



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us

NOTICE OF ADOPTED AMENDMENT

September 30, 2008



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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Phoenix Plan Amendment
DLCD File Number 001-08

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Copies of the adopted plan amendment are available for review at DLCD offices in Salem, the applicable field office, and at the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: October 14, 2008

This amendment was submitted to DLCD for review prior to adoption with less than the required 45-day notice. 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 DATE SPECIFIED ABOVE.**

Cc: Gloria Gardiner, DLCD Urban Planning Specialist
John Renz, DLCD Regional Representative
Laura LeCornu, City of Phoenix

<paa> ya/

SEP 25 2008

D L C D NOTICE OF ADOPTION

This form must be mailed to DLCD within 5 working days after the final decision
Per ORS 197.610, OAR Chapter 600 - Division 18

LAND CONSERVATION AND DEVELOPMENT

(See reverse side for submittal requirements)

Jurisdiction: City of Phoenix

Local File No.: CP08-01

Date of Adoption: September 15, 2008
(Must be filled in)

Date Mailed: September 22, 2008
(Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: July 28, 2008

- X Comprehensive Plan Text Amendment
Comprehensive Plan Map Amendment
Land Use Regulation Amendment
Zoning Map Amendment
New Land Use Regulation
Other:
(Please Specify Type of Action)

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

An Ordinance amending the text of the Comprehensive Plan to eliminate references that distinguish segments of the urban growth boundary as permanent versus standard to ensure an urban growth boundary that is singular in quality.

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".

Same

Plan Map Changed from: to:

Zone Map Changed from: to:

Location: Acres Involved:

Specify Density: Previous: New:

Applicable Statewide Planning Goals:

Was an Exception Adopted? Yes: No:

DLCD File No.: 001-08 (17047)

Did the Department of Land Conservation and Development **receive** a notice of Proposed Amendment **FORTY FIVE (45) days prior to the first evidentiary hearing.** Yes: X No: _____

If no, do the Statewide Planning Goals apply: Yes: _____ No: _____

If no, did The Emergency Circumstances Require immediate adoption: Yes: _____ No: _____

Affected State or Federal Agencies, Local Governments or Special Districts: DLCD, Jackson County

Local Contact: Laura LeCornu Area Code + Phone Number: 541-535-2050

Address: PO Box 330 City: Phoenix, Oregon

Zip Code + 4: 97535 Email Address: phoenixplanlaura@charterinternet.com

ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD within **5 working days after the final decision**
Per ORS 197.610, OAR Chapter 600 – 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 no 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 Larry.French@state.or.us
– ATTENTION: PLAN AMENDMENT SPECIALIST.

AN ORDINANCE AMENDING THE TEXT OF THE COMPREHENSIVE PLAN TO ELIMINATE REFERENCES THAT DISTINGUISH SEGMENTS OF THE URBAN GROWTH BOUNDARY AS *PERMANENT* VERSUS *STANDARD* TO ENSURE AN URBAN GROWTH BOUNDARY THAT IS SINGULAR IN QUALITY.

WHEREAS, the City of Phoenix City Council received a letter from CSA Planning Ltd. requesting the City consider amending its Comprehensive Plan to eliminate the Comprehensive Plan's qualitative distinctions that reference segments of its urban growth boundary as permanent, and

WHEREAS, the Council directed this request to the Planning Commission for their consideration and the City of Phoenix Planning Commission initiated a legislative amendment project (PLDO Type IV Procedure) to the City of Phoenix Comprehensive Plan by unanimous consent at a work session devoted to the subject of this ordinance on May 27, 2008. A memo from the Planning Staff summarizing the Planning Commission's decision on this matter is included in the official record for this legislative Comprehensive Plan amendment, and

WHEREAS, after initiating a Type IV Procedure, the City of Phoenix has followed the City's acknowledged procedure for legislative amendments found at PLDO 4.1.6 (D) through (K), and

WHEREAS, the Planning Commission held a public hearing(s) on this matter on July 14, 2008 and after considering the recommendations of staff, the public testimony, agency comments, and the record as a whole, acted to forward a recommendation to the City Council that the Comprehensive Plan be amended as provided in Exhibit 'A' to this ordinance, and

WHEREAS, The City Council held a public hearing on this request on September 2, 2008 and September 15, 2008 and after considering the recommendations of staff, the public testimony, agency comments, and the record as a whole, acted to amend the Comprehensive Plan as provided in Exhibit 'A' to this ordinance.

