34.210(1)(a)(i)(A) through (D) are applicable, trees located in the CWS-required easement need not be tagged.*

*(b) The application for tree removal shall be approved or denied based on the criteria in TDC 34.230.*

*(c) The approval or denial of an application to remove trees shall be a part of the Architectural Review, Subdivision Review, or Partition Review decision.*

*(2) Existing Single-Family Dwelling.* When a property owner wishes to cut remove trees, in addition to those other than the exemptions permitted under TDC 34.200(2)(a)(3), for reasons other than those identified in TDC 34.210(1) the permit process shall be in order to remodel, add to, or replace, an existing single-family dwelling, or in order to remodel, add to, replace or newly construct, an accessory structure on property developed with an existing single-family dwelling, the property owner shall apply for a Tree Removal Permit as follows:

*(a) A property owner desiring to cut trees in addition to those permitted under TDC 34.200(2)(a) shall file an application for a Tree Removal Permit shall be filed with the Planning Community Development Director. Application shall be made upon forms furnished by the City, and shall be accompanied by a nonrefundable fee as established by City Council resolution. The application for tree removal shall include:*

*(i) A Tree Preservation Site Plan, drawn to a legible scale, showing the following information: a north arrow; property lines; existing and proposed topographical contour lines; existing and proposed structures, impervious surfaces, wells, septic systems, and stormwater retention/detention facilities; existing and proposed utility and access locations/easements; illustration of vision clearance areas. All trees eight inches or more in diameter that are proposed for removal or that are located within 15 feet of the development envelope shall be indicated on the site plan (including size, species, and tag i.d. number), except as follows:*

*(A) Where Clean Water Services (CWS) has issued a Service Provider Letter that addresses the proposed development currently under consideration, and*

*(B) Where CWS has approved delineation of a "sensitive area" or "vegetated corridor" on the subject property, and*

*(C) Where CWS has required dedication of an easement that prohibits encroachment into the delineated area, then*

*(D) All trees located within the CWS-required easement need not be individually identified on the Tree Preservation Site Plan if the CWS-required easement boundary is clearly illustrated and identified on the Tree Preservation Site Plan.*

*(ii) A tree assessment prepared by a qualified arborist, including the following information: an analysis as to whether any trees proposed for removal could be reasonably preserved in light of the development proposed and health of the tree; a statement addressing the approval criteria set forth in TDC 34.230; and arborist's signature and contact information. The tree assessment report shall have*



*been prepared and dated no more than one calendar year preceding the date the Tree Removal Permit application is deemed complete by the City. Where TDC 34.210(2)(a)(i)(A) through (D) are applicable, trees located within the CWS-required easement need not be included in the tree assessment report.*

*(iii) All trees eight inches or more in diameter that are proposed for removal or that are located within 15 feet of the development envelope shall be physically identified and numbered in the field with an arborist-approved tagging system. The tag i.d. numbers shall correspond with the tag i.d. numbers illustrated on the site plan. Where TDC 34.210(2)(a)(i)(A) through (D) are applicable, trees located in the CWS-required easement need not be tagged.*

*(iv) The application shall include a mailing list of all property owners within 300 feet of the property.*

*(b) The Applications shall be made upon forms furnished by the City for a Tree Removal Permit shall be approved or denied based on the criteria in TDC 34.230.*

*(c) The application shall contain a site plan, the number, size, species and location of the trees to be cut and a report from a qualified arborist stating the reason for cutting or removal based on the criteria in TDC 34.230 approval or denial of a Tree Removal Permit application is a land use decision.*

*(d) Mailing list of all property owners within 300 feet of the property.*

*(e) The application shall be approved or denied in accordance with criteria listed in TDC 34.230.*

*(3) Other. When a property owner wishes to remove trees, other than the exemptions permitted under TDC 34.200(3), for reasons other than those identified in TDC 34.210(1) and (2), the property owner shall apply for a Tree Removal Permit as follows:*

*(a) An application for a Tree Removal Permit shall be filed with the Community Development Director. Application shall be made upon forms furnished by the City, and shall be accompanied by a nonrefundable fee as established by City Council resolution. The application for tree removal shall include:*

*(i) A Tree Preservation Site Plan, drawn to a legible scale, showing the following information: a north arrow; property lines; existing and proposed topographical contour lines; existing and proposed structures, impervious surfaces, wells, septic systems, and stormwater retention/detention facilities; existing and proposed utility and access locations/easements; illustration of vision clearance areas; and illustration of all trees on-site that are eight inches or more in diameter (including size, species, and tag i.d. number). All trees proposed for removal and all trees proposed for preservation shall be indicated on the site plan as such by identifying symbols, except as follows:*

*(A) Where Clean Water Services (CWS) has issued a Service Provider Letter that addresses the proposed development currently under consideration, and*

*(B) Where CWS has approved delineation of a "sensitive area" or "vegetated corridor" on the subject property, and*

*(C) Where CWS has required dedication of an easement that prohibits encroachment into the delineated area, then*

*(D) All trees located within the CWS-required easement need not be individually identified on the Tree Preservation Site Plan if the CWS-required easement boundary is clearly illustrated and identified on the Tree Preservation Site Plan.*

*(ii) A tree assessment prepared by a qualified arborist, including the following information: an analysis as to whether trees proposed for preservation can in fact be preserved in light of the development proposed, are healthy specimens, and do not pose an imminent hazard to persons or property if preserved; an analysis as to whether any trees proposed for removal could be reasonably preserved in light of the development proposed and health of the tree; a statement addressing the approval criteria set forth in TDC 34.230; and arborist's signature and contact information. The tree assessment report shall have been prepared and dated no more than one calendar year preceding the date the Tree Removal Permit application is deemed complete by the City. Where*



*TDC 34.210(3)(a)(i)(A) through (D) are applicable, trees located within the CWS-required easement need not be included in the tree assessment report.*

*(iii) All trees on-site shall be physically identified and numbered in the field with an arborist-approved tagging system. The tag i.d. numbers shall correspond with the tag i.d. numbers illustrated on the site plan. Where TDC 34.210(3)(a)(i)(A) through (D) are applicable, trees located in the CWS-required easement need not be tagged.*

*(iv) The application shall include a mailing list of all property owners within 300 feet of the property.*

*(b) The application for a Tree Removal Permit shall be approved or denied based on the criteria in TDC 34.230.*

*(c) The approval or denial of a Tree Removal Permit application is a land use decision.*

**Section 8. TDC 34.220 is amended to read as follows:**

(1) Architectural Review, Subdivision or Partition Review. In accordance with the Architectural Review process, TDC Chapter 73, Subdivision or Partition Review process, TDC Chapter 36.

(2) Permit. The application shall be accompanied by a filing fee established by Council resolution. The filing fee is not refundable, regardless of whether a permit is granted. All permits shall be valid for one year from the date of issue.

(3) *Tree removal in violation of Planning District Standards. In addition to any applicable civil violation penalties, any property owner who removes, or causes to be removed, one or more trees in violation of applicable TDC provisions, shall pay an enforcement fee and a restoration fee to the City of Tualatin, as follows:*

*(a) Enforcement Fee: \$837.00 per incident, plus \$10 per each tree removed. The City Manager may administratively reduce or waive this fee, based upon a demonstration of hardship or other good cause.*

*(b) Restoration Fee: \$2,000 per tree removed in violation of Planning District Standards. The City Manager may administratively reduce or waive this fee, based upon a demonstration of hardship or other good cause.*

**Section 9. TDC 34.230 is amended to read as follows:**

The Planning *Community Development* Director shall consider the following criteria when approving, approving with conditions, or denying a request to cut trees.

(1) The Planning Director may approve a request to cut a tree when the ~~an~~ applicant ~~can~~ *must* satisfactorily demonstrate that any of the following criteria are met:

(a) The tree is diseased, and

(i) The disease threatens the structural integrity of the tree; or

(ii) The disease permanently and severely diminishes the aesthetic value of the tree; or

(iii) The continued retention of the tree could result in other trees being infected with a disease that threatens either their structural integrity or aesthetic value.

(b) The tree represents a hazard which may include but not be limited to:

(i) The tree is in danger of falling;

(ii) Substantial portions of the tree are in danger of falling.

(c) It is necessary to remove the tree to construct proposed improvements based on Architectural Review approval, building permit, or approval of a Subdivision or Partition Review.

(2) If none of the conditions in TDC 34.240(1) are met, then the Planning *Community Development* Director shall evaluate the condition of each tree based on the following criteria. A tree given a rating of one on a factor will not be required to be retained.



FACTOR	VARIATION OF CONDITION FACTOR	AWARDED
Trunk Condition	Sound and solid (5) Sections of bark missing (3) Extensive decay and hollow (1)	
Crown Development	Full and balanced (5) Full but unbalanced (3) Unbalanced and lacking a full crown (1)	
<i>Structure*</i>	Sound (5) One major or several minor limbs dead (3) Two or more major limbs dead (1)	
* For deciduous trees only		

**Section 10. TDC 34.240 is amended to read as follows:**

(1) If emergency conditions occur requiring the immediate cutting or removal of trees to avoid danger or hazard to persons or property, an emergency permit shall be issued by the *Planning Community Development* Director without payment of a fee and without formal application. If the *Planning Community Development* Director is unavailable the property owner may proceed to cut the tree or trees without a permit to the extent necessary to avoid the immediate danger or hazard. If a tree is cut under this section without filing of an application with the *Planning Community Development* Director, the person doing so shall report the action to the *Planning Community Development* Director within two working days, without payment of fee, and shall provide such information and evidence as may be reasonably required by the *Planning Community Development* Director to explain and justify the action taken. Where no emergency is found to exist, the cutting or removal of a tree or trees is prohibited.

**Section 11. TDC 34.250 is amended to read as follows:**

(1) Architectural Review, Subdivision or Partition Review. Notice of decision shall be in accordance with the Architectural Review, Subdivision *Review* or Partition Review Process in Chapters 31 and 36 respectively. If approval is granted to ~~cut~~remove a Heritage Tree, a copy of the decision shall be sent to the chairman of the Tualatin Park Advisory Committee.

(2) *Tree Removal* Permit. The decision shall be in writing and shall be sent in accordance with TDC 31.074. If the application for ~~cutting~~*tree removal* pertains to a Heritage Tree, the decision shall also be sent to the chairman of the Tualatin Park Advisory Committee.

**Section 12. TDC 73.050 is amended to read as follows:**

(1) In exercising or performing his or her powers, duties, or functions, the Community Development Director shall determine whether there is compliance with the following:

(a) The proposed site development, including the site plan, architecture, landscaping, parking and graphic design, is in conformance with the standards of this and other applicable City ordinances insofar as the location, height, and appearance of the proposed development are involved;

(b) The proposed design of the development is compatible with the design of other developments in the general vicinity; and

(c) The location, design, size, color and materials of the exterior of all structures are compatible with the proposed development and appropriate to the design character of other developments in the vicinity.

(2) In making his or her determination of compliance with the above requirements, the Community Development Director shall be guided by the objectives and standards set forth in this chapter. If the architectural review plan includes utility facilities or public utility facilities, then the City Engineer shall determine whether those aspects of the proposed plan comply with applicable standards.

(3) In determining compliance with the requirements set forth, the Community Development Director shall consider the effect of his or her action on the availability and cost of needed housing.




The Community Development Director shall not use the requirements of this section to exclude needed housing types. However, consideration of these factors shall not prevent the Community Development Director from imposing conditions of approval necessary to meet the requirements of this section. The costs of such conditions shall not unduly increase the cost of housing beyond the minimum necessary to achieve the purposes of this Code. As part of the Architectural Review process, the Community Development Director has no authority to reduce dwelling unit densities.

(4) As part of Architectural Review, the property owner may apply for approval to ~~cut~~remove trees, in addition to those *exemptions* allowed in TDC 34.200(3), *by submitting information concerning proposed tree removal, pursuant to TDC 34.210(1)*. The granting or denial of a tree ~~cutting~~removal permit shall be based on the criteria in TDC 34.230.

(5) Conflicting Standards. In addition to the MUCOD requirements, the requirements in TDC Chapter 73 (Community Design Standards) and other applicable Chapters apply. If TDC Chapters 57, 73 and other applicable Chapters, conflict or are different, they shall be resolved in accordance with TDC 57.200(2).

INTRODUCED AND ADOPTED this 12th day of February, 2007.

CITY OF TUALATIN, Oregon

BY   
Mayor Pro Tem

ATTEST:

BY   
City Recorder



EXH A



6605 SE Lake Road, Portland, OR 97222 • PO  
Box 22109 • Portland, OR 97269  
Phone: 503-684-0360 Fax: 503-620-3433  
Email: [legals@commnewspapers.com](mailto:legals@commnewspapers.com)

**AFFIDAVIT OF PUBLICATION**

State of Oregon, County of Washington, SS

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

City of Tualatin  
Notice of Hearing  
TT1886

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

1  
successive and consecutive weeks in the following issues  
November 23, 2006

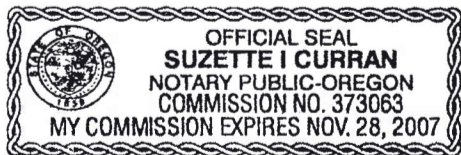
Charlotte Allsop  
Charlotte Allsop (Accounting Manager)

November 23, 2006

Suzette I. Curran  
NOTARY PUBLIC FOR OREGON  
My commission expires NOV. 28, 2007

Acct #108462  
Stacy Fonseca  
City of Tualatin  
18880 SW Martinazzi Avenue  
Tualatin, OR 97062-7092

Size: 2 x 7.75  
Amount Due \$140.27  
\*Remit to address above



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

NOTICE IS HEREBY GIVEN that a public hearing will be held before the City of Tualatin City Council at 7:30 p.m., Monday, December 11, 2006, at the Council Building, Tualatin City Center, at 18884 SW Martinazzi Avenue, to consider:

PLAN TEXT AMENDMENT 06-01, AN ORDINANCE RELATING TO TREE PRESERVATION, AMENDING SECTIONS 10.050, 31.060, 31.076, 31.111, 34.200, 34.210, 34.230, 34.240, 34.250, AND 73.050. (PTA 06-01)

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

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

Copies of the application, all documents and evidence relied upon by the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost. A copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing, and will be provided at reasonable cost. For information contact Melissa Hardy at 503-691-3024 or [mhardy@ci.tualatin.or.us](mailto:mhardy@ci.tualatin.or.us). This meeting and any materials being considered can be made accessible upon request.

**CITY OF TUALATIN, OREGON**

By: Richard C. Townsend  
Interim City Recorder

Publish 11/23/2006 TT1886



EXH B

B-1

### AFFIDAVIT OF POSTING

STATE OF OREGON )  
 ) SS  
COUNTY OF WASHINGTON )

I, Stacy Fonseca, being first duly sworn, depose and say:

That at the request of Richard Townsend, Interim City Recorder for the City of Tualatin, Oregon; that I posted two copies of the Notice of Hearing on the 22<sup>nd</sup> day of November, 2006, a copy of which Notice is attached hereto; and that I posted said copies in two public and conspicuous places within the City, to wit:

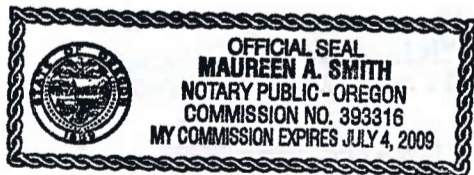
1. U.S. Post Office - Tualatin Branch
2. City of Tualatin City Center Building

Dated this 22<sup>nd</sup> day of November, 2006.

Stacy Fonseca  
Stacy Fonseca

Subscribed and sworn to before me this 22 day of November, 2006.

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



RE: PLAN TEXT AMENDMENT 06-01, AN ORDINANCE RELATING TO TREE PRESERVATION; AMENDING SECTIONS 10.050, 31.060, 31.076, 31.111, 34.200, 34.210, 34.230, 34.240, 34.250, AND 73.050. (PTA 06-01)





## City of Tualatin

18880 SW Martinazzi Avenue  
Tualatin, Oregon 97062-7092  
Main 503.692.2000  
TDD 503.692.0574

### NOTICE OF HEARING CITY OF TUALATIN, OREGON

NOTICE IS HEREBY GIVEN that a public hearing will be held before the City of Tualatin City Council at 7:00 p.m., Monday, December 11, 2006, at the Council Building, Tualatin City Center, at 18884 SW Martinazzi Avenue, to consider:

PLAN TEXT AMENDMENT 06-01, AN ORDINANCE RELATING TO TREE PRESERVATION; AMENDING SECTIONS 10.050, 31.060, 31.076, 31.111, 34.200, 34.210, 34.230, 34.240, 34.250, AND 73.050. (PTA 06-01)

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

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

Copies of the application, all documents and evidence relied upon by the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost. A copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing, and will be provided at reasonable cost. For information contact Melissa Hardy at 503-691-3024 or [mhardy@ci.tualatin.or.us](mailto:mhardy@ci.tualatin.or.us). This meeting and any materials being considered can be made accessible upon request.

CITY OF TUALATIN, OREGON

By: Richard C. Townsend  
Interim City Recorder

NOTICE TO THE TUALATIN TIMES: Please publish in the Tualatin Times on November 23, 2006.



EXH C

### AFFIDAVIT OF MAILING

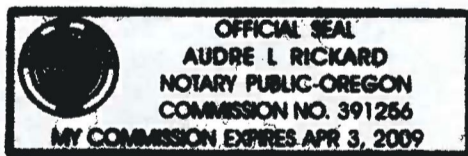
STATE OF OREGON )  
 ) SS  
COUNTY OF WASHINGTON )

I, Sally Jakes, being first duly sworn, depose and say:

That on the 8<sup>th</sup> day of November, 2006, I served upon the persons shown on Exhibit "A," attached hereto and by this reference incorporated herein, a copy of a Notice of Hearing marked Exhibit "B," attached hereto and by this reference incorporated herein, by mailing to them a true and correct copy of the original hereof. I further certify that the addresses shown on said Exhibit "A" are their regular addresses as determined from the books and records of the Washington County and/or Clackamas County Departments of Assessment and Taxation Tax Rolls, and that said envelopes were placed in the United States Mail at Tualatin, Oregon, with postage fully prepared thereon.

Sally Jakes  
Sally Jakes

SUBSCRIBED AND SWORN to before me this 28 day of November, 2006.



Audre L. Rickard  
Notary Public for Oregon  
My commission expires: April 3, 2009

RE: PLAN TEXT AMENDMENT 06-01, AN ORDINANCE RELATING TO TREE PRESERVATION; AMENDING SECTIONS 10.050, 31.060, 31.076, 31.111, 34.200, 34.210, 34.230, 34.240, 34.250, AND 73.050. (PTA 06-01)



United States Postal Service  
**Postage Statement – Standard Mail**

USPS Only Note Mail Arrival Date & Time

Mailer	Permit Holder's Name and Address and Email Address, If Any City of Tualatin 18880 SE Martinazzi Ave Tualatin, OR 97062-7092	Telephone	Name and Address of Mailing Agent <i>if other than permit holder</i> AKA Direct P.O. Box 2990 Tualatin, OR 97062-2990	Telephone (503) 454-2218	Name and Address of Individual or Organization for Which Mailing is Prepared <i>(if other than permit holder)</i> City of Tualatin 18880 SW Martinazzi Ave Tualatin, OR 97062-7092
	CAPS Cust. Ref. No. Dun & Bradstreet No. <u>01</u>		Dun & Bradstreet No. <u>1006</u>		Dun & Bradstreet No. <u>01</u>

Mailing	Post Office of Mailing Tualatin OR 97062	Processing Category <input checked="" type="checkbox"/> Letters <input type="checkbox"/> CMM <input type="checkbox"/> Flats <input type="checkbox"/> Automation Flats (DMM 301.3) <input type="checkbox"/> Parcels	Mailing Date 11/08/2006	Federal Agency Cost Code	Statement Seq. No.	No. & Type of Containers 14
	Type of Postage <input checked="" type="checkbox"/> Permit Imprint <input type="checkbox"/> Precanceled Stamps <input type="checkbox"/> Meter Postage	Permit # 01	For Mail Enclosed Within Another Class <input type="checkbox"/> Periodicals <input type="checkbox"/> Bound Printed Matter <input type="checkbox"/> Library Mail <input type="checkbox"/> Media Mail <input type="checkbox"/> Parcel Post	Weight of a Single Piece 0.0128 pounds	Total Pieces 7,421	No. of pieces with Detached Address Labels Attached (DMM 602.4)
	For Automation Rate Pieces, Enter Date of Address Matching and Coding (DMM 708.3.3) 11/03/2006	For Automation Carrier Route Rate Pieces, Enter Date of Address Matching and Coding (DMM 708.3.3) 11/03/2006	If Sacked, Based on <input type="checkbox"/> 125 pcs. <input type="checkbox"/> 15 lbs <input type="checkbox"/> both	Total Weight 94.9888 lb	For Enhanced Carrier Route Rate Pieces, Enter Date of Carrier Route Sequencing (DMM 245/345/445.6.10.1) 11/03/2006	
	Receipt Number 462 BC	Reference Number 0701-17462	Mailer's Department/Job No.	Description of Mail Notice of Hearing	Destination	

Applicable Parts Completed (select all that apply)  A  B  C  D  E  F  G  H  I  J  K  L  M  S

<b>Total Postage</b> (Add parts totals)	\$1,511.3520
Rate at Which Postage Affixed (Check one) (DMM 244, 344, 444) <input type="checkbox"/> Correct <input type="checkbox"/> Lowest <input type="checkbox"/> Neither	_____ pcs. x \$ _____ = Postage Affixed
<b>Net Postage Due</b> (Subtract postage affixed from total postage)	\$1,511.35
For USPS Use Only: Additional Postage Payment (State reason)	
For postage affixed add additional payment to net postage due; for permit imprint add additional payment to total postage.	
<b>Total Adjusted Postage Affixed</b>	
Postmaster: Report Total Postage in (Permit Imprint Only) <b>AIC 130</b>	<b>Total Adjusted Postage Permit Imprint</b>

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*Privacy Notice: For information regarding our Privacy Policy visit [www.usps.com](http://www.usps.com)*

Signature of Mailer or Agent	Name of Mailer or Agent Mindy Sampson L.O.F.	Telephone (503) 454-2218
------------------------------	---	-----------------------------

USPS Use Only	Weight of a Single Piece 0 _____ pound	Are postage figures at left adjusted from mailer's entries? If yes, reason: <input type="checkbox"/> Yes <input type="checkbox"/> No	
	Total Pieces	Total Weight	Round Stamp (Required)
	Total Postage		
	Check One <input type="checkbox"/> Presort Verification Not Scheduled <input type="checkbox"/> Presort Verification Performed as Scheduled		
	I CERTIFY that this mailing has been inspected concerning: (1) eligibility for postage rates claimed; (2) proper preparation (and presort where required); (3) proper completion of postage statement; and (4) payment of annual fee (if required).		Date Mailer Notified
Verifying Employee's Signature		By (Initials)	
Verifying Employee's Name		Time	PM AM



City of Tualatin, Oregon  
COUNCIL AGENDA STATEMENT

Meeting Date December 11, 2006

Agenda Item No. \_\_\_\_\_

**Item Title** AN ORDINANCE RELATING TO TREE PRESERVATION; AMENDING TDC 10.050, 31.060, 31.076, 31.111, 34.200, 34.210, 34.230, 34.240, 34.250, AND 73.050 (PTA 06-01)

**Prepared by** Doug Rux *DR*

**Department** Community Development

**Explanation**

This Plan Text Amendment (PTA) is a City-initiated legislative amendment to the Tualatin Development Code (TDC), the purpose of which is to revise the Tualatin Community Plan in order to clarify the City's comprehensive plan goal related to preservation of trees, and to revise the Planning District Standards in order to amend the City's tree preservation regulations.

Proposed code amendments include: (1) Amending tree preservation objectives in TDC Chapter 10; (2) Amending TDC Chapter 31 in order to refine the definition for "qualified arborist", delete the definition for "cutting (trees)", add a definition for "tree removal", replace the term "tree cutting" with "tree removal", and clarify in the penalties section that removal of trees in violation of City code is subject to a maximum fine of \$500 per each tree removed rather than on a per day basis, with no limit set on the total amount of fines that one person could receive for multiple violations; (3) Amending TDC Chapter 34 to replace the terminology "tree cutting" with "tree removal", correct the reference "Greenway Protection Overlay District" to more accurately refer to the "Natural Resource Protection Overlay District", eliminate the single family dwelling building permit exemption, renumber the tree removal exemptions section and correct section references, more clearly articulate information that must be provided in a tree removal site plan, require an arborist assessment, require physical tree tagging, replace the term "Planning Director" with "Community Development Director", and replace the term "permit" with "tree removal permit"; (4) Amending TDC Chapter 73 in order to replace the terms "cut" and "cutting" with "remove" and "removal", and add a reference back to TDC 34.210(1) for added clarity concerning information that must be submitted if tree removal is proposed as part of an Architectural Review application.

Greater detail concerning recommended code amendments is provided in the staff report.

**Applicant:** City of Tualatin

**Special Issues** The 120-day rule does not apply to legislative applications.

**Financial Statement** Not applicable

**Account No.** Not applicable

**Recommendation** Staff recommends the City Council adopt the staff report and direct staff to prepare an ordinance granting PTA 06-01. *RT*

**Board/Commission Recommendation** TPARK recommends that City Council approve PTA 06-01 as recommended by staff; Additionally, TPARK recommends, at the discretion of City Council, that an ad-hoc committee be formed as soon as possible to begin Phase II (comprehensive) review of the City's development code, so that more complex tree preservation issues can be investigated.

TPAC recommends that City Council approve PTA 06-01 as recommended by staff, with one exception: TPAC differs with TPARK and with staff concerning the requirement that an arborist report be submitted in conjunction with architectural review, subdivision plan, partition plan, and tree removal permit applications. TPAC's reason for disagreement with the staff recommendation is that they believe it to be too burdensome on a property owner to require that they hire an arborist to review removal of five or more trees for the purpose of constructing a new, or remodeling an existing, single-family dwelling. At this time, staff recommends that an arborist assessment be required in conjunction with all architectural review, subdivision plan, partition plan, and tree removal permit applications.

**Attachments** 1. Draft Ordinance; 2. Brief Project Timeline; 3. Supporting Research Citations; 4. Public Comments.

as amended  
Approved By Tualatin City Council

Date 12-11-06

Recording Secretary *A. Kirby*



## PTA 06-01 COUNCIL STAFF REPORT EXECUTIVE SUMMARY

### BACKGROUND

This Plan Text Amendment (PTA) is a City-initiated legislative amendment to the Tualatin Development Code (TDC), the purpose of which is to revise the Tualatin Community Plan in order to clarify the City's comprehensive plan goal related to preservation of trees, and to revise the Planning District Standards in order to amend the City's tree preservation regulations.

The following first-phase TDC amendments recommended by staff are based upon ~~the~~ **recommendations** formulated by TPAC and TPARK over the course of a number of joint and separate committee meetings:

1. Amend the Tualatin Community Plan:
  - A. Amend the Tualatin Community Plan in order to more clearly articulate the City's comprehensive plan objectives concerning tree preservation, and describe why the community has an interest in controlling tree removal.
2. Amend the Planning District Standards:
  - A. Revise the definition for "qualified arborist" in order to clarify the minimum level of professional proficiency that the City expects in an acceptable arborist.
  - B. Delete the definition for "cutting (trees)", and replace this terminology with a definition for "tree removal", and replace the term "tree cutting" with the term "tree removal", in order to clarify what constitutes destruction of a tree, including but not limited to cutting, girdling, poisoning, root destruction, topping, etc.
  - C. Amend the code violation provisions in order to clarify that violation of the City's tree preservation regulations is subject to a maximum fine of \$500 per tree, with no maximum limit set for the total amount of fines that may be imposed on a person who commits multiple violations.
  - D. Correct the reference "Greenway Protection Overlay District" to more accurately refer to the "Natural Resource Protection Overlay District".
  - E. Eliminate the exemption from tree removal permit requirements for tree removal in conjunction with permitted single-family dwelling construction, in order that a tree removal permit be required for removal of more than 4 trees in a calendar year for the purpose of constructing a new, or remodeling an existing, single-family dwelling.
  - F. More clearly articulate what information must be provided on a tree removal site plan, in order to provide decision makers with better information concerning tree removal and tree preservation, and in order to improve the general public's understanding of what type of information is expected on a tree removal site plan.
  - G. Require an arborist assessment be submitted in conjunction with all tree removal permit applications and with all subdivision plan, partition plan, and architectural review applications, when removal of one or more trees is proposed (currently an arborist report is only required in conjunction with a tree cutting permit application), in order to provide decision makers with better information concerning proposed tree removal and tree preservation.



**PTA 06-01 COUNCIL STAFF REPORT  
EXECUTIVE SUMMARY (cont'd)**

- H. Require that trees be physically tagged in order to provide a means of visual identification on a proposed project site for City staff, elected and appointed officials, and interested citizens in the community.
- I. Add a section reference from TDC Chapter 73 back to Chapter 34 for added clarity concerning information that must be submitted if tree removal is proposed as part of an architectural review application.
- J. Make a number of non-substantive housekeeping revisions in order to correct section references and renumber sections, replace the term "Planning Director" with "Community Development Director", replace the term "permit" with "tree removal permit", and replace the terms "cut" and "cutting" with "remove" and "removal".

**DECISION TO BE MADE**

This is a legislative amendment. City Council must decide to: ~~approve~~, approve with modifications, or deny.

**OPTIONS**

The options for City Council are:

- Approve PTA 06-01 as proposed, based upon the recommended findings contained in the staff report, and direct staff to prepare an ordinance for adoption of the approved TDC amendments.
- Approve PTA 06-01 with alterations, and direct staff to prepare an ordinance for adoption of the approved TDC amendments.
- Deny the application request.
- Continue the public hearing, and return to the matter at a later date.

**PROS**

- The recommended amendments are relatively simple changes to existing tree preservation standards that can be implemented immediately to tighten up and make existing tree protection policies more effective.

**CONS**

- The recommended amendments do not result in any major programmatic changes to existing tree preservation standards.

**RECOMMENDATION**

Staff recommends the City Council adopt the staff report and direct staff to prepare an ordinance granting PTA 06-01.





## City of Tualatin

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Main 503.692.2000  
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December 11, 2006

City Council  
City of Tualatin

Members of the Council:

AN ORDINANCE RELATING TO TREE PRESERVATION;  
AMENDING TDC 10.050, 31.060, 31.076, 31.111, 34.200,  
34.210, 34.230, 34.240, 34.250, AND 73.050 (PTA 06-01)

### **PROPOSAL**

PTA 06-01 is a City-initiated Plan Text Amendment (PTA), the purpose of which is to revise the Tualatin Community Plan in order to clarify the City's comprehensive plan goal related to preservation of trees, and to revise the Planning District Standards in order to amend the City's tree preservation regulations. A draft ordinance is attached hereto (see Attachment 1).

### **BACKGROUND**

On November 28, 2005, the City Council initiated a Tualatin Development Code (TDC) Plan Text Amendment (PTA), and directed staff to work with the Tualatin Planning Advisory Committee (TPAC) and Tualatin Parks Advisory Committee (TPARK) to undertake a two-phase review of the City's tree preservation regulations, with the ultimate objective of increasing Tualatin's overall tree canopy. Phase I amendments, per City Council direction, are intended to be relatively simple changes to existing tree preservation standards that can be implemented immediately to tighten up and make existing tree protection policies more effective. Phase II code recommendations are anticipated next year, following a comprehensive review of the City's tree preservation goals and an examination of the potential effectiveness of a variety of more complex protection measures and incentives that could be implemented.

The following first-phase TDC amendments recommended by staff are based upon recommendations formulated by TPAC and TPARK over the course of a number of joint and separate committee meetings. A brief project timeline is attached hereto (see Attachment 2). Staff recommends the TDC be amended as follows:

1. Amend the Tualatin Community Plan:

- A. Chapter 10 - Amend the Title Page and revise section 10.050 in order to more clearly articulate the City's comprehensive plan objectives concerning tree preservation, and describe why the community has an interest in controlling tree removal.



2. Amend the Planning District Standards:

- A. Chapter 31 - Revise sections 31.060, 31.076, and 31.111 in order to:
- (1) Revise the definition for "qualified arborist" in order to clarify the minimum level of professional proficiency that the City expects in an acceptable arborist.
  - (2) Delete the definition for "cutting (trees)", and replace this terminology with a definition for "tree removal", and replace the term "tree cutting" with the term "tree removal", in order to clarify what constitutes destruction of a tree, including but not limited to cutting, girdling, poisoning, root destruction, topping, etc.
  - (3) Amend the code violation provisions in order to clarify that violation of the City's tree preservation regulations is subject to a maximum fine of \$500 per tree, with no maximum limit set for the total amount of fines that may be imposed on a person who commits multiple violations.
- B. Chapter 34 - Amend the Title Page and revise sections 34.200, 34.210, 34.230, 34.240, and 34.250 in order to:
- (1) Replace the term "tree cutting" with the term "tree removal".
  - (2) Correct the reference "Greenway Protection Overlay District" to more accurately refer to the "Natural Resource Protection Overlay District".
  - (3) Eliminate the exemption from tree removal permit requirements for tree removal in conjunction with permitted single-family dwelling construction, in order that a tree removal permit be required for removal of more than 4 trees in a calendar year for the purpose of constructing a new, or remodeling an existing, single-family dwelling.
  - (4) Renumber the tree removal exemptions section and correct section references.
  - (5) More clearly articulate what information must be provided on a tree removal site plan, in order to provide decision makers with better information concerning tree removal and tree preservation, and in order to improve the general public's understanding of what type of information is expected on a tree removal site plan.
  - (6) Require an arborist assessment be submitted in conjunction with all tree removal permit applications and with all subdivision plan, partition plan, and architectural review applications, when removal of one or more trees is proposed (currently an arborist report is only required in conjunction with a tree cutting permit application), in order to provide decision makers with better information concerning proposed tree removal and tree preservation.
  - (7) Require that trees be physically tagged in order to provide a means of visual identification on a proposed project site for City staff, elected and appointed officials, and interested citizens in the community.
  - (8) Replace the term "Planning Director" with "Community Development Director".
  - (9) Replace the term "permit" with "tree removal permit".
- C. Chapter 73 - Revise section 73.050 in order to:
- (1) Replace the terms "cut" and "cutting" with "remove" and "removal".
  - (2) Add a reference back to TDC 34.210(1) for added clarity concerning information that must be submitted if tree removal is proposed as part of an architectural review application.
- D. Amend the TDC Table of Contents accordingly to reflect these changes.



These staff recommendations were presented to TPAC at their November 09, 2006, meeting, and to TPARK at their November 14, 2006, meeting. TPARK recommends that the Council approve all of the staff-recommended amendments. TPAC recommends that the Council approve the staff-recommended amendments, with one exception.

TPAC differs with TPARK and with staff on amendment item 2.B.(6) detailed on the previous page, in that TPAC recommends instead that an arborist report should be required only in conjunction with architectural review, subdivision plan, and partition plan applications, and not be required with tree removal permit applications. TPAC's reason for disagreement with the staff recommendation is that they believe it to be too burdensome on a property owner to require that they hire an arborist to review removal of five or more trees for the purpose of constructing a new, or remodeling an existing, single-family dwelling.

It should be noted here that the City's existing code requires an arborist assessment be submitted with a tree removal permit application, and does not require an arborist assessment be submitted with an architectural review, subdivision plan, or partition plan application. Furthermore, the City's existing code makes tree removal in conjunction with permitted single-family dwelling construction exempt from tree preservation requirements.

At this time, staff recommends that an arborist assessment be required for ALL non-exempt tree removal proposals, including applications for tree removal permits, applications for architectural review, applications for subdivision plan review, and applications for partition plan review. An arborist report provides valuable expert testimony, and provides city staff with professional information upon which to make an informed discretionary decision. Approval criteria require that an applicant demonstrate to the City that a tree must be removed because it is diseased, is a hazard, or that removal is necessary to accommodate proposed development. An arborist assessment provides information necessary to demonstrate that approval criteria are met. Therefore, staff is in support of TPARK's recommendation that an arborist report be required with all tree removal permit, architectural review, subdivision plan, and partition plan applications.