NOW, THEREFORE, THE CITY OF PHOENIX ORDAINS AS FOLLOWS:

Section 1: The City of Phoenix Comprehensive Plan for land uses in the City is herewith amended as provided in Attached Exhibit 'A'.

Section 2: The City of Phoenix herewith incorporates and adopts the Findings of Fact and Conclusions of Law in support of this ordinance amending the Comprehensive Plan found in Exhibit 'B' to this Ordinance.

Section 3: This Comprehensive Plan Amendment shall become effective 30 days from the date of City Council approval of this ordinance.

PASSED and adopted by the City Council and signed by me in authentication thereof on this 15th day of September 2008.

ATTEST:


Carlos DeBritto, Mayor

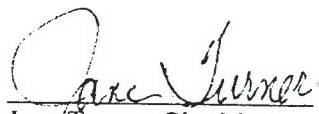

Jane Turner, City Manager

EXHIBIT 'A' – SUGGESTED REWORDING

COMPREHENSIVE PLAN TEXT AMENDMENT

LAND USE ELEMENT AMENDMENTS

A) The language on Page 19 of the Land Use Element following “ownerships.” at the end of paragraph one is herewith stricken in its entirety. The stricken language is as follows:

~~Extensive analysis was performed to determine the location of the “permanent” and “standard” urban growth boundaries. The concept of a permanent urban growth boundary was established within Parks and Recreation Element, Goal 7 and Policy 7.1. The Goal requires that the City “establish programs, plans, and policies which protect the City’s environmental setting.” The policy provides for the creation of a “permanent” urban growth boundary. The Policy further establishes three criteria to be used when evaluating the location of a permanent urban growth boundary. A fourth criteria was developed during application of the policy. They include;~~

- ~~1) Lands outside the UGB are zoned by the County as Exclusive Farm Use, and~~
- ~~2) The boundary represents a logical separation of urban and rural lands, and~~
- ~~3) Adequate buffering of the agricultural lands is possible within the UGB or existing development is of a character and intensity that land use conflicts are expected to be minimal, and~~
- ~~4) Areas with low agricultural productivity and zoned Exclusive Farm Use should not be excluded from future urbanization when they contain soils which are of no value for agricultural use (class 5 or greater even when irrigated or class 6 when not irrigated). Lands with these characteristics should not be protected by a “permanent” urban growth boundary.~~

~~The Boundary, where designated as “permanent,” can provide a clear, long term, and defensible, line of demarcation between rural and urban lands. Inventory information related to the establishment of the permanent urban growth boundary is included in the 1995 Land Use Inventory.~~

B) The language in the first sentence on Page 20 is herewith amended, as follows:

The City must ensure that the lands lying outside the “standard” urban growth boundary are protected from uses or land divisions that might otherwise make them unsuitable for urban development while protecting the City’s environmental setting.

C) Goal 2, Policy 2.1 and Policy 2.2 are herewith stricken in their entirety. These goals are found on Page 21 and 22 of the Land Use Element. The balance of the goals and policies are herewith renumbered consistent with the numbering schema in the balance of the Land Use Element. The new language is as follows:

Goal 2. The City is participating in the Regional Problem Solving (RPS) Plan for the Greater Bear Creek Valley. This RPS Plan, through state statute, provides a special process for addressing regional land use issues that allows the local jurisdictions, upon the satisfaction of certain conditions, to implement regional strategies for the location of future boundary between urban and rural lands.

Policy 2.1 The Planning Commission and City Council shall continue with the RPS process and during periodic review amend and update pertinent elements of the Comprehensive Plan.

PARKS AND RECREATION ELEMENT AMENDMENTS

D) The first whole paragraph on Page 22 is herewith stricken in its entirety. The new language is as follows:

The City's participation and eventual adoption of the Regional Problem Solving Plan for the Greater Bear Creek Valley will provide a clear direction for future urban expansion and reduce development pressure into agricultural lands.

E) Strike Policy 7.1 in its entirety. The new language is as follows:

Policy 7.1 Continue to participate and support the City's Regional Problem Solving Plan which promotes buffering of agricultural lands from urban uses within the UGB as well as proposing logical separation of urban and rural lands.