#### **REQUEST**

PTA 06-01 is a City-initiated Plan Text Amendment (PTA), the purpose of which is to revise the Tualatin Community Plan in order to clarify the City's comprehensive plan goal related to preservation of trees, and to revise the Planning District Standards in order to amend the City's tree preservation regulations.

Code amendments recommended by staff are summarized on pages 1 and 2 of this staff report under the Background heading, and are illustrated in full text in the attached draft ordinance (see Attachment 1).

#### **POLICY CONSIDERATIONS**

The policy issues to be considered when reviewing these proposed code amendments include:



1. Are the proposed changes to the comprehensive plan objective language consistent with the intent of the City Council concerning tree preservation?

Staff Comments: The City Council provided direction to City staff at their November 28, 2005, meeting, at which time the Council directed staff to work with TPAC and TPARK to undertake a two-phase review of the City's tree preservation regulations, with the ultimate objective of increasing Tualatin's overall tree canopy. Staff believes that the first phase TDC amendments recommended herein are in line with the Council's objective of increasing overall tree canopy in the City by making existing tree protection policies more effective.

2. Are the proposed changes to the planning district standards consistent with City Council's intent for phase one amendments; that they be relatively simple changes to the City's tree preservation standards, low-hanging fruit that can be implemented immediately, and that will make existing tree protection policies more effective?

Staff Comments: Staff believes the recommended phase one TDC amendments to be relatively simple changes to existing tree preservation standards, which can be implemented immediately to tighten up and make existing tree protection policies more effective.

3. Does the City have adequate resources to implement the recommended tree preservation code amendments?

Staff Comments: The recommended TDC amendments do not result in a major programmatic change. The amendments are instead intended to tighten up and make existing tree protection policies and procedures more effective.

It is anticipated that a minor amount of additional staff hours will be spent addressing the following issues: (a) revise tree removal permit application form, (b) update the City's webpage with information concerning revised tree preservation regulations, and (c) process some number of additional tree removal applications annually as a result of deleting the existing exemption for removal of five or more trees in conjunction with permitted new construction or remodel of a single-family dwelling.

These additional staff hour expenditures are not expected to be significant. Therefore, staff projects at this time that the City has adequate resources to implement the recommended TDC amendments.

### **ANALYSIS AND FINDINGS**

This amendment is a legislative action. The approval criteria set forth by TDC 1.032 must be met if the proposed change is to be granted. Before granting the proposed amendment, the City Council must find that the following criteria are met:

- 1. Granting the amendment is in the public interest.**

The proposed amendments to the Tualatin Community Plan and Tualatin Planning District Standards serve to improve tree protection measures. Trees, in turn, serve to



enhance the aesthetic character of Tualatin, to protect and enhance property values, to protect and improve public health, to protect and improve air and water quality, to conserve energy, to provide buffering and screening between land uses, and provide and protect habitat for wildlife, in a manner consistent with the general purpose of the Tualatin Community Plan, as set forth in TDC Section 2.020, which is to guide the physical development of the City so as to preserve the natural beauty of the area while accommodating economic growth.

Research has demonstrated that trees provide a number of valuable community benefits (see supporting research citations – Attachment 3). The public interest is served by the proposed amendments, in that improved preservation of existing trees and reasonable management of tree removal within the City of Tualatin creates and preserves a desirable community in which to live, work, and invest.

Thus, the proposed amendments to the Tualatin Community Plan and Tualatin Planning District Standards promote and protect the health, safety, and general welfare of the community. Granting the amendment is in the public interest.

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

The amendments result in an increase in the number of trees that are regulated by Tualatin's tree preservation regulations, by eliminating exemptions for construction of a single-family dwelling. Increasing the number of trees that are subject to the City's regulations results in greater oversight of tree removal in the City, and potential preservation of trees that might have otherwise been cut down or destroyed. Because research has demonstrated that trees provide a number of valuable community benefits (see supporting research citations – Attachment 3), preservation of trees serves the public interest.

The amendments result in a better understanding of, and improved analysis of, trees proposed for removal and for preservation, by more clearly articulating what constitutes tree removal, clarifying what information must be provided in a tree removal site plan, by requiring that a qualified arborist prepare a tree assessment for all tree removal proposals, and by physically identifying trees in the field. The City's decision-making authorities are better able to make land use decisions that best serve the public interest when they have more complete, accurate, and professional information on which to rely.

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

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

TDC 2.020 - General Purpose: "*The general purpose of this Plan is to guide the physical development of the City so as to preserve the natural beauty of the area while accommodating economic growth*" - The amendments, for the purpose of revising the City's tree preservation regulations, are consistent with the general purpose of the Tualatin Community Plan, as set forth in TDC Section 2.020, because the amendments



serve to protect and enhance the aesthetic character of Tualatin, to protect and enhance property values, to protect and improve public health, to protect and improve air and water quality, to conserve energy, to provide buffering and screening between land uses, and provide and protect habitat for wildlife, while accommodating economic growth.

TDC 4.050(1) - Community Growth: "*Provide a plan that will accommodate a population range of 22,000 to 29,000 people*" - The amendments, for the purpose of revising the City's tree preservation regulations, are consistent with the Community Growth objectives in Chapter 4 of the Tualatin Community Plan, in that the amendments do not preclude growth and development of the community in an orderly and efficient manner. Existing tree removal approval criteria are in place in the City's code standards to ensure that reasonable tree removal may occur in order to accommodate development to serve the community's population.

TDC 4.050(10) - Community Growth: "*Encourage the highest quality physical design for future development*" - The amendments, for the purpose of revising the City's tree preservation regulations, serve to protect and enhance the aesthetic character of Tualatin, protect and enhance property values, protect and improve public health, protect and improve air and water quality, conserve energy, and provide buffering and screening between land uses, and are thus an integral component in encouraging physical design of the highest quality.

TDC 5.030(1) - Residential Planning Growth: "*Provide for the housing needs of existing and future City residents*" - The amendments, for the purpose of revising the City's tree preservation regulations, do not hinder the community's ability to provide for the housing needs of existing and future City residents. Tree removal approval criteria include consideration of a situation in which "tree removal is necessary to accommodate proposed development of the property based on Architectural Review approval, building permit, or approval of a Subdivision Review or Partition Review."

TDC 6.030(1) - Commercial Planning Districts: "*Encourage commercial development*" - The amendments, for the purpose of revising the City's tree preservation regulations, do not hinder the community's ability to encourage commercial development and provide employment and shopping opportunities. Tree removal approval criteria include consideration of a situation in which "tree removal is necessary to accommodate proposed development of the property based on Architectural Review approval, building permit, or approval of a Subdivision Review or Partition Review."

TDC 7.030(1) - Manufacturing Planning Districts: "*Encourage new industrial development*" - The amendments, for the purpose of revising the City's tree preservation regulations, do not hinder the community's ability to encourage industrial development and employment opportunities. Tree removal approval criteria include consideration of a situation in which "tree removal is necessary to accommodate proposed development of property based on Architectural Review approval, building permit, or approval of a Subdivision Review or Partition Review."

TDC Chapter 8 - Public, Semi-Public and Miscellaneous Land Uses: The proposed



amendments are consistent with TDC Chapter 8 provisions, because the amendments do not affect the existing comprehensive plan objectives pertaining to siting and development of general government services, utility facilities, schools, churches, retirement homes, residential facilities, hospitals, solid waste disposal sites, day care facilities, and wireless communication facilities.

TDC 9.010 - Plan Map: The amendments do not result in any change to the Plan Map (Map 9-1), which is incorporated as part of the Tualatin Development Code (TDC) in Chapter 9 of the Tualatin Community Plan.

TDC 10.020(3) - Community Design: "*Promote the City's natural beauty and visual character and charm by insuring that structures and other improvements are properly related to their sites, and to surrounding sites and structures, with due regard to the aesthetic qualities of the natural terrain and landscaping, and that proper attention is given to exterior appearances of structures and other improvements*" - The amendments, for the purpose of revising the City's tree preservation regulations, further this objective by encouraging preservation of existing trees in order that due regard is given to the aesthetic qualities of the natural terrain and landscaping.

TDC 10.050 – Tree Cutting: "*Develop a program for tree conservation within the City including control over tree removal or cutting*" - The amendments to the Tualatin Community Plan include adding language to TDC Section 10.050 in order to expand upon, and provide better clarification of, the City's comprehensive plan objective related to preservation of trees. The supplemental comprehensive plan language provides clearer direction for codification and implementation of Planning District Standards, without substantially changing the original intent of the objective, which is to conserve trees in the City.

TDC 11.610(2) - Transportation: "*Provide a transportation system that serves the travel needs of Tualatin residents, businesses, and visitors*" - The amendments, for the purpose of revising the City's tree preservation regulations, are consistent with the Transportation objectives in Chapter 11 of the Tualatin Community Plan, in that the proposed amendments do not include deletion of the existing exemption for "Federal, state, county, or City road, water, sanitary sewer, or storm sewer improvements..." from the tree preservation regulations, and therefore do not hinder development of an adequate transportation system.

TDC 12.020(1) - Water Service: "*Plan and construct a City water system that protects the public health, provides cost-effective water service, meets the demands of users, addresses regulatory requirements and supports the land uses designated in the Tualatin Community Plan*" - The amendments, for the purpose of revising the City's tree preservation regulations, are consistent with the Water Service objectives in Chapter 12 of the Tualatin Community Plan, in that the proposed amendments do not include deletion of the existing exemption for "Federal, state, county, or City road, water, sanitary sewer, or storm sewer improvements..." from the tree preservation regulations, and therefore do not hinder development of an adequate water service system.



TDC 13.015(1) - Sewer Service: *"Plan and construct a City sewer system that protects the public health, protects the water quality of creeks, ponds, wetlands and the Tualatin River, provides cost-effective sewer service, meets the demands of users, addresses regulatory requirements and supports the land uses designated in the Tualatin Community Plan"* - The amendments, for the purpose of revising the City's tree preservation regulations, are consistent with the Sewer Service objectives in Chapter 13 of the Tualatin Community Plan, in that the proposed amendments do not include deletion of the existing exemption for "Federal, state, county, or City road, water, sanitary sewer, or storm sewer improvements..." from the tree preservation regulations, and therefore do not hinder development of an adequate sewer service system.

TDC 14.040(1) - Drainage Plan and Surface Water Management: *"Provide a plan for routing surface drainage through the City, utilizing the natural drainages where possible. Update the plan as needed with drainage studies of problem areas and to respond to changes in the drainage pattern caused by urban development"* - The amendments, for the purpose of revising the City's tree preservation regulations, are consistent with the Drainage Plan and Surface Water Management objectives in Chapter 14 of the Tualatin Community Plan, in that the proposed amendments do not include deletion of the existing exemption for "Federal, state, county, or City road, water, sanitary sewer, or storm sewer improvements..." from the tree preservation regulations, and therefore do not hinder development of an adequate drainage and surface water management system.

TDC 15.020(2) - Parks and Recreation: *"Provide a high-quality park and recreation system to offset the environmental impact of large areas of commercial and industrial development"* - The amendments, for the purpose of revising the City's tree preservation regulations, are consistent with the Parks and Recreation objectives in Chapter 15 of the Tualatin Community Plan, in that the proposed amendments do not hinder the community's ability to develop a high-quality park and recreation system.

TDC 16.030(1) - Historic Preservation: *"Promote the historic, educational, architectural, cultural, economic, and general welfare of the public through the identification, preservation, restoration, rehabilitation, protection and use of those buildings, structures, sites and objects of historic interest within the City"* - The amendments, for the purpose of revising the City's tree preservation regulations, are consistent with the Historic Preservation objectives in Chapter 16 of the Tualatin Community Plan, in that the amendments do not hinder the community's ability to promote the historic, educational, architectural, cultural, economic, and general welfare of the public through the identification, preservation, restoration, rehabilitation, protection and use of those buildings, structures, sites and objects of historic interest within the City.

TDC 20.030(2) - Sign Design: *"Protect the public health, safety and welfare"* - The amendments, for the purpose of revising the City's tree preservation regulations, are consistent with the Sign Design objectives in Chapter 20 of the Tualatin Community Plan, in that the amendments do not hinder the community's ability to protect the public health, safety, and welfare as it relates to signs.



The amendments are in conformity with the applicable objectives of the Tualatin Community Plan.

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

**The various characteristics of the areas in the City:** The amendments are applicable to all Planning Districts in the City. Because the amendments serve to protect and enhance the aesthetic character of Tualatin, to protect and enhance property values, to protect and improve public health, to protect and improve air and water quality, to conserve energy, to provide buffering and screening between land uses, and provide and protect habitat for wildlife (see supporting research citations – Attachment 3), in a manner consistent with the general purpose of the Tualatin Community Plan, as set forth in TDC Section 2.020, which is to guide the physical development of the City so as to preserve the natural beauty of the area while accommodating economic growth, there is no particular Planning District and no particular area in the City in which the amendments do not serve the public interest.

**The suitability of the areas for particular land uses and improvements in the areas:** This factor is not particularly applicable to consideration of the proposed amendments, because the proposed tree preservation amendments are applicable to all areas in the City of Tualatin and do not involve adding any new proposed land uses or improvements to any particular area. However, consideration is given here to the fact that Tualatin has designated planning districts for various allowed residential, commercial, and manufacturing land uses and improvements, and trees are often present on land located within the various planning districts, and the amendments contribute to the suitability of land in the City for development of all allowed uses by protecting and enhancing the aesthetic character of Tualatin, protecting and enhancing property values, protecting and improving air and water quality, conserving energy, providing and protecting buffering and screening between land uses, and providing and protecting habitat for wildlife.

**Trends in land improvement and development:** Because trees serve to protect and enhance the aesthetic character of Tualatin, and protect and enhance property values, the amendments serve to encourage well-planned land improvement and development. The amendments do not hinder land improvement and development.

**Property values:** Tree removal approval criteria include consideration of a situation in which "tree removal is necessary to accommodate reasonable development of the property based on Architectural Review approval, building permit, or approval of a Subdivision Review or Partition Review". Therefore, the code amendments do not reduce property values because tree removal is allowed in order to accommodate reasonable development. Furthermore, statistical studies have found that trees enhance property values (see supporting research citations – Attachment 3). Therefore, revising the City's tree preservation codes in order to better preserve trees supports and enhances property values.

**The needs of economic enterprises and the future development of the area:** Tree



removal approval criteria include consideration of a situation in which tree removal is necessary to accommodate development of the property based on Architectural Review approval, building permit, or approval of a Subdivision Review or Partition Review. Therefore, the amendments do not create an undue impediment to economic enterprises nor to future development.

**Needed right-of-way and access for and to particular sites in the area:** While this factor is not particularly applicable to consideration of the proposed amendments, it should be noted that the existing tree regulation exemption for construction of public right-of-way is not affected by the code amendments.

**Natural resources of the City and the protection and conservation of said resources:** The amendments result in an increase in the number of trees that are regulated by Tualatin's tree preservation regulations by eliminating the exemption for construction of a single family dwelling. The amendments result in a better understanding of, and improved analysis of, trees proposed for removal and for preservation, by more clearly articulating what constitutes tree removal, detailing what information must be provided in a tree removal site plan, and by requiring that a qualified arborist prepare a tree assessment and physically identify trees in the field. Trees are a natural resource. Therefore, the code amendments result in improved stewardship of natural resources.

**Prospective requirements for the development of natural resources in the City:** The amendments do not eliminate the existing exemption in place for timber harvesting. Therefore, the amendments do not create an undue impediment to development and use of natural resources in the city limits.

**The public need for healthful, safe, aesthetic surroundings and conditions:** The amendments to the Tualatin Community Plan and Tualatin Planning District Standards serve to protect and enhance the aesthetic character of Tualatin, to protect and enhance property values, to protect and improve public health, to protect and improve air and water quality, to conserve energy, to provide buffering and screening between land uses, and provide and protect habitat for wildlife (see supporting research citations – Attachment 3), by regulating a greater number of tree removals and improving tree removal application submittal requirements. The public need for healthful, safe, aesthetic surroundings and conditions is therefore supported by the amendments.

**Proof of change in a neighborhood or area, or a mistake in the Plan Text or Plan Map for the property under consideration are additional relevant factors to consider:** This factor is not applicable to consideration of the proposed amendments.

The factors listed in Section 1.032(4) have been consciously considered in development of the proposed amendments.

**5. The criteria in the Tigard-Tualatin School District Facility Plan for school facility capacity have been considered.**

School facility capacity is impacted when additional students are added to the Tigard-



Tualatin School District. The amendments to the City's existing tree preservation regulations have no impact on student population nor on school facility capacity.

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

The Oregon Land Conservation and Development Commission acknowledged the Tualatin Community Plan in 1981, and through post-acknowledgement amendments, as complying with all the applicable Statewide Planning Goals. The proposed PTA is consistent with the State of Oregon Planning Goals and applicable Oregon Administrative Rules as follows:

Goal 1 – Citizen Involvement – The general public, through Tualatin's local program of citizen involvement, including public TPAC and TPARK committee meetings, has the opportunity to participate in the development, adoption, and application of legislation that is needed to carry out the Tualatin Community Plan objectives. The process through which these amendments have been developed and considered for adoption by the City Council has included citizen involvement consistent with Statewide Planning Goal 1 (see Attachment 2 for brief project timeline).

Goal 2 – Land Use Planning – The amendments to the TDC are found to be internally consistent with the remainder of the elements of the TDC, with the METRO Urban Growth Management Functional Plan, and without exception to the Oregon Statewide Planning Goals. The proposed amendments are consistent with Statewide Planning Goal 2.

Goal 3 – Agricultural Lands – Not applicable.

Goal 4 – Forest Lands – The amendments do not result in elimination of the existing tree regulation exemption in place for harvesting timber from property under forestland tax deferral status, have been considered in light of Statewide Planning Goal 4, and are found not to hinder forest operations, practices and auxiliary uses on forest lands. The proposed amendments are consistent with Statewide Planning Goal 4.

Goal 5 – Natural Resources, Scenic and Historic Areas, and Open Spaces – The amendments are consistent with Statewide Planning Goal 5, in that eliminating the exemption for construction of a single family dwelling, more clearly articulating what constitutes tree removal, detailing what information must be provided in a tree removal site plan, and requiring that a qualified arborist prepare a tree assessment and physically identify trees in the field, all provide increased protection and stewardship of natural resources. The amendments are consistent with Statewide Planning Goal 5.

Goals 6 through 19 – Statewide Planning Goals 6 through 19 were considered and found not applicable to the proposed amendments.



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

The proposed PTA is consistent with the Metropolitan Service District's (METRO) Urban Growth Management Functional Plan as follows:

Title 1 – Housing and Employment Accommodation – Not applicable.

Title 2 – Regional Parking Policy – Not applicable.

Title 3 – Water Quality, Flood Management and Fish and Wildlife Conservation – Not applicable.

Title 4 – Industrial and Other Employment Areas – Not applicable.

Title 5 – Neighbor Cities and Rural Reserves – Not applicable.

Title 6 – Central City, Regional Centers, Town Centers and Station Communities – Not applicable.

Title 7 – Affordable Housing – The amendments, particularly elimination of the exemption from tree preservation regulations for construction of a single family dwelling, does not create a local regulatory constraint on development of affordable housing, because tree removal approval criteria include consideration of a situation in which tree removal is necessary to accommodate development of a property based on Architectural Review approval, building permit, or approval of a Subdivision Review or Partition Review. The proposed amendments are consistent with Title 7.

Title 8 – Compliance Procedures – Notice of the proposed amendments was initially mailed to the METRO Chief Operating Officer on April 25, 2006, and again on November 01, 2006. The proposed amendments are consistent with Title 8.

Title 9 – Performance Measures – Not applicable.

Title 10 – Functional Plan Definitions – Not applicable.

Title 11 – Planning for New Urban Areas – Not applicable.

Title 12 – Protection of Residential Neighborhoods – Not applicable.

Title 13 – Nature in Neighborhoods – The amendments are not intended to amend any existing Tualatin ordinances pertaining to mapping of riparian habitat or upland wildlife habitat, nor to amend any existing programs associated therewith. The proposed amendments are consistent with Title 13.



**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.**

No development is being proposed. Therefore, the amendments to the City's existing tree preservation regulations have no impact on transportation facility capacity. Furthermore, the amendments do not include deletion of the existing exemption for "Federal, state, county, or City road, water, sanitary sewer, or storm sewer improvements..." from the tree preservation regulations, and therefore do not hinder development of an adequate transportation system.

**PUBLIC COMMENT**

Over the course of this past year, TPAC and TPARK held a number of separate and joint meetings to discuss a variety of potential tree preservation code amendments. A public open house was also hosted by the Community Development Department in May of 2006. Four interested persons submitted written comments during this time (see Attachment 4). Three of the comment letters submitted express support for more stringent tree preservation regulations. The Homebuilders Association (HBA) of Metropolitan Oregon also submitted a letter expressing concern with several potential code revisions that TPAC and TPARK discussed during their committee meetings. It should be noted here that none of the code amendments that HBA expressed concerns with are included in the Phase I amendments being recommended by staff.

Notice of the proposed PTA was mailed to the Oregon Department of Land Conservation and Development (DLCD) and to the Metropolitan Service District (METRO) on April 25, 2006, and again on November 01, 2006. As of the date of staff report submittal, no comments have been received.

Public comment on the proposed PTA was solicited through notice published in the Times newspaper on November 23, 2006. Additionally, on November 22, 2006, two copies of the notice of public hearing were posted in conspicuous locations. As of the date of staff report submittal, no comments have been received.

**TUALATIN PLANNING ADVISORY COMMITTEE (TPAC) AND TUALATIN PARKS ADVISORY COMMITTEE (TPARK) RECOMMENDATIONS**

1. TPARK recommends that the City Council approve PTA 06-01 as recommended by staff, and direct staff to prepare an ordinance for adoption.

Additionally, TPARK recommends, at the discretion of City Council, that an ad-hoc committee be formed as soon as possible to begin Phase II (comprehensive) review of the City's development code, so that more complex tree preservation issues can be discussed and investigated, such as protecting certain stands or groves of trees in such a way that the remaining trees would not pose a hazard to life or property, protecting certain species and/or sizes of trees that are of particular benefit to the community, requiring review of site design alternatives when feasible, designing a planting and/or in-lieu fee



program, creating incentives for preservation of trees on private property, creating a tree easement purchasing program, creating an electronic database to track the number of trees allowed to be removed, and number of trees planted, in each approved subdivision and development, etc. Furthermore, TPARK is willing to volunteer a TPARK committee member to represent TPARK on whatever Phase II committee is formed by the City Council, and is supportive of formation of a committee that is representative of all community interests and expertise, including but not limited to, the TPARK and TPAC committees, the development community, City Council, local watershed groups, neighborhood groups, arborist association, and any other persons interested or who have expertise in tree preservation issues.

2. TPAC recommends that the City Council approve PTA 06-01 as recommended by staff, and direct staff to prepare an ordinance for adoption, with the following exception: TPAC differs with TPARK and with staff concerning the requirement that an arborist report be submitted in conjunction with architectural review, tentative subdivision plan, tentative partition plan, and tree removal permit applications. TPAC's reason for disagreement with the staff recommendation is that they believe it to be too burdensome on a property owner to require that they hire an arborist to review removal of five or more trees for the purpose of constructing a new, or remodeling an existing, single-family dwelling.
3. Staff Response - At this time, staff recommends that an arborist assessment be required for ALL tree removal proposals, including applications for tree removal permits, applications for architectural review, applications for tentative subdivision plan review, and applications for tentative partition plan review. An arborist report provides valuable expert testimony, and provides city staff with professional information upon which to make an informed discretionary decision. Approval criteria require that an applicant demonstrate to the City that a tree must be removed because it is diseased, is a hazard, or that removal is necessary to accommodate proposed development. An arborist assessment provides information necessary to demonstrate that approval criteria are met. Therefore, staff is in support of TPARK's recommendation that an arborist report be required with all tree removal permit, architectural review, subdivision, and partition applications.

#### **RECOMMENDATION**

Staff recommends that the City Council adopt the staff report and direct staff to prepare an ordinance granting PTA 06-01.



PTA 06-01  
December 11, 2006  
Page 15 of 15

Respectfully submitted,



Melissa Hardy,  
Assistant Planner

- Attachments
1. Draft Ordinance
  2. Brief Project Timeline
  3. Supporting Research Citations
  4. Public Comments

file: PTA 06-01

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PTA'06-01  
December 11, 2006  
Attachment 1 – Draft Ordinance

**DRAFT ORDINANCE**

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-See Draft Ordinance on Following 10 Pages-



DRAFT

ORDINANCE NUMBER \_\_\_\_\_

AN ORDINANCE RELATING TO TREE PRESERVATION;  
AMENDING TDC 10.050, 31.060, 31.076, 31.111, 34.200,  
34.210, 34.230, 34.240, 34.250, AND 73.050 (PTA 06-01)

WHEREAS upon initiation by the City of Tualatin, a public hearing was held before the City Council of the City of Tualatin on December 11, 2006, relating to amending the Tualatin Community Plan and Planning District Standards in order to amend the City's tree preservation regulations; amending TDC 10.050, 31.060, 31.076, 31.111, 34.200, 34.210, 34.230, 34.240, 34.250, and 73.050 (PTA 06-01); and

WHEREAS notice of public hearing was given as required under the Tualatin Community Plan by publication on November 23, 2006, in *The Times*, a newspaper of general circulation within the City which is evidenced by the Affidavit of Publication marked "Exhibit A," attached and incorporated by this reference; by posting a copy of the notice in two public and conspicuous places within the City, which is evidenced by the Affidavit of Posting, marked "Exhibit B," attached and incorporated by this reference; and

WHEREAS the Council conducted a public hearing on December 11, 2006, and heard and considered the testimony and evidence presented by the City staff and those appearing at the public hearing; and

WHEREAS after the conclusion of the public hearing the Council vote resulted in approval of the application, with revisions, by a vote of ~~X-X~~, with Councilor ~~X~~ absent; and

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

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

THE CITY OF TUALATIN ORDAINS AS FOLLOWS:

**Section 1. TDC Chapter 10 Title Page is amended to read as follows:**

**Chapter 10  
Community Design**

Sections:

**10.010 Background.**

**10.020 Design Objectives.**

**10.025 Design Guidelines - Central Design District**

**10.030 Design Improvements.**

**10.040 Implementation.**

**10.050 Tree ~~Cutting~~ Preservation and Street Tree Objectives.**

Section 2. TDC 10.050 is amended to read as follows:

**Section 10.050 Tree ~~Cutting~~ Preservation and Street Tree Objectives.**

*This section describes the purpose of tree preservation and street tree provisions in the Planning District Standards.*

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

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

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

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

Section 3. Definitions in TDC 31.060 (excerpt of affected definitions) are amended to read as follows:

**Section 31.060 Definitions.**

***Arborist, Qualified.*** *A professional in the field of arboriculture who provides professional consultation about trees and other woody plants regarding damage, diseases, and afflictions which affect them; their health and care; and their value. The arborist must demonstrate proficiency and credibility through documentation of one or more of the following:*

*(1) Current Certification as either a Master Arborist or an Arborist-Municipal Specialist by the International Society of Arboriculture (ISA); or*

*(2) Current Certification as a Registered Consulting Arborist by the American Society of Consulting Arborists (ASCA); or*

*(3) Any combination of one or more of the following, as deemed acceptable by the City, to demonstrate qualification for inclusion on a list of acceptable qualified arborists:*

*(a) Professional certification, pertinent academic degree, or other form of professional training, other than that detailed in (1) or (2) above;*

*(b) Substantial and regular experience as an arborist;*

*(c) Referential record of practice in the field as an arborist through examples of a variety of arboricultural consultation problem-solving situations.*

~~Cutting (trees).~~ *Falling or removing a tree, or an act by a person, above or below ground, the natural result of which is to cause the death or substantial destruction of a tree. Cutting does not include measures performed in accordance with sound arboriculture practice such as trimming, pruning or, in the case of conifers, topping.*

~~Qualified Arborist.~~ *A professional in the field of arboriculture who provides professional consultation about trees and other woody plants regarding damage, diseases, and afflictions which affect them; their health and care; and their value. The arborist must be able to demonstrate proficiency and credibility through evidence of either of the following:*

~~(1) Membership in the American Society of Consulting Arborists, or~~

~~(2) Qualification for inclusion on a list of acceptable qualified arborists by the City through documentation of any or all of the following:~~



- ~~\_\_\_\_\_ (a) Substantial and regular experience as an arborist.~~
- ~~\_\_\_\_\_ (b) Pertinent academic degree or other forms of certified training;~~
- ~~\_\_\_\_\_ (c) Referential record of practice in the field as an arborist through examples of a variety of arboricultural consultation problem-solving situations. (See "Arborist, Qualified")~~

***Tree Removal.*** *To remove or cut down a tree, or to damage a tree so as to cause the tree to die. Damage which constitutes removal includes, but is not limited to, topping or removing a significant portion of the tree crown; application or injection of a substance toxic to the tree; damage inflicted upon the root system by root cutting, grading, paving, or storing materials or equipment in the tree's root zone; disrupting bark functions by stripping bark or girdling tree trunks or limbs with rope or wire.*

**Section 4. 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 shall indicate the date of receipt, determine the appropriate hearing body to conduct review, schedule the hearing and give notice of the hearing in accordance with this section. A request for review shall be accompanied by a fee as established by City Council resolution.

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

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

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

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

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

(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



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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) the applicant and owner of the subject property;
- (b) owners of property (fee title) within 300 feet of the entire contiguous site who commented on the proposal;
- (c) recognized neighborhood associations whose boundaries include the site;
- (d) City Council members;
- (e) 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
- (f) members of the Architectural Review Board.

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

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

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

**Section 5. TDC 31.111 is amended to read as follows:**

**Section 31.111 Penalties.**

Violation of any provision of the Tualatin Development Code is punishable upon conviction by:

- (1) A fine of not more than \$500.00 for each day of violation when the violation is a continuing violation, but such fine shall not exceed \$10,000.00.
- (2) (a) A fine of not more than \$2,500.00 when the violation is not a continuing violation.  
(2) *When the violation is removal of one or more trees under TDC Chapter 34 standards, a fine of not more than \$500.00 for each tree removed.*



Section 6. TDC Chapter 34 Title Page is amended to read as follows:

Chapter 34  
Special Regulations

Sections:

**TEMPORARY USES**

- 34.010 General Provision.
- 34.011 Outdoor Sales.
- 34.013 Mobile Food and Flower Vendors.
- 34.014 Temporary Sales Office.
- 34.020 Application Fee for Temporary Uses.

**HOME OCCUPATIONS**

- 34.031 Definitions
- 34.032 Intent and General Provisions
- 34.045 Allowed Home Occupations
- 34.055 Standards

**MICROWAVE RECEIVING DISHES**

- 34.060 Purpose.
- 34.070 Screening.
- 34.080 Application of Provisions.

**RETIREMENT HOUSING**

- 34.160 General Provisions.
- 34.170 Specific Standards for Retirement Housing.

**TRANSITIONAL USES**

- 34.180 Purpose and Intent.
- 34.181 Goals.
- 34.182 Eligibility Criteria and Limitations.
- 34.183 General Standards.
- 34.184 Transitional Use Conditions.
- 34.185 Issuance, Renewal and Automatic Termination.
- 34.186 Process.
- Manufactured Dwelling Park Development Standards.

**TREE PRESERVATION**

- 34.200 Tree ~~Cutting~~*Removal* Without Architectural Review, Subdivision or Partition Approval, or *Tree Removal* Permit Prohibited.
- 34.210 Application for Architectural Review, Subdivision or Partition Review, or *Tree Removal* Permit.
- 34.220 Fees.
- 34.230 Criteria.
- 34.240 Emergencies.
- 34.250 Notice of Decision.
- 34.260 Request for Review.

34.270 Tree Protection During Construction.

34.300 Accessory Dwelling Units.

34.310 Standards.

Section 7. TDC 34.200 is amended to read as follows:

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

(1) Except as provided in TDC 34.200(53), no person shall ~~cut~~*remove* a tree within the City limits without first obtaining a *Tree Removal* Permit from the City or *obtaining* approval through the Architectural Review, Subdivision *Review*, or Partition Review process. Incentives for tree retention are found in TDC Chapter 73, Community Design Standards.

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

(3) The following exemptions apply to ~~tree cutting~~*removal*:

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

(i) Is located in the ~~Greenway~~*Natural Resource* Protection Overlay District (~~GNRPO~~);

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

(iii) Is a Heritage Tree; or

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

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

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

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

~~(4) (c) Forest Harvesting Exemption. The harvesting of forest tree species for the commercial value of the timber is permitted subject to all the following conditions and restrictions:~~

~~(a) The Forest Harvesting Exemption. All of the following criteria must be met in order for the exemption to exist.~~

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

- Farm Deferral according to state law.

- Forest Land Deferral according to state law.

- Small Woodlands Deferral according to state law.

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

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



- (i)- Subdivision or Partition review;
  - (ii)- Conditional Use;
  - (iii)- Architectural Review.
- (c) (iv) Reinstatement of the Forest Harvesting Exemption. Property or portions of the property previously exempted under TDC 34.200(3)(ac) and revoked in accordance with TDC 34.200(3)(bc)(iii) will be considered reinstated under TDC 34.200(3)(a) if *the property remains tax deferred in accordance with TDC 34.200(3)(c)(i) and 34.200(3)(c)(ii), and one or more of the following criteria are met:*
- (i) The property remains tax deferred in accordance with TDC 34.200(3)(a) and meets the conditions of either TDC 34.200(3)(c)(ii) or 34.200(3)(c)(ii);
  - (ii)- The land use action that affected the revocation was denied and the appeals period has expired; or
  - (iii)- The land use action that affected the revocation was approved, and the proposed development ~~which affected the filing of the land use action did not~~ occur; and the approval that was granted, including extensions has expired.
- (d) (v) The ~~Planning~~ *Community Development* Director shall prepare a listing of properties exempted under this section upon the effective date of this ordinance and update the list annually.
- (5) (d) Orchards. Tree cutting *removal* is permitted in orchards of commercial agricultural production.
- (6) (e) Public Right-of-Way. Trees within public right-of-way shall be governed by TDC Chapter 74, Public Improvement Requirements.
- (7) (f) Federal, state, county, or City road, water, sanitary sewer, or storm sewer improvements and maintenance of City owned property are exempt from this ordinance.
- (8) Building permits issued in connection with parcels approved for construction of single family dwellings are exempt from this ordinance.

**Section 8. TDC 34.210 is amended to read as follows:**

**Section 34.210 Application for Architectural Review, Subdivision or Partition Review, or *Tree Removal Permit*.**

(1) When a property owner wishes to ~~cut~~ *remove* trees, ~~in addition to other than those~~ *the exemptions* permitted under TDC 34.200(2)(a)(3), to develop property, and the development is subject to Architectural Review, Subdivision *Review*, or Partition Review *approval*, the property owner shall apply for approval to ~~cut~~ *remove* trees as part of the Architectural Review, Subdivision *Review*, or Partition Review *application process*. The granting or denial of approval will be based on the criteria in TDC 34.230.

**(a) The application for tree removal shall include:**

**(i) A site plan, drawn to a legible scale, showing the following information: a north arrow; existing and proposed property lines; existing and proposed topographical contour lines; existing and proposed structures, impervious surfaces, wells, septic systems, and stormwater retention/detention facilities; existing and proposed utility and access easements; illustration of vision clearance areas; and illustration of all trees on-site that are eight inches or more in diameter (including size, species, and tag i.d. number). All trees proposed for removal and all trees proposed for preservation shall be indicated on the site plan as such by identifying symbols.**

**(ii) A tree assessment prepared by a qualified arborist, including the following information: an analysis as to whether trees proposed for preservation can in fact be preserved in light of the development proposed, are healthy specimens, and do not pose an imminent hazard to**



*persons or property if preserved; an analysis as to whether any trees proposed for removal could be reasonably preserved in light of the development proposed and health of the tree; a statement addressing the approval criteria set forth in TDC 34.230; and arborist's signature and contact information. The tree assessment report shall have been prepared and dated no more than one calendar year preceding the date the development application is deemed complete by the City.*

*(b) All trees on-site shall be physically identified and numbered in the field with an arborist-approved tagging system. The tag i.d. numbers shall correspond with the tag i.d. numbers illustrated on the site plan.*

*(c) The application for tree removal shall be approved or denied based on the criteria in TDC 34.230.*

*(d) The approval or denial of an application to remove trees shall be a part of the Architectural Review, Subdivision Review, or Partition Review decision.*

(2) When a property owner wishes to ~~cut~~remove trees, in addition to ~~other than those~~~~the~~ ~~exemptions~~ permitted under TDC 34.200(2)(a)(3), for reasons other than those identified in TDC 34.210(1), the permit process shall be ~~property owner shall apply for a Tree Removal Permit~~ as follows:

(a) A property owner desiring to cut trees in addition to those permitted under TDC 34.200(2)(a) shall file a ~~An~~ application for a ~~Tree Removal~~ permit ~~shall be filed~~ with the Planning Community Development Director. ~~Application shall be made upon forms furnished by the City, and shall be accompanied by a nonrefundable fee as established by City Council resolution. The application for tree removal shall include:~~

*(i) A site plan, as detailed under TDC 34.210(1)(a)(i).*

*(ii) A tree assessment, as detailed under TDC 34.210(1)(a)(ii).*

~~(b) Applications shall be made upon forms furnished by the City~~ *All trees on-site shall be physically identified and numbered in the field with an arborist-approved tagging system, as detailed under TDC 34.210(1)(b).*

~~(c) The application shall contain a site plan, the number, size, species and location of the trees to be cut and a report from a qualified arborist stating the reason for cutting or removal based on the criteria in TDC 34.230~~ *include a mailing list of all property owners within 300 feet of the property.*

~~(d) Mailing list of all property owners within 300 feet of the property~~ *The application for a Tree Removal Permit shall be approved or denied based on the criteria in TDC 34.230.*

~~(e) The approval or denial of a Tree Removal Permit application is a land use decision~~ *application shall be approved or denied in accordance with criteria listed in TDC 34.230.*

**Section 9. TDC 34.230 is amended to read as follows:**

**Section 34.230 Criteria.**

The Planning *Community Development* Director shall consider the following criteria when approving, approving with conditions, or denying a request to cut trees.

(1) The Planning Director may approve a request to cut a tree when the ~~An~~ applicant can ~~must~~ satisfactorily demonstrate that any of the following criteria are met:

(a) The tree is diseased, and

*(i) The disease threatens the structural integrity of the tree; or*

*(ii) The disease permanently and severely diminishes the aesthetic value of the tree; or*

*(iii) The continued retention of the tree could result in other trees being infected with a disease that threatens either their structural integrity or aesthetic value.*

(b) The tree represents a hazard which may include but not be limited to:

*(i) The tree is in danger of falling;*



(ii) Substantial portions of the tree are in danger of falling.

(c) It is necessary to remove the tree to construct proposed improvements based on Architectural Review approval, building permit, or approval of a Subdivision or Partition Review.

(2) If none of the conditions in TDC 34.240(1) are met, then the **PlanningCommunity Development** Director shall evaluate the condition of each tree based on the following criteria. A tree given a rating of one on a factor will not be required to be retained.

FACTOR	VARIATION OF CONDITION FACTOR	AWARDED
Trunk Condition	Sound and solid (5) Sections of bark missing (3) Extensive decay and hollow (1)	
Crown Development	Full and balanced (5) Full but unbalanced (3) Unbalanced and lacking a full crown (1)	
<i>Structure*</i>	Sound (5) One major or several minor limbs dead (3) Two or more major limbs dead (1)	
* For deciduous trees only		

**Section 10. TDC 34.240 is amended to read as follows:**

**Section 34.240 Emergencies.**

(1) If emergency conditions occur requiring the immediate cutting or removal of trees to avoid danger or hazard to persons or property, an emergency permit shall be issued by the **PlanningCommunity Development** Director without payment of a fee and without formal application. If the **PlanningCommunity Development** Director is unavailable the property owner may proceed to cut the tree or trees without a permit to the extent necessary to avoid the immediate danger or hazard. If a tree is cut under this section without filing of an application with the **PlanningCommunity Development** Director, the person doing so shall report the action to the **PlanningCommunity Development** Director within two working days, without payment of fee, and shall provide such information and evidence as may be reasonably required by the **PlanningCommunity Development** Director to explain and justify the action taken. Where no emergency is found to exist, the cutting or removal of a tree or trees is prohibited.

**Section 11. TDC 34.250 is amended to read as follows:**

**Section 34.250 Notice of Decision.**

(1) Architectural Review, Subdivision or Partition Review. Notice of decision shall be in accordance with the Architectural Review, Subdivision **Review** or Partition Review Process in Chapters 31 and 36 respectively. If approval is granted to ~~cut~~**remove** a Heritage Tree, a copy of the decision shall be sent to the chairman of the Tualatin Park Advisory Committee.

(2) **Tree Removal** Permit. The decision shall be in writing and shall be sent in accordance with TDC 31.074. If the application for ~~cutting~~**tree removal** pertains to a Heritage Tree, the decision shall also be sent to the chairman of the Tualatin Park Advisory Committee.

**Section 12. TDC 73.050 is amended to read as follows:**

**Section 73.050 Criteria and Standards.**

(1) In exercising or performing his or her powers, duties, or functions, the Community Development Director shall determine whether there is compliance with the following:

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(a) The proposed site development, including the site plan, architecture, landscaping, parking and graphic design, is in conformance with the standards of this and other applicable City ordinances insofar as the location, height, and appearance of the proposed development are involved;

(b) The proposed design of the development is compatible with the design of other developments in the general vicinity; and

(c) The location, design, size, color and materials of the exterior of all structures are compatible with the proposed development and appropriate to the design character of other developments in the vicinity.

(2) In making his or her determination of compliance with the above requirements, the Community Development Director shall be guided by the objectives and standards set forth in this chapter. If the architectural review plan includes utility facilities or public utility facilities, then the City Engineer shall determine whether those aspects of the proposed plan comply with applicable standards.

(3) In determining compliance with the requirements set forth, the Community Development Director shall consider the effect of his or her action on the availability and cost of needed housing. The Community Development Director shall not use the requirements of this section to exclude needed housing types. However, consideration of these factors shall not prevent the Community Development Director from imposing conditions of approval necessary to meet the requirements of this section. The costs of such conditions shall not unduly increase the cost of housing beyond the minimum necessary to achieve the purposes of this Code. As part of the Architectural Review process, the Community Development Director has no authority to reduce dwelling unit densities.

(4) As part of Architectural Review, the property owner may apply for approval to ~~cut~~*remove* trees, in addition to those *exemptions* allowed in TDC 34.200(3), **by submitting information concerning proposed tree removal, pursuant to TDC 34.210(1)**. The granting or denial of a tree cutting~~removal~~ permit shall be based on the criteria in TDC 34.230.

(5) Conflicting Standards. In addition to the MUCOD requirements, the requirements in TDC Chapter 73 (Community Design Standards) and other applicable Chapters apply. If TDC Chapters 57, 73 and other applicable Chapters, conflict or are different, they shall be resolved in accordance with TDC 57.200(2).

INTRODUCED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2007.

CITY OF TUALATIN, Oregon

BY \_\_\_\_\_  
Mayor

ATTEST:

BY \_\_\_\_\_  
City Recorder



### **BRIEF PROJECT TIMELINE**

- Spring 2005: The City Council directed staff to examine the City's existing tree regulations and to provide recommendations for code amendments to strengthen tree preservation standards.
- Nov. 08, 2005: Staff presented the Tualatin Park Advisory Committee (TPARK) with an overview of the City's existing tree regulations and research into other Oregon cities' tree regulations, and discussed possible approaches to amending the City's tree regulations.\*
- Nov. 10, 2005: Staff presented the Tualatin Planning Advisory Committee (TPAC) with an overview of the City's existing tree regulations and research into other Oregon cities' tree regulations, and discussed possible approaches to amending the City's tree regulations.\*
- \* At their respective November meetings, both TPARK and TPAC voted unanimously to forward a recommendation to City Council that proposed code amendment recommendations be developed jointly by TPARK and TPAC, and that a two-step approach be followed to develop code amendments pertaining to trees: (1) As a first step, the Council may wish to consider relatively easy code modifications that could be implemented in the short term; (2) As a second step, the Council may wish to undertake a more long-term comprehensive review of Tualatin's tree regulations to address more complex issues.
- Nov. 28, 2005: At their regular meeting, the City Council received a report on the joint recommendation from TPARK and TPAC, and provided the following direction

\*\*\*  
*Community Development Dept. and Community Services Dept. staff to work with TPAC and TPARK to undertake a comprehensive review of Tualatin's urban forestry regulations and to forward recommendations to Council that, over time, would increase Tualatin's overall tree canopy through protection, restoration, mitigation, and other plantings.*

*Council further requested that the committees forward recommendations that can be made within a month or two, as well as other more complicated modifications that may take 9 to 12 months to complete.*

*Specifically, Council would like the committees to consider a variety of protection requirements and incentives, limiting outright exemptions, enforcement and penalties for illegal cuttings, restrictions on topping trees, consideration to saving large and/or notable trees that impact neighborhoods and areas, alternative approaches effectively used by other cities, such as those identified in the staff report with particular attention given to Lake Oswego's urban forestry regulations. Council directed that the Homebuilders Association and the general public be consulted in the development of these proposed regulations.*

- Feb. 09, 2006: Staff provided an update to the Tualatin Planning Advisory Committee (TPAC) and asked whether they would be willing to have a joint TPAC/TPARK meeting to review potential short term tree code amendments.
- Feb. 14, 2006: Staff provided an update to the Tualatin Park Advisory Committee (TPARK) on the status of tree regulation review.
- Mar. 09, 2006: Staff provided an update to the Tualatin Planning Advisory Committee (TPAC) on the status of tree regulation review.
- April 11, 2006: Staff presented the Tualatin Park Advisory Committee (TPARK) with an initial set of draft code amendments in advance of the upcoming May 09, 2006 joint TPAC/TPARK meeting. TPARK committee members present asked City staff to provide additional information at the May 9<sup>th</sup> meeting pertaining to:
- A. Whether other cities protect certain species of trees, and whether there are particular trees that could have significant value to Tualatin;
  - B. Arborists' cost for a tree assessment and cost of tagging trees in the field;
  - C. Number of subdivisions and lots that are currently tentatively approved but not yet recorded or built;
  - D. Number of acres of land outside city limits but inside Tualatin's Planning Area Boundary;
  - E. Recommendation regarding feasibility of using a sliding scale approach for tree removal permit requirements, allowing removal of up to 2 trees (that measure between 2 to 6 inches) per 12-month period without a permit, and allowing removal of no trees greater than 6 inches without first obtaining a permit.
- April 13, 2006: Staff presented the Tualatin Planning Advisory Committee (TPAC) with an initial set of draft code amendments in advance of the upcoming May 09, 2006 joint TPAC/TPARK meeting. TPAC committee members present asked City staff to provide additional information at the May 9<sup>th</sup> meeting pertaining to:
- A. How many tree permits are issued annually by other cities with more stringent regulations? How would tighter regulations impact staffing & funding levels?
  - B. Recommendation regarding feasibility of varying the number of trees a property owner is allowed to remove based on the size of the property;
  - C. Recommendation regarding feasibility of allowing property owners to remove trees that were planted by the property owner without a permit;
  - D. Recommendation regarding feasibility of having a simplified permitting process for removal of smaller trees;
  - E. Number of, and location of Heritage trees;
  - F. Clarifying definition of tree by defining a regulated tree as "regulated tree".
- April 18, 2006: Community Development Department staff met with Ernie Platt of the Home Builders Association of Metropolitan Oregon.
- April 25, 2006: Notice of June 12, 2006 Public Hearing mailed to Department of Land Conservation



and Development (DLCD) and the Metropolitan Service District (METRO).

- May 04, 2006: The Community Development Department hosted a Public Open House at Tualatin City Hall, advertised in the May issue of the Tualatin Newsletter and on the City's website, to give interested persons an opportunity to talk with planning staff about the City's tree preservation regulations and voice any issues of concern or suggestions pertaining to potential amendments to the Tualatin Development Code tree preservation regulations.
- May 09, 2006: TPAC and TPARK held a joint meeting on May 09, 2006, wherein the committees received a memorandum and a supplemental memorandum from Community Development Staff, recommending TDC code amendments concerning tree preservation, as directed by City Council. The TPAC and TPARK committees discussed the proposed amendments, but did not make a recommendation. The issue was continued to a second joint meeting, scheduled for June 08, 2006, for further discussion and action.
- June 08, 2006: TPAC and TPARK held a joint meeting on June 08, 2006. The TPAC and TPARK committees discussed the proposed amendments, but did not make a recommendation. The issue was continued for further discussion and action.
- July 11, 2006: TPARK held a meeting on July 11, 2006. There was a brief discussion regarding the report prepared by staff, but because only two committee members were present at the meeting, no recommendation was made, and the issue was continued to the next regular meeting in August for further discussion and action.
- July 13, 2006: TPAC held a meeting on July 13, 2006. Following discussion, the committee unanimously recommended that no changes to the existing tree preservation regulations be made at this time, and further recommended that staff should be directed to review existing enforcement provisions and procedures and determine if steeper violation penalties are feasible.
- Aug. 22, 2006: TPARK held a meeting on August 22, 2006. Following discussion, the committee unanimously recommended a number of Phase I code amendments, including support of TPAC's July 13<sup>th</sup> recommendation that staff should review existing enforcement regulations:
- TPARK (August 22, 2006)
- (1) TPARK is supportive of and in agreement with TPAC's recommendation that staff should review existing enforcement regulations, as they apply to violations of the tree preservation regulations, in order to determine if steeper violation penalties are feasible; and
  - (2) TPARK recognizes City Council's desire to quickly implement relatively simple and easy code amendments as an immediate first step in better preserving trees, and TPARK wishes to follow City Council's directive that TPARK and TPAC recommend a Phase I list of simple and easy code

amendments, and TPARK therefore recommends the following Phase I amendments as a first step in improving accountability, tightening definitions to make enforcement easier, and better preserving trees:

- a. Eliminate the exemption that allows tree removal in connection with a building permit for a single-family dwelling without a tree removal permit (TDC 34.200(8));
  - b. Refine the definition of "qualified arborist" in order to clarify that a qualified arborist must demonstrate proficiency to the City through professional certification or licensing;
  - c. Change the terminology "tree cutting" to "tree removal" and better clarify what constitutes destruction of a tree, including but not limited to cutting, girdling, poisoning, root destruction, topping, etc.;
  - d. **Require** a report from a "qualified arborist" in conjunction with all tree removal permit applications and all architectural review, tentative subdivision plat, and tentative partition plat applications;
  - e. **Require that trees** be physically tagged in order to provide a means of visual identification on a proposed project site for City staff, elected and appointed officials, and interested citizens in the community;
  - f. If the City Attorney advises this is possible, the civil infraction penalty should be changed so that it clearly states that tree removal in violation of the City's regulations, is punishable by a fine of \$500 per tree, not to exceed \$25,000 per violation incident; and
- (3) TPARK recommends, at the discretion of City Council, that an ad-hoc committee be formed as soon as possible to begin Phase II (comprehensive) review of the City's development code, so that more complex tree preservation issues can be discussed and investigated, such as protecting certain stands or groves of trees in such a way that the remaining trees would not pose a hazard to life or property, protecting certain species and/or sizes of trees that are of particular benefit to the community, requiring review of site design alternatives when feasible, designing a planting and/or in-lieu fee program, creating incentives for preservation of trees on private property, creating a tree easement purchasing program, creating an electronic database to track the number of trees allowed to be removed, and number of trees planted, in each approved subdivision and development, etc. Furthermore, TPARK is willing to volunteer a TPARK committee member to represent TPARK on whatever Phase II committee is formed by the City Council, and is supportive of formation of a committee that is representative of all community interests and expertise, including but not limited to, the TPARK and TPAC committees, the development community, City Council, local watershed groups, neighborhood groups, arborist association, and any other persons interested or who have expertise in tree preservation issues.

Oct. 12, 2006:

TPAC held a meeting on October 12, 2006. Following discussion, the committee amended their previous recommendation regarding tree preservation code amendments, voting to support TPARK's August recommendation, with two exceptions:



TPAC (October 12, 2006)

- (1) TPAC differs with TPARK on item (d) in that they recommend instead that an arborist report should be required only in conjunction with all architectural review, tentative subdivision plat, and tentative partition plat applications, and not be required with tree removal permit applications;
- (2) TPAC differs with TPARK on item (f) in that they recommend instead that there should be no cap on the total amount of fines that can be applied for multiple violations of the tree removal regulations.

- Nov. 01, 2006: Notice of December 11, 2006 Public Hearing mailed to Department of Land Conservation and Development (DLCD) and the Metropolitan Service District (METRO).
- Nov. 08, 2006: Notice of December 11, 2006 Public Hearing mailed to all Tualatin property owners pursuant to Oregon Revised Statute 227.186 provisions.
- Nov. 09, 2006: TPAC held a meeting on November 09, 2006. Staff presented TPAC with a set of staff-recommended code amendments, based upon both the TPAC and TPARK recommendations. TPAC voted to recommend that the City Council approve the staff-recommended amendments, with one exception.
- TPAC differs with TPARK and with staff concerning the requirement that an arborist report be submitted in conjunction with architectural review, tentative subdivision plan, tentative partition plan, and tree removal permit applications. TPAC's reason for disagreement with the staff recommendation is that they believe it to be too burdensome on a property owner to require that they hire an arborist to review removal of five or more trees for the purpose of constructing a new, or remodeling an existing, single-family dwelling.
- Nov. 14, 2006: TPARK held a meeting on November 14, 2006. Staff presented TPARK with a set of staff-recommended code amendments, based upon both the TPAC and TPARK recommendations. TPARK voted to recommend that the City Council approve the staff-recommended amendments.
- Nov. 23, 2006: Notice of December 11, 2006 Public Hearing published in the Tualatin Times.

### **SUPPORTING RESEARCH CITATIONS**

#### **Community Benefits from Tree Preservation**

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Des Rosiers, F., Theriault, M., Kestens, Y., & Villeneuve, P. (2002). Landscaping and House Values: An Empirical Investigation. *Journal of Real Estate Research*, 23:01/02, 139-162. <http://business.fullerton.edu/Finance/Journal>

In a detailed field survey of 760 single-family homes sold between 1993 and 2000 in the Quebec Urban Community (sales prices ranging between \$50,000 to \$435,000), a positive differential in the percentage of tree cover between a property and its immediate neighborhood raises the house value by roughly 0.2% for each percentage point, provided tree cover is not excessive.

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Payne, B.R. (1973). The Twenty-Nine Tree Home Improvement Plan. *Natural History*, 82, 74-5.

The market value of a single-family house receives a 7 percent premium on average (between 5% and 15%) due to arborescent vegetation, provided that there are less than thirty trees on the lot.

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Morales, D., Boyce, B.N., & Favretti, R.J. (1976). The Contribution of Trees to Residential Property Value: Manchester, Connecticut. *Valuation*, 23:2, 26-43.

Combining factor analysis and multiple linear regression techniques, a study was conducted of sixty residential sales in Manchester, Connecticut. Four factors are used as explanatory variables, reflecting location, house size, date of sale and tree cover, respectively. With 83% of price variations explained by the model, the authors concluded that a good tree cover could raise total sale price by as much as 6% to 9%.

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Anderson, A.F., & Anderson, L.M. (1982). Estimating Costs of Tree Preservation on Residential Lots. *Journal of Arboriculture*, 8, 182-85.

Newly built houses command prices that are 7 percent higher when located on tree-planted lots rather than on bare lots.

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Anderson, L.M., & Cordell, H.K. (1985). Residential Property Values Improved by Landscaping With Trees. *Southern Journal of Applied Forestry*, 9, 162-66.

In an analysis of some 800 single-family houses sold over the 1978-1980 period in Athens, Georgia, the study led to the conclusion that

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the presence of trees adds a 3% to 5% premium to sale price, although the authors added that other lot and building features associated with tree cover could explain part of this increment in value.

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Anderson, L.M., & Cordell, H.K. (1988). Influence of Trees on Residential Property Values in Athens, Georgia (U.S.A.): A Survey Based on Actual Sales Prices. *Landscape and Urban Planning*, 15, 153-64.

In a second study by Anderson and Cordell, on a similar size sample involving cheaper properties (mean sale price at \$38,100), the rise in market value associated with the presence of intermediate and large size trees stands within a 3.5% to 4.5% range, regardless of species.

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Kuo, F.E., & Sullivan, W.C. (2001). Environment and Crime in the Inner City: Does Vegetation Reduce Crime? *Environment and Behavior*, 33:03, 343-367.

In a study examining the relationship between vegetation and crime for 98 apartment buildings in an inner-city neighborhood, analyses revealed consistent, systematically negative relationships between the density of trees and grass around the buildings and the number of crimes reported per building. The negative correlation extended to both property crimes and violent crimes.

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Kuo, F.E., & Sullivan, W.C. (2001). Aggression and Violence in the Inner City, Effects of Environment via Mental Fatigue. *Environment and Behavior*, 33:04, 543-571.

Levels of aggression were compared for 145 urban public housing residents randomly assigned to buildings with varying levels of nearby nature (trees and grass). Attentional functioning was assessed as an index of mental fatigue. Residents living in relatively barren buildings reported more aggression and violence than did their counterparts in greener buildings. Moreover, levels of mental fatigue were higher in barren buildings, and aggression accompanied mental fatigue.

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Air Pollution Control - The Tree Factor. (2005). Center for Urban Forest Research Newsletter, Pacific Southwest Research Station, USDA Forest Service, Davis, California. January 2005.

Community trees help to reduce air pollution by:

- o Absorbing the gaseous pollutants through leaf stomata during the normal exchange of gases
- o Binding or dissolving water soluble pollutants onto moist leaf surfaces
- o Intercepting and storing larger particulates on outer leaf surfaces, the epidermis, which may be waxy, resinous, hairy, or

- scaly
- o Capturing and storing particulates on the uneven, rough branch and bark surfaces
- o Sequestering CO<sub>2</sub> aboveground in woody tissue and belowground in the roots
- o Reducing local air temperatures through transpiration and shading, and reducing wind infiltration, ultimately lessening the demand for cooling and heating and the attendant hydrocarbon emissions and ozone formation

In a study of Sacramento's 6,000,000 trees, trees were found to contribute to an annual net reduction of CO<sub>2</sub> by about 335,000 tons. Of that total, 262,300 tons of CO<sub>2</sub> remain sequestered in the trees. An additional 83,300 tons - nearly 25% of the reduction - is attributable to tree **shade** on homes, buildings, and other structures. Findings indicate that the reduction of atmospheric CO<sub>2</sub> by the 6,000,000 trees in Sacramento County has a current annual value of \$3.3 million. The total value of the annual reduction of ozone and particle pollution is \$28.7 million, or nearly \$5 per tree on average.

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Xiao, Q., McPherson, E.G., Simpson, J.R., & Ustin, S.L. (1998). Rainfall Interception by Sacramento's Urban Forest. *Journal of Arboriculture*, 24:04, 235-244.

Planting trees, as well as maintaining existing trees in a healthy condition, will reduce the volume of stormwater runoff over the long term. In a regional land use/land cover and tree canopy cover parametric analysis, the model demonstrates annual interception of 1.1% for the entire county and 11.1% of precipitation falling on the urban forest canopy. Summer interception at the urban forest canopy level was 36% for an urban forest stand dominated by large, broadleaf evergreens and conifers, and 18% for a stand dominated by medium-sized conifers and broadleaf deciduous trees. The authors go on to explain that rainfall interception was least in the rural sector due to its relatively low tree density, basal area, and canopy cover.

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McPherson, E.G., Simpson, J.R., Peper, P.J., Gardner, S.L., Vargas, K.E., Maco, S.E., et al. (2005). *Piedmont Community Tree Guide - Benefits, Costs, and Strategic Planting*, December 2005. Center for Urban Forest Research, Pacific Southwest Research Station: USDA Forest Service.

Trees modify and conserve building energy use in three principal ways:

- o Shading reduces the amount of heat absorbed and stored by built surfaces,
- o Evapotranspiration converts liquid water to water vapor and thus cools the air by using solar energy that would otherwise result in heating of the air,
- o Wind-speed reduction reduces the infiltration of outside air into interior spaces and reduces heat loss, especially where



conductivity is relatively high.

Urban forests reduce atmospheric CO<sub>2</sub> in two ways:

- o Trees directly sequester CO<sub>2</sub> in their stems and leaves while they grow,
- o Trees near buildings can reduce the demand for heating and air conditioning, thereby reducing emissions associated with power production.

Urban forests provide five main air quality benefits:

- o Trees absorb gaseous pollutants (e.g., ozone [O<sub>3</sub>], nitrogen dioxide [NO<sub>2</sub>], and sulfur dioxide [SO<sub>2</sub>]) through leaf surfaces,
- o Trees intercept small particulate matter (PM<sub>10</sub>) (e.g., dust, ash, pollen, smoke),
- o Trees release oxygen through photosynthesis,
- o Trees transpire water and shade surfaces, which lowers air temperatures, thereby reducing ozone levels,
- o Trees reduce energy use, which reduces emissions of pollutants from power plants, including NO<sub>2</sub>, SO<sub>2</sub>, PM<sub>10</sub>, and volatile organic compounds (VOCs).

Trees reduce stormwater runoff and improve hydrology in several ways:

- o Leaves and branch surfaces intercept and store rainfall, thereby reducing runoff volumes and delaying the onset of peak flows,
- o Roots increase the rate at which rainfall infiltrates soil and the capacity of soil to store water, reducing overland flow,
- o Tree canopies reduce soil erosion by diminishing the impact of raindrops on barren surfaces,
- o Transpiration through tree leaves reduces soil moisture, increasing the soil's capacity to store rainfall.

Trees provide aesthetic, social, economic, and health benefits:

- o Trees provide beautification by adding color, texture, line, and form to the landscape, softening hard geometry that dominates built environments,
- o Trees can contribute to reduced levels of domestic violence, as well as foster safer and more sociable neighborhood environments,
- o Research comparing sales prices of residential properties with different numbers of trees suggests that people are willing to pay 3-7% more for properties with ample trees versus few or no trees, contributing significantly to a city's property tax revenues,
- o Urban green appears to have an "immunization effect", in that people show less stress response if they have had a recent view of trees and vegetation,
- o Trees reduce exposure to ultraviolet light, thereby lowering the risk of harmful effects from skin cancer and cataracts.

Trees mitigate environmental noise:

- o Thick strips of vegetation in conjunction with landforms or solid barriers can reduce highway noise by 6-15 decibels,
- o Plants absorb more high frequency noise than low frequency, which is advantageous to humans since higher frequencies are more distressing to people.

Trees provide habitat for wildlife:

- o Numerous types of wildlife inhabit cities and are generally highly valued by residents.

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McPherson, E.G., Maco, S.E., Simpson, J.R., Peper, P.J., Xiao, Q., VanDerZanden, A.M., et al. (2002). Western Washington and Oregon Community Tree Guide: Benefits, Costs and Strategic Planting. Center for Urban Forest Research, Pacific Southwest Research Station: USDA Forest Service.

Average annual net benefits from a tree, calculated over the course of 40 years, increase with mature tree size as follows (the average annual net benefits of a large tree can be substantially greater than those from small trees):

- o \$1 to \$8 per small tree
- o \$19 to \$25 per medium tree
- o \$48 to \$53 per large tree

The largest average annual net benefits stem from residential yard trees opposite a westfacing wall: \$8, \$25, and \$53 per small, medium, and large tree, respectively. Residential yard trees produce net benefits that are greater than public trees primarily because of lower maintenance costs.

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Simpson, J.R., & McPherson, E.G. (1996, 28 Jan - 2 Feb). Estimating Urban Forest Impacts on Climate-Mediated Residential Energy Use. 12<sup>th</sup> Conference of Biometeorology and Aerobiology, Atlanta, GA. Published by the American Meteorological Society, Boston, MA.

Shade impacts for a large sample of participants in a collaborative tree planting program between the Sacramento Municipal Utility District and the Sacramento Tree Foundation were reviewed. The effects of program trees on energy use were calculated, with the following results: (1) Mean annual energy used for air conditioning was 2164 kWh before and 1693 kWh after addition of mature program trees, for a savings of 471 kWh (22%), equivalent to 153 kWh (7.2%) per tree; (2) Peak demand dropped from 3.18 to 2.95 kW with addition of program trees, for a savings of 0.23 kW (7.1%) per property, or 0.075 kW (2.3%) per tree.

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**PUBLIC COMMENTS**



Home Builders Association  
of Metropolitan Portland

May 5, 2006

Tualatin Parks Advisory Commission  
Tualatin Planning Advisory Commission  
City Hall  
Tualatin, OR

CITY OF TUALATIN  
RECEIVED  
MAY 05 2006  
COMMUNITY DEVELOPMENT  
PLANNING DIVISION

RE: Proposed revisions to the Tree Regulation Ordinance

Dear Commissioners:

On behalf of the 1400+ member firms of the Home Builders Association of Metro Portland, I thank you for the opportunity to submit comments on the proposed revisions to the Tualatin Tree Regulation Ordinance.

The changes to sec 31.060 which change the definition of a tree from eight inches in diameter to six inches in diameter and which lower the threshold of the number of trees that can be removed from a particular property in a calendar year from four to two do not in and of themselves have a significant impact, but will surely result in a greater number of tree removal applications.


Likewise, the changes that define a "grove" of trees and the criteria for removal of such trees will also result in a greater number of tree removal applications.

The prospect of this greater number of tree removal applications raises the concern as to just how objectively the applications will be considered. The proposed language in sec 34.230(b), "Tree removal is necessary to accommodate reasonable development of the property" is fine, but I can only hope that the reviewing body and the applicant can come to agreement on what is 'reasonable.' The criteria as it applies to 'diseased' is quite workable.

The proposed changes as they apply to the elimination of the exemption for commercial timber harvesting are very troubling. I have no information to suggest how many properties in the city may be in this category, but to remove this exemption is to strip away an opportunity and a right that an owner now has. (In my mind it also raises a Measure 37 question)

It has been suggested that these revisions are perhaps an interim set of changes, and that the city will be considering a more comprehensive set of changes in the future. If this is the case, I would like very much to be part of the discussion for those future changes.

Sincerely,

  
Ernie Platt  
Director, Local Government Affairs

15555 SW Bangy Road ♦ Suite 301 ♦ Lake Oswego, Oregon 97035  
Phone: 503.684.1880 ♦ Fax: 503.684.0588 ♦ www.homebuildersportland.org

**John W. Broome, F.A.I.A.**

CITY OF TUALATIN  
RECEIVED

MAY 08 2006

COMMUNITY DEVELOPMENT  
PLANNING DIVISION

Melissa Hardy  
Assistant Planner  
City of Tualatin.

Re: Bad pruning of trees and shrubs.

Dear Melissa,

Enclosed are pictures of the trees and shrubs that I discussed with you Thursday evening of 5 May.

I have a conflict on Tuesday evening (the joint meeting of TPARK & TPAC) to discuss the tree ordinance revisions. I hope you will be able to share these pictures with them. I hope they are self-explanatory.

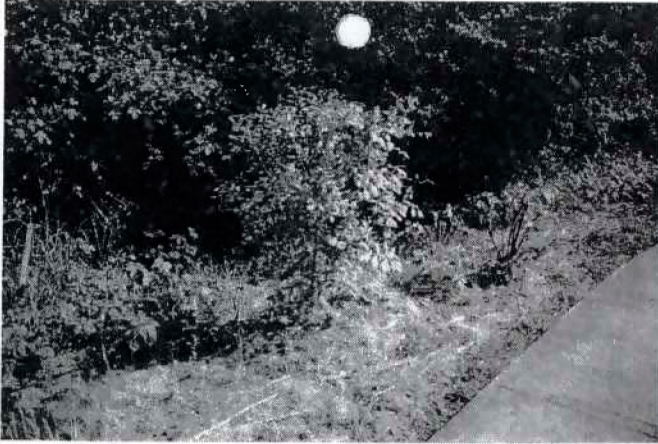
All the best,  
John Broome



PTA 06-01  
December 11, 2006  
Attachment 4 - Page 3 of 6



PTA 06-01  
December 11, 2006  
Attachment 4 - Page 4 of 6





**MELISSA HARDY**

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**From:** Steve Wheeler  
**Sent:** Monday, May 15, 2006 1:42 PM  
**To:** 'Martha Bailey'  
**Cc:** jay@h-mc.com; Doug Rux; MELISSA HARDY; 'mgillespie@linear.com'  
**Subject:** RE: Tree code revision

Martha - Thank you for sharing your opinion. I will forward your thoughts to the parties that are reviewing the tree code ordinance.

Thanks - Steve Wheeler

-----Original Message-----

**From:** Martha Bailey (mailto:gm.bailey@verizon.net)  
**Sent:** Friday, May 12, 2006 1:48 PM  
**To:** Steve Wheeler  
**Subject:** Tree code revision

As far as I am concerned, the proposed revisions to the tree code do not go far enough. Residents should not be able to take down any tree (as defined under the proposed change) --except in an emergency (for example, after a storm, if the tree is threatening a street or structure)--without there being notification of neighbors and approval by the city. I have been very unhappy to find that my neighbors can destroy huge and beautiful trees, whose loss affects the entire neighborhood, without having to tell anyone. This is not good citizenship in my opinion. As it is, the current code would allow every large tree in our neighborhood to be taken down without anyone being able to intervene. Even two trees per residential property per year would allow the area to be largely denuded in the space of a year. The code needs to be revised in a way that will not allow that to happen.

Martha Bailey  
17965 SW Cheyenne Way  
Tualatin OR 97062-8475

A 2/45

**MELISSA HARDY**

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**From:** Paul Hennon  
**Sent:** Saturday, June 10, 2006 10:40 AM  
**To:** KathyNewc@aol.com  
**Cc:** MELISSA HARDY  
**Subject:** RE: Strengthening Tualatin's tree protection regulations.

Kathy,  
I will forward your comments to Melissa Hardy in planning. She is coordinating this process right now. We will advise you of the next steps.

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**From:** KathyNewc@aol.com [mailto:KathyNewc@aol.com]  
**Sent:** Thursday, June 08, 2006 2:48 PM  
**To:** Paul Hennon  
**Subject:** Strengthening Tualatin's tree protection regulations.

To Paul Hennon for TPARK and TPAC --

Yes, we do support strengthening Tualatin's tree protection regulations. It was an unpleasant shock to see trees cut down by business on Lower Boones Ferry Road a year or so ago. This is unacceptable in a city which calls itself "Tree City."

Apparently there are very ineffective penalties for cutting down trees without permission, so that it is financially far more profitable to cut down the trees.

Please do strengthen Tualatin's tree protection regulations by realistic financial penalties, and any other possible, reasonable protections you can provide.

Bob and Kathy Newcomb

Sorry not to have opened up email for several days, so this support for strengthening Tualatin's tree protection regulations is sent to you and TPARK and TPAC at the last minute.



EXH. E



## City of Tualatin

18880 SW Martinazzi Avenue  
Tualatin, Oregon 97062-7092  
Main 503.692.2000  
TDD 503.692.0574

TO: Honorable Mayor and Members of the City Council

VIA: Sherilyn Lombos, City Manager *SL*  
Doug Rux, Community Development Director *DR*

FROM: Melissa Hardy, Assistant Planner *MH*

SUBJECT: Discussion of Amendments to the Tualatin Development Code  
Related to Tree Preservation and Removal;  
Plan Text Amendment (PTA) 06-01.

DATE: January 22, 2007

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### **RECOMMENDATION**

Staff recommends that the City Council review the proposed changes to the Tualatin Development Code (TDC) associated with tree preservation and removal, discuss the proposed changes, and provide additional direction to staff.

### **BACKGROUND**

Staff has been diligently working on a Council-directed initiative to revise the TDC having to do with tree preservation and removal. Council's directive was to begin with Phase I and capture as much "low hanging fruit" as possible, and then move to Phase II, where more substantive changes would be proposed.

Phase I was presented to the City Council on December 11, 2006, and staff proposed the following significant changes to the code related to tree preservation and removal:

1. Require a tree removal permit when trees are removed for single-family dwelling construction (previously exempt) (TDC Section 34.200);
2. Require trees to be physically tagged in the field (new requirement) (TDC Section 34.210);
3. Require an arborist assessment be submitted with all tree removal permit, subdivision, partition, and architectural review applications (previously only required with a tree removal permit application) (TDC Section 34.210);
4. Clearly define what information must be provided on a tree preservation site plan (TDC Section 34.210);

5. Make violation subject to a maximum fine of \$500 per tree, with no limit set for the total amount of fines imposed for multiple violations (TDC Section 31.111).

In addition to those significant amendments, the proposed changes:

- Better describe the City's objectives and interest concerning tree preservation (TDC Section 10.050);
- Revise the definition for a qualified arborist (TDC Section 31.060);
- Better define what constitutes destruction of a tree (TDC Section 31.060);
- Correct various references and section numbering.

Following the close of the public hearing, Council requested that staff return with proposals to address three additional issues:

- (1) Explore increasing fines for removal of trees in violation of code, to the maximum amount enforceable under the current court system;
- (2) Exclude portions of property that are outside developable area from tree mapping, tagging, and analysis requirements; and
- (3) At the time a property is divided, identify all trees that will be removed as a result of the division and as a result of future potential development on the property.

## **DISCUSSION**

### **(1) Increase violation fines.**

Council requested that staff explore ways to increase violation fines to the maximum amount enforceable.

Staff recommends the following amendments to achieve Council's goal:

- Increase the civil infraction penalty, up to \$1,000 per tree removed; and
- Require payment of a Restoration Fee of \$2,000 per tree removed, to be set aside for use in tree planting and tree preservation; and
- Require payment of an Enforcement Fee of \$837 per violation, plus \$10 for each tree removed.

These amendments are included in TDC Sections 31.111 and 34.220 (see Attachment 1).

- Pros:**
- A. Greater financial penalties create a greater disincentive for violation of the tree preservation regulations.
  - B. Collected restoration fees can be placed in a holding account to be used by the City for tree planting.



- C. Collected enforcement fees can be placed in the general fund to substantially offset the cost of processing tree preservation code violation cases.

- Cons:
- A. If property owner chooses not to pay the restoration fee and/or enforcement fee, the City will need to undertake some collection process, or will have to write it off as uncollectible.
  - B. Financial administration of restoration fee and enforcement fee will require allocation of additional staff time and resources.

Background Information:

The City Attorney has determined that the civil infraction penalty may set as high as \$1,000 per tree removed in violation of code regulations.

In addition, a person who removes one or more trees in violation of code regulations may be required to pay a "Restoration Fee" to the City in order to mitigate for the loss of the removed trees. In review of two studies, the average annual benefit that the community receives from a mature or large tree is quantified at approximately \$100 per tree. If we carry this amount of benefit out over a 20-year period, even though many trees will survive much longer than 20 years, conservatively we can conclude that the community would receive approximately \$2,000 of benefit over a 20-year period from each tree.

Therefore, removal of a tree in violation of the code regulations should result in required payment of restoration to the City for the loss of \$2,000 (per tree) in community benefit. This money would then be set aside to be used by the City for tree planting and tree preservation activities in the community to compensate for the loss of the removed trees.

Additionally, a person who removes one or more trees in violation of code regulations may be required to pay an "Enforcement Fee" of \$837 (based on staff time and materials), plus \$10 per tree removed, to the City. An enforcement fee is intended to reimburse the community for costs incurred by the City in investigating and processing a tree preservation code violation case.

**(2) Exclude un-developable portions of property.**

Council requested that the proposed code language exclude portions of property that are outside the developable area from these requirements.

Staff recommends the following amendments to achieve Council's goal:

- Exempt trees that are located within the following delineated area(s) from individual identification on the tree preservation site plan, physical tagging, and from arborist assessment:

- Where Clean Water Services (CWS) has issued a Service Provider Letter that addresses the proposed development currently under consideration, and
- Where CWS has approved the delineation of a “sensitive area” or “vegetated corridor” on the subject property, and
- Where CWS has required dedication of an easement that prohibits encroachment into the delineated area.
- Require instead that the CWS-required easement boundary be illustrated on the tree preservation site plan.

These amendments are included in TDC Section 34.210 (see Attachment 1).

Pros: A. Property owner saves money in not having to map, tag, and have an arborist assess trees for the City in exempt areas.

Cons: A. There is no hard-and-fast prohibition of tree removal within these areas under CWS regulations. Tree removal in these areas is subject to CWS approval.

B. The TDC currently requires a property owner to provide a tree plan to the City at time of application for partition/subdivision of property, or at time of application for architectural review for development of property, which shows the location of all trees proposed for removal and all trees proposed for retention. Changing the code to exclude portions of the property located within a CWS-required easement would result in a change that provides city staff with less information about trees than they receive now under the existing code.

C. Because the tree preservation site plan would not show the location of individual trees in these areas, if the property owner were to remove trees from these areas in violation of the City's code, the City would likely have a more difficult time proving the previous existence of those trees than if the property owner had been required to identify the individual trees on the tree plan, thereby attesting to the existence of each of those trees.

**(3) Identify potential for future tree removal at time of property division.**

Council requested that the proposed code language include requirements that a property owner identify all trees that will be removed as a result of the property division, and identify all trees that might be removed as a result of future development on the property.

Staff does not recommend these code revisions at this time. Rather, these complex issues would be better addressed during Phase II tree preservation review. If Council wishes to proceed with these particular code revisions,



draft amendments are included in TDC Sections 34.210 and 34.230 (see Attachment 1):

- At time of tentative subdivision application or tentative partition application, applicant must illustrate potential building envelopes (this is the area in which future structures may be located) on the tree preservation site plan for all proposed lots/parcels;
- As it is unknown at the time of property division what will be built on each new lot/parcel in the future, the best method of anticipating future potential tree removal is to illustrate the smallest setbacks that would be allowed by current code on each lot;
- Trees that do not need to be removed for subdivision improvements and that are located outside of the potential building envelopes would be designated for preservation on the tree preservation site plan;
- If tentative subdivision/partition approval is granted, the tree preservation plan then becomes a condition of that approval, and conformance with this condition must be demonstrated at the time of final plat approval;
- Conformance with the tree preservation plan is also a requirement placed on each of the newly created lots/parcels until such time that a final occupancy permit is granted for any structure constructed on that lot or parcel;
- Prior to final plat approval, property owner shall be required to demonstrate to City that a notice has been recorded on the property title, notifying future property owners that owners of each lot/parcel created by the subdivision must conform with the tree preservation plan until such time that a final occupancy permit is issued for their lot/parcel;
- A tree removal permit is required in order to remove any tree designated for preservation on the tree preservation plan prior to final plat approval, or to remove any tree designated for preservation on the tree preservation plan prior to a final occupancy permit.

Pros: A. Community members would have a better understanding that trees must be removed, not only to accommodate subdivision improvements, but also to accommodate development upon each of the newly created lots/parcels.

Cons: A. Additional expense will be incurred by property owner in preparing submittals for subdivision/partition application.  
B. Additional staff time must be spent in reviewing application in order to verify whether the building envelopes illustrated by the applicant are accurate or not.  
C. Driveway, utility alignments, and soil engineering requirements are almost impossible to predict until someone proposes to build some type of structure on the property, so property owner may need to apply for a tree removal permit and remove additional trees at the time that actual construction is proposed for the lot

or parcel; which will result in a potential building permit delay of up to 45 to 60 days.

- D. It is not likely that these proposed amendments would result in preservation of any additional trees than are currently preserved under existing code standards, and could in fact lead to subdivider removing a greater number of trees at the time of subdivision preparation in order to ensure that tree removal permits will not be required at the time the lots/parcels are developed upon.

**Background Information:**

Below are two sketches illustrating what areas these potential building envelopes would encompass (see Figure 1 and Figure 2):

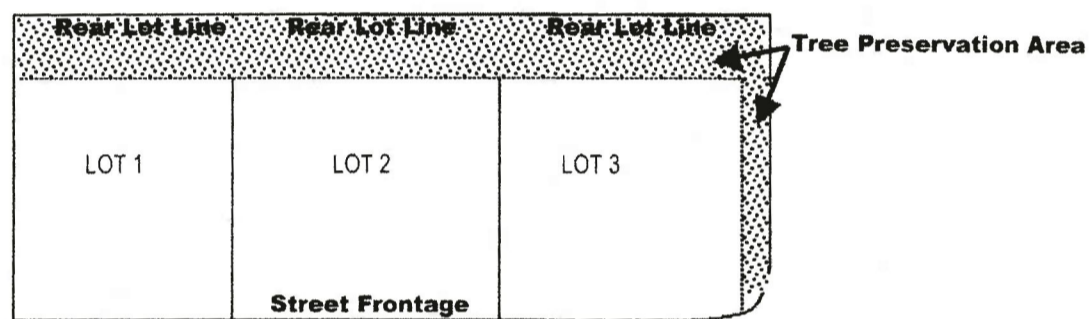


Fig. 1 Low Density Residential District

**Minimum Front Setback:** 12 feet. However, because locations of driveway alignments are unknown at this time, and because 10-foot-wide utility easements normally run along the front of residential lots, there would be no purpose in identifying trees for preservation along the street frontage.

**Minimum Side Setback:** 5 feet for interior side lot lines and 8 feet (10 feet minus 2-foot allowance for permitted projections) for side lot line adjacent street (corner lot). However, because common-wall dwellings (with zero lot line setbacks) may be constructed with conditional use approval, and because it is not often that trees are recommended closer than 5 feet from a foundation, there would be no purpose in identifying trees for preservation along interior side lot lines.

**Minimum Rear Setback:** 12 feet (15 feet minus 3-foot allowance for permitted projections).



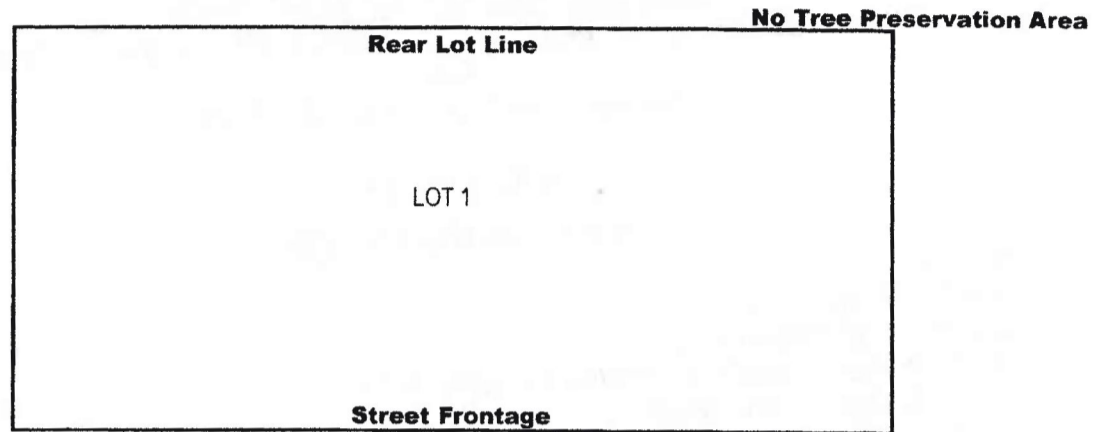


Fig. 2 Light Manufacturing District

*Minimum Front Setback:* 30 feet. However, because locations of driveway alignments are unknown at this time, there would be no purpose in identifying trees for preservation along the street frontage.

*Minimum Side Setback:* Zero feet, except on corner lots where vision clearance triangle must be maintained at dual street frontage corner for vehicle and pedestrian safety.

*Minimum Rear Setback:* Zero feet.

### **CONCLUSION**

Staff recommends that the City Council review the proposed amendments to the TDC associated with tree preservation and removal, discuss the issue, and provide additional direction to staff. The current schedule calls for an ordinance to be introduced at the February 12, 2007, Council meeting.

Respectfully submitted,

Melissa Hardy,  
Assistant Planner

Attachments: 1. Draft Tualatin Development Code (TDC) Amendments

file: PTA 06-01

## **DRAFT TDC AMENDMENTS**

*Includes code changes detailed in the December 11, 2006, staff report (blue)  
-AND-  
City Council's requested additional code changes (red)*

### **Chapter 10 Community Design**

Sections:

**10.010 Background.**

**10.020 Design Objectives.**

**10.025 Design Guidelines - Central Design District**

**10.030 Design Improvements.**

**10.040 Implementation.**

**10.050 Tree ~~Cutting~~ Preservation and Street Tree Objectives.**

#### **Section 10.050 Tree ~~Cutting~~ Preservation and Street Tree Objectives.**

*This section describes the purpose of tree preservation and street tree provisions in the Planning District Standards.*

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

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

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

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

#### **Section 31.060 Definitions.**

**Arborist, Qualified.** *A professional in the field of arboriculture who provides professional consultation about trees and other woody plants regarding damage, diseases, and afflictions which affect them; their health and care; and their value. The arborist must demonstrate proficiency and credibility through documentation of one or more of the following:*

*(1) Current Certification as either a Master Arborist or an Arborist-Municipal Specialist by the International Society of Arboriculture (ISA); or*

*(2) Current Certification as a Registered Consulting Arborist by the American Society of Consulting Arborists (ASCA); or*



**(3) Any combination of one or more of the following, as deemed acceptable by the City, to demonstrate qualification for inclusion on a list of acceptable qualified arborists:**

- (a) Professional certification, pertinent academic degree, or other form of professional training, other than that detailed in (1) or (2) above;**
- (b) Substantial and regular experience as an arborist;**
- (c) Referential record of practice in the field as an arborist through examples of a variety of arboricultural consultation problem-solving situations.**

~~**Cutting (trees).** Falling or removing a tree, or an act by a person, above or below ground, the natural result of which is to cause the death or substantial destruction of a tree. Cutting does not include measures performed in accordance with sound arboriculture practice such as trimming, pruning or, in the case of conifers, topping.~~

~~**Qualified Arborist.** A professional in the field of arboriculture who provides professional consultation about trees and other woody plants regarding damage, diseases, and afflictions which affect them; their health and care; and their value. The arborist must be able to demonstrate proficiency and credibility through evidence of either of the following:~~

- ~~—— (1) Membership in the American Society of Consulting Arborists, or~~
- ~~—— (2) Qualification for inclusion on a list of acceptable qualified arborists by the City through documentation of any or all of the following:~~
  - ~~—— (a) Substantial and regular experience as an arborist.~~
  - ~~—— (b) Pertinent academic degree or other forms of certified training;~~
  - ~~—— (c) Referential record of practice in the field as an arborist through examples of a variety of arboricultural consultation problem-solving situations. (See “Arborist, Qualified”)~~

~~**Tree Removal.** To remove or cut down a tree, or to damage a tree so as to cause the tree to die. Damage which constitutes removal includes, but is not limited to, topping or removing a significant portion of the tree crown; application or injection of a substance toxic to the tree; damage inflicted upon the root system by root cutting, grading, paving, or storing materials or equipment in the tree’s root zone; disrupting bark functions by stripping bark or girdling tree trunks or limbs with rope or wire.~~

#### **Section 31.076 Requests for Review.**

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

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

- (a) If the request for review raises issues regarding the design or conditions in the Architectural Features decision or an application of standards relating to preservation of a historic structure and the Architectural Review Board has not already held a hearing and

issued a decision on the matter, then the Architectural Review Board is the appropriate hearing body for such subject matter.

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

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

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

(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) the applicant and owner of the subject property;
- (b) owners of property (fee title) within 300 feet of the entire contiguous site who commented on the proposal;
- (c) recognized neighborhood associations whose boundaries include the site;
- (d) City Council members;



(e) 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

(f) members of the Architectural Review Board.

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

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

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

#### **Section 31.111 Penalties.**

Violation of any provision of the Tualatin Development Code is punishable upon conviction by:

(1) A fine of not more than \$500.00 for each day of violation when the violation is a continuing violation, but such fine shall not exceed \$10,000.00.

~~(2)~~ (a) A fine of not more than \$2,500.00 when the violation is not a continuing violation.

*(2) When the violation is removal of one or more trees under TDC Chapter 34 standards, a fine of not more than \$500.001,000.00 for each tree removed.*

## Chapter 34 Special Regulations

Sections:

### **TEMPORARY USES**

**34.010 General Provision.**

**34.011 Outdoor Sales.**

**34.013 Mobile Food and Flower Vendors.**

**34.014 Temporary Sales Office.**

**34.020 Application Fee for Temporary Uses.**

**HOME OCCUPATIONS**

- 34.031 Definitions**
- 34.032 Intent and General Provisions**
- 34.045 Allowed Home Occupations**
- 34.055 Standards**

**MICROWAVE RECEIVING DISHES**

- 34.060 Purpose.**
- 34.070 Screening.**
- 34.080 Application of Provisions.**

**RETIREMENT HOUSING**

- 34.160 General Provisions.**
- 34.170 Specific Standards for Retirement Housing.**

**TRANSITIONAL USES**

- 34.180 Purpose and Intent.**
- 34.181 Goals.**
- 34.182 Eligibility Criteria and Limitations.**
- 34.183 General Standards.**
- 34.184 Transitional Use Conditions.**
- 34.185 Issuance, Renewal and Automatic Termination.**
- 34.186 Process.**
- Manufactured Dwelling Park Development Standards.**

**TREE PRESERVATION**

- 34.200 Tree ~~Cutting~~Removal Without Architectural Review, Subdivision or Partition Approval, or *Tree Removal* Permit Prohibited.**
- 34.210 Application for Architectural Review, Subdivision or Partition Review, or *Tree Removal* Permit.**
- 34.220 Fees.**
- 34.230 Criteria.**
- 34.240 Emergencies.**
- 34.250 Notice of Decision.**
- 34.260 Request for Review.**
- 34.270 Tree Protection During Construction.**
- 34.300 Accessory Dwelling Units.**
- 34.310 Standards.**

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

(1) Except as provided in TDC 34.200(53), no person shall ~~remove~~ a tree within the City limits without first obtaining a *Tree Removal* pPermit from the City or ~~obtaining~~ approval through the Architectural Review, Subdivision *Review*, or Partition Review process. Incentives for tree retention are found in TDC Chapter 73, Community



**Design Standards.** *Any property owner who removes, or causes to be removed, one or more trees in violation of applicable TDC provisions, shall pay an enforcement fee and a restoration fee to the City of Tualatin, as set forth in TDC 34.220(3), in addition to civil penalties set forth in TDC 31.111.*

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

(3) The following exemptions apply to tree ~~cutting~~*removal*:

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

(i) Is located in the ~~Greenway~~*Natural Resource* Protection Overlay District (~~GNRPO~~);

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

(iii) Is a Heritage Tree; or

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

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

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

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

~~(4)~~ (c) Forest Harvesting Exemption. The harvesting of forest tree species for the commercial value of the timber is permitted subject to all the following conditions and restrictions:

~~(a) The Forest Harvesting Exemption. All of the following criteria must be met in order for the exemption to exist.~~

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

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

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

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

~~(i)~~ Subdivision or Partition review;

- (ii) Conditional Use;
- (iii) Architectural Review.
- (e) (iv) Reinstatement of the Forest Harvesting Exemption. Property or portions of the property previously exempted under TDC 34.200(3)(ac) and revoked in accordance with TDC 34.200(3)(bc)(iii) will be considered reinstated under TDC 34.200(3)(a) if *the property remains tax deferred in accordance with TDC 34.200(3)(c)(i) and 34.200(3)(c)(ii), and one or more of the following criteria are met:*
  - (i) ~~The property remains tax deferred in accordance with TDC 34.200(3)(a) and meets the conditions of either TDC 34.200(3)(e)(ii) or 34.200(3)(e)(ii);~~
  - (ii) ~~The land use action that affected the revocation was denied and the appeals period has expired; or~~
  - (iii) ~~The land use action that affected the revocation was approved, and the proposed development which affected the filing of the land use action did not occur; and the approval that was granted, including extensions has expired.~~
- (d) (v) ~~The Planning~~*Community Development* Director shall prepare a listing of properties exempted under this section upon the effective date of this ordinance and update the list annually.
- (5) (d) Orchards. Tree cutting ~~removal~~ is permitted in orchards of commercial agricultural production.
- (6) (e) Public Right-of-Way. Trees within public right-of-way shall be governed by TDC Chapter 74, Public Improvement Requirements.
- (7) (f) Federal, state, county, or City road, water, sanitary sewer, or storm sewer improvements and maintenance of City owned property are exempt from this ordinance.
- (8) ~~Building permits issued in connection with parcels approved for construction of single family dwellings are exempt from this ordinance.~~

**Section 34.210 Application for Architectural Review, Subdivision or Partition Review, or Tree Removal Permit.**

(1) When a property owner wishes to ~~cut~~*remove* trees, ~~in addition to other than those~~*the exemptions* permitted under TDC 34.200(2)(a)(3), to develop property, and the development is subject to Architectural Review, ~~Subdivision Review, or Partition Review approval~~, the property owner shall apply for approval to ~~cut~~*remove* trees as part of the Architectural Review, ~~Subdivision Review, or Partition Review application process~~. ~~The granting or denial of approval will be based on the criteria in TDC 34.230.~~

(a) The application for tree removal shall include:

(i) *A Tree Preservation Site Plan, drawn to a legible scale, showing the following information: a north arrow; existing and proposed property lines; existing and proposed topographical contour lines; existing and proposed structures, impervious surfaces, wells, septic systems, and stormwater retention/detention facilities; existing and proposed utility and access easements; illustration of vision clearance areas; and illustration of all trees on-site that are eight inches or more in diameter (including size, species, and tag i.d. number). All trees proposed for removal and all trees proposed for preservation shall be indicated on the Tree Preservation Site Plan as such by identifying symbols, except as follows:*



**(A) Where Clean Water Services (CWS) has issued a Service Provider Letter that addresses the proposed development currently under consideration, and**

**(B) Where CWS has approved delineation of a “sensitive area” or “vegetated corridor” on the subject property, and**

**(C) Where CWS has required dedication of an easement that prohibits encroachment into the delineated area, then**

**(D) All trees located within the CWS-required easement need not be individually identified on the Tree Preservation Site Plan if the CWS-required easement boundary is clearly illustrated and identified on the Tree Preservation Site Plan.**

**(ii) A tree assessment prepared by a qualified arborist, including the following information: an analysis as to whether trees proposed for preservation can in fact be preserved in light of the development proposed, are healthy specimens, and do not pose an imminent hazard to persons or property if preserved; an analysis as to whether any trees proposed for removal could be reasonably preserved in light of the development proposed and health of the tree; a statement addressing the approval criteria set forth in TDC 34.230; and arborist’s signature and contact information. The tree assessment report shall have been prepared and dated no more than one calendar year preceding the date the development application is deemed complete by the City. Where TDC 34.210(1)(a)(i)(A) through (D) are applicable, trees located within the CWS-required easement need not be included in the tree assessment report.**

**(b) All trees on-site shall be physically identified and numbered in the field with an arborist-approved tagging system. The tag i.d. numbers shall correspond with the tag i.d. numbers illustrated on the Tree Removal Site Plan. Where TDC 34.210(1)(a)(i)(A) through (D) are applicable, trees located within the CWS-required easement need not be tagged.**

**(c) The application for tree removal shall be approved or denied based on the criteria in TDC 34.230(1).**

**(d) The approval or denial of an application to remove trees shall be a part of the Architectural Review, ~~Subdivision Review, or Partition Review~~ decision.**

**(2) When a property owner wishes to ~~remove~~ trees, in addition to ~~other than those~~ the exemptions permitted under TDC 34.200(2)(a)(3), for reasons other than those identified in ~~TDC 34.210(1)~~ to develop property, and the development is subject to Subdivision Review or Partition Review approval, the ~~permit process shall be~~ property owner shall apply for a ~~Free Removal Permit~~ as follows: approval to remove trees as part of the Subdivision Review or Partition Review application process.**

**(a) A property owner desiring to cut trees in addition to those permitted under TDC 34.200(2)(a) shall file a ~~An~~ The application for a ~~Tree Removal~~ permit shall be filed with the Planning ~~Community Development~~ Director. ~~include: Application shall be made upon forms furnished by the City, and shall be accompanied by a nonrefundable fee as established by City Council resolution. The application for tree removal shall include:~~**

**(i) A Tree Preservation Site Plan, as detailed under TDC 34.210(1)(a)(i). In addition to those elements detailed under TDC 34.210(1)(a)(i), potential building envelopes shall be illustrated within all proposed lots or parcels. The**

*potential building envelopes shall be created by drawing in the side and rear setback lines, based upon the smallest setbacks allowed by the applicable TDC planning district standards, including permitted projections.*

*(ii) A tree assessment, as detailed under TDC 34.210(1)(a)(ii).*

*(b) Applications shall be made upon forms furnished by the City. All trees on-site shall be physically identified and numbered in the field with an arborist-approved tagging system, as detailed under TDC 34.210(1)(b). The tag i.d. numbers shall correspond with the tag i.d. numbers illustrated on the Tree Removal Site Plan. Where TDC 34.210(1)(a)(i)(A) through (D) are applicable, trees located within the CWS-required easement need not be tagged.*

*(c) The application for tree removal shall contain a site plan, the number, size, species and location of the trees to be cut and a report from a qualified arborist stating the reason for cutting or removal based on the criteria in TDC 34.230. ~~include a mailing list of all property owners within 300 feet of the property~~ be approved or denied based on the criteria in TDC 34.230(2).*

*(d) Mailing list of all property owners within 300 feet of the property. ~~The application for a Tree Removal Permit shall be approved or denied based on the criteria in TDC 34.230~~ approval or denial of an application to remove trees shall be a part of the Subdivision Review or Partition Review decision.*

*(e) ~~The approval or denial of a Tree Removal Permit application is a land use decision~~ application shall be approved or denied in accordance with criteria listed in TDC 34.230.*

*(3) When a property owner wishes to remove trees, other than the exemptions permitted under TDC 34.200(3), for reasons other than those identified in TDC 34.210(1) and (2), the property owner shall apply for a Tree Removal Permit as follows:*

*(a) An application for a Tree Removal Permit shall be filed with the Community Development Director. Application shall be made upon forms furnished by the City, and shall be accompanied by a nonrefundable fee as established by City Council resolution. The application for tree removal shall include:*

*(i) A Tree Preservation Site Plan, as detailed under TDC 34.210(1)(a)(i).*

*(ii) A tree assessment, as detailed under TDC 34.210(1)(a)(ii).*

*(b) All trees on-site shall be physically identified and numbered in the field with an arborist-approved tagging system, as detailed under TDC 34.210(1)(b).*

*(c) The application shall include a mailing list of all property owners within 300 feet of the property.*

*(d) The application for a Tree Removal Permit shall be approved or denied based on the criteria in TDC 34.230(1).*

*(e) The approval or denial of a Tree Removal Permit application is a land use decision.*

#### **Section 34.220 Fees.**

(1) Architectural Review, Subdivision or Partition Review. In accordance with the Architectural Review process, TDC Chapter 73, Subdivision or Partition Review process, TDC Chapter 36.



(2) Permit. The application shall be accompanied by a filing fee established by Council resolution. The filing fee is not refundable, regardless of whether a permit is granted. All permits shall be valid for one year from the date of issue.

**(3) Tree removal in violation of Planning District Standards. In addition to any applicable civil violation penalties, any property owner who removes, or causes to be removed, one or more trees in violation of applicable TDC provisions, shall pay an enforcement fee and a restoration fee to the City of Tualatin, as follows:**

**(a) Enforcement Fee: \$837.00 per incident, plus \$10 per each tree removed. The City Manager may administratively reduce or waive this fee, based upon a demonstration of hardship or other good cause.**

**(b) Restoration Fee: \$2,000 per tree removed in violation of Planning District Standards. The City Manager may administratively reduce or waive this fee, based upon a demonstration of hardship or other good cause.**

#### **Section 34.230 Criteria.**

The ~~Planning~~**Community Development** Director shall consider the following criteria when approving, approving with conditions, or denying a request to cut trees.

~~(1) The Planning Director may approve a request to cut a tree when the~~**Tree removal in conjunction with Architectural Review, or for other reasons, as detailed under TDC 34.210(1) and (3).** ~~An applicant must~~ satisfactorily demonstrate that any of the following criteria are met:

(a) The tree is diseased, and

(i) The disease threatens the structural integrity of the tree; or

(ii) The disease permanently and severely diminishes the aesthetic value of the tree; or

(iii) The continued retention of the tree could result in other trees being infected with a disease that threatens either their structural integrity or aesthetic value.

(b) The tree represents a hazard which may include but not be limited to:

(i) The tree is in danger of falling;

(ii) Substantial portions of the tree are in danger of falling.

(c) It is necessary to remove the tree to construct proposed improvements based on Architectural Review approval; ~~or~~ building permit; ~~or approval of a Subdivision or Partition Review.~~

~~(2) If none of the conditions in TDC 34.240(1) are met, then the Planning~~**Community Development** Director shall evaluate the condition of each tree based on the following criteria. ~~A tree given a rating of one on a factor will not be required to be retained.~~

FACTOR	VARIATION OF CONDITION FACTOR	AWARDED
Trunk Condition	Sound and solid (5) Sections of bark missing (3) Extensive decay and hollow (1)	_____
Crown Development	Full and balanced (5) Full but unbalanced (3) Unbalanced and lacking a full crown (1)	_____
Structure*	Sound (5) One major or several minor limbs dead (3) Two or more major limbs dead (1)	_____
* For deciduous trees only		

*Tree removal in conjunction with Subdivision Review or Partition Review, as detailed under TDC 34.210(2). An applicant must satisfactorily demonstrate that the following criteria are met:*

*(a) A tree may be removed if the tree is diseased, the tree represents a hazard, or it is necessary to remove the tree to construct proposed improvements as follows:*

*(i) Diseased: The disease threatens the structural integrity of the tree, or the disease permanently and severely diminishes the aesthetic value of the tree, or the continued retention of the tree could result in other trees being infected with a disease that threatens either their structural integrity or aesthetic value.*

*(ii) Hazard: The tree is in danger of falling, or substantial portions of the tree are in danger of falling.*

*(iii) To construct proposed improvements: The tree must be removed to construct proposed subdivision or partition improvements, or the tree is located within a potential building envelope as detailed under TDC 34.210(2)(a)(i).*

*(b) The Tree Preservation Site Plan detailed under TDC 34.210(2)(a)(i) shall demonstrate conformance with the criteria in TDC 34.230(2)(a), and shall be consistent with all other exhibits and submittals that are a part of the subdivision or partition application, including the Tree Assessment report and on-site tagging.*

*(c) If tentative subdivision approval or tentative partition approval is granted, the applicant shall demonstrate conformance with the Tree Preservation Site Plan detailed above in TDC 34.230(2)(b) as a condition of final plat approval. A Tree Removal Permit application shall be submitted, as detailed under TDC 34.210(3), and approved prior to removal of any tree designated for preservation on the Tree Preservation Site Plan.*

*(d) Conformance with the Tree Preservation Site Plan detailed above in TDC 34.230(2)(b) shall be required of each lot/parcel created by the subdivision or partition until a final occupancy permit is granted for a structure constructed on that lot/parcel. A Tree Removal Permit application shall be submitted, as detailed under TDC 34.210(3), and approved prior to removal of any tree designated for preservation on the Tree Preservation Site Plan, prior to issuance of first final occupancy permit.*

*(e) Prior to final plat approval, property owner shall demonstrate to the City that a notice has been recorded on the property title, notifying future property owners that owners of each lot/parcel created by the subdivision or partition must conform with the Tree Preservation Site Plan detailed above in TDC 34.230(2)(b) until such*



*time that a final occupancy permit is issued for a structure constructed on that lot/parcel.*

**Section 34.240 Emergencies.**

(1) If emergency conditions occur requiring the immediate cutting or removal of trees to avoid danger or hazard to persons or property, an emergency permit shall be issued by the ~~Planning~~ **Community Development** Director without payment of a fee and without formal application. If the ~~Planning~~ **Community Development** Director is unavailable the property owner may proceed to cut the tree or trees without a permit to the extent necessary to avoid the immediate danger or hazard. If a tree is cut under this section without filing of an application with the ~~Planning~~ **Community Development** Director, the person doing so shall report the action to the ~~Planning~~ **Community Development** Director within two working days, without payment of fee, and shall provide such information and evidence as may be reasonably required by the ~~Planning~~ **Community Development** Director to explain and justify the action taken. Where no emergency is found to exist, the cutting or removal of a tree or trees is prohibited.

**Section 34.250 Notice of Decision.**

(1) Architectural Review, Subdivision or Partition Review. Notice of decision shall be in accordance with the Architectural Review, Subdivision ~~Review~~ or Partition Review Process in Chapters 31 and 36 respectively. If approval is granted to ~~cut~~ **remove** a Heritage Tree, a copy of the decision shall be sent to the chairman of the Tualatin Park Advisory Committee.

(2) ~~Tree Removal~~ Permit. The decision shall be in writing and shall be sent in accordance with TDC 31.074. If the application for ~~cutting~~ **tree removal** pertains to a Heritage Tree, the decision shall also be sent to the chairman of the Tualatin Park Advisory Committee.

**Section 73.050 Criteria and Standards.**

(1) In exercising or performing his or her powers, duties, or functions, the Community Development Director shall determine whether there is compliance with the following:

(a) The proposed site development, including the site plan, architecture, landscaping, parking and graphic design, is in conformance with the standards of this and other applicable City ordinances insofar as the location, height, and appearance of the proposed development are involved;

(b) The proposed design of the development is compatible with the design of other developments in the general vicinity; and

(c) The location, design, size, color and materials of the exterior of all structures are compatible with the proposed development and appropriate to the design character of other developments in the vicinity.

(2) In making his or her determination of compliance with the above requirements, the Community Development Director shall be guided by the objectives and standards set forth in this chapter. If the architectural review plan includes utility facilities or public

utility facilities, then the City Engineer shall determine whether those aspects of the proposed plan comply with applicable standards.

(3) In determining compliance with the requirements set forth, the Community Development Director shall consider the effect of his or her action on the availability and cost of needed housing. The Community Development Director shall not use the requirements of this section to exclude needed housing types. However, consideration of these factors shall not prevent the Community Development Director from imposing conditions of approval necessary to meet the requirements of this section. The costs of such conditions shall not unduly increase the cost of housing beyond the minimum necessary to achieve the purposes of this Code. As part of the Architectural Review process, the Community Development Director has no authority to reduce dwelling unit densities.

(4) As part of Architectural Review, the property owner may apply for approval to ~~remove~~ trees, in addition to those *exemptions* allowed in TDC 34.200(3), *by submitting information concerning proposed tree removal, pursuant to TDC 34.210(1)*. The granting or denial of a tree ~~cutting~~*removal* permit shall be based on the criteria in TDC 34.230(1).

(5) Conflicting Standards. In addition to the MUCOD requirements, the requirements in TDC Chapter 73 (Community Design Standards) and other applicable Chapters apply. If TDC Chapters 57, 73 and other applicable Chapters, conflict or are different, they shall be resolved in accordance with TDC 57.200(2).