Policy 7.2 Add "such as RPS" between Talent and to. The new language is as follows:

Explore interagency agreements or other cooperative arrangements with Jackson County, Medford, and Talent such as RPS to ensure that future expansions of UGB's do not adversely affect the City's environmental setting.

BEFORE THE CITY COUNCIL
FOR THE CITY OF PHOENIX
JACKSON COUNTY, OREGON

IN THE MATTER OF AN ORDINANCE)
FOR LEGISLATIVE AMENDMENT TO)
THE COMPREHENSIVE PLAN TEXT TO)
ELIMINATE REFERENCES THAT)
DISTINGUISH SEGMENTS OF THE) FINDINGS OF FACT AND
URBAN GROWTH BOUNDARY AS) CONCLUSIONS OF LAW
PERMANENT VERSUS *STANDARD* TO)
ENSURE AN URBAN GROWTH) *Ordinance Exhibit 'B'*
BOUNDARY THAT IS SINGULAR IN)
QUALITY.)

I
NATURE AND SCOPE OF THE FINDINGS OF FACT
AND CONCLUSIONS OF LAW

The City of Phoenix initiated a legislative review of its Comprehensive Plan to assess the City's desire to preserve language in its Comprehensive Plan that makes qualitative distinctions between segments of its Urban Growth Boundary (UGB). That language contemplated that the City would have segments of its UGB designated "Permanent" and other segments designated "Standard". During the course of their legislative review, the Planning Commission first recommended and the City Council ultimately voted to eliminate this concept and references thereto from its Comprehensive Plan. The Findings of Fact and Conclusions of Law presented herein provide City Council's legal basis to support this Comprehensive Plan amendment.

PROCEDURAL FINDINGS OF FACT

1. **Nature of the Amendment:** The Phoenix Planning Commission initiated this Comprehensive Plan Amendment at a work session on May 27, 2008 about the 'Permanent' UGB concept. At that meeting, the Planning Commission unanimously decided to initiate an amendment to the Comprehensive Plan to consider whether the City wished to further retain this concept in its Comprehensive Plan. The Planning Commission considered that the PLDO may also require amendments to allow larger lot sizes near the Urban Growth Boundary to provide additional lands for buffering agricultural uses from urban residential uses. Once this process was initiated, it was for the Planning Commission and City Council to consider and determine whether the changes made by the ordinance supported by these Findings of Fact were warranted.

The amendment considerations were focused only on the policies and plan text related to the concept of a 'Permanent' urban growth boundary and whether this was a policy component of the Comprehensive Plan that the City wished to retain. This policy review included all aspects of the Comprehensive Plan that dealt with the 'Permanent' urban growth boundary concept on a city-wide basis.

The Comprehensive Plan amendments supported by these Findings of Fact and Conclusions of Law are not subject to specific criteria established in advance. Rather, they must only be generally consistent with State Law, Administrative Rules, the Statewide Planning Goals and the balance of the Comprehensive Plan.

2. **Public Process:** The following summarizes the public process leading to the adoption of the Comprehensive Plan amendments supported by these findings of fact and conclusions of law:
 - a. The following properly noticed public hearings were conducted:
 - i. The Planning Commission held the following public hearings: July 14, 2008
 - ii. The City Council held the following public hearings: September 2, 2008 and September 15, 2008
 - b. The written public record was open at the following times:
 - i. The Planning Commission written record was open from July 7, 2008
 - ii. The City Council written record was open from August 26, 2008
3. **Agency Coordination:** The following summarizes the agency coordination undertaken by the City of Phoenix
 - a. Timely 45-day notice was provided to the Department of Land Conservation and Development (DLCD) of the amendments supported by the Findings of Fact and Conclusions of Law provided herein on July 28, 2008.
 - b. The City of Phoenix made reasonable effort to identify potentially affected agencies and provided notice that the City was considering amending its plan to change its policies regarding 'Permanent' segments of its Urban Growth Boundary. On this basis, the City notified the following agencies : DLCD

PROCEDURAL CONCLUSIONS OF LAW

STATE OF OREGON REQUIREMENTS

Applicable Case Law:

The Oregon Supreme Court has laid forth standards by which land use decisions are determined to be either quasi-judicial or legislative in nature as provided in *Strawberry Hill Four-Wheelers Association versus Benton County*. In that case, the court held that such determinations are subject to three tests:

1. *Does the decision apply to a circumscribed factual situation that applies to a limited number of people or properties?*
2. *Is the decision subject to pre-determined set of criteria?*
3. *Is the application destined to result in a decision?*

Conclusions of Law: In the case of this Comprehensive Plan Amendment, the changes apply to the text of the Comprehensive Plan and affect the policy basis of the plan as a whole so the changes do not apply to a circumscribed factual situation nor does it apply to a limited number of people or properties. The amendments of the Comprehensive Plan are based upon a choice of the City Council to change the City's policy in this regard and the changes are not therefore subject to a pre-determined set of criteria. Following initiation by the Planning Commission, the proposed amendments were drafted and a decision reached based upon the desire of the Council to change the City's policy, but a final decision on the review of this policy position was not required by the mere act of initiating the review. Because the answer to all the above questions was in the negative, the Comprehensive Plan Amendments supported by these Findings of Fact and Conclusions of Law are legislative in nature and subject to the procedures and requirements of legislative land use decisions.

POST-ACKNOWLEDGMENT PROCEDURES [Oregon Revised Statutes and Administrative Rules]

ORS 197.610 Local government notice of proposed amendment or new regulation; exceptions; report to commission.

(1) A proposal to amend a local government acknowledged comprehensive plan or land use regulation or to adopt a new land use regulation shall be forwarded to the Director of the Department of Land Conservation and Development at least 45 days before the first evidentiary hearing on adoption. The proposal forwarded shall contain the text and any supplemental information that the local government believes is necessary to inform the director as to the effect of the proposal. The notice shall include the date set for the first evidentiary hearing. The director shall notify persons who have requested notice that the proposal is pending.

(2) When a local government determines that the goals do not apply to a particular proposed amendment or new regulation, notice under subsection (1) of this section is not required. In addition, a local government may submit an amendment or new regulation with less than 45 days' notice if the local government determines that there are emergency circumstances requiring expedited review.

Conclusions of Law: Based upon the Findings of Fact in Section III and supporting record herewith incorporated and adopted, the City Council concludes proper notice was given to DLCD.

ORS 197.615 Local government notice of adopted amendment or new regulation; content; notice by director. (1) A local government that amends an acknowledged comprehensive plan or land use regulation or

adopts a new land use regulation shall mail or otherwise submit to the Director of the Department of Land Conservation and Development a copy of the adopted text of the comprehensive plan provision or land use regulation together with the findings adopted by the local government. The text and findings must be mailed or otherwise submitted not later than five working days after the final decision by the governing body. If the proposed amendment or new regulation that the director received under ORS 197.610 has been substantially amended, the local government shall specify the changes that have been made in the notice provided to the director. If the text and findings are mailed, they shall include a signed statement by the person mailing them indicating the date of deposit in the mail.

- (2) (a) On the same day that the text and findings are mailed or delivered, the local government also shall mail or otherwise submit notice to persons who:
- (A) Participated in the proceedings leading to the adoption of the amendment to the comprehensive plan or land use regulation or the new land use regulation; and
 - (B) Requested of the local government in writing that they be given such notice.
- (b) The notice required by this subsection shall:
- (A) Describe briefly the action taken by the local government;
 - (B) State the date of the decision;
 - (C) If delivered by mail, include a certificate of mailing containing a statement signed by the person mailing it indicating the date the notice was deposited in the mail;
 - (D) List the place where and the time when the amendment to the acknowledged comprehensive plan or land use regulation or the new land use regulation, and findings, may be reviewed; and
 - (E) Explain the requirements for appealing the action of the local government under ORS 197.830 to 197.845.

Conclusions of Law: The City Council herewith concludes that the required notice can feasibly be provided and the same is herewith ordered at the time and in the manner prescribed in the above statute.

OAR 660-018-0020

Filing of a Proposed Amendment to or Adoption of a Comprehensive Plan or Land Use Regulation with the Director

- (1) A proposal to amend a local government acknowledged comprehensive plan or land use regulation or to adopt a new land use regulation must:
- (a) Be submitted to the director at least 45 days before the first evidentiary hearing on adoption. The submittal must be received by the department at its Salem office;
 - (b) Be accompanied by appropriate forms provided by the department;
 - (c) Contain two copies of the text and any supplemental information the local government believes is necessary to inform the director as to the effect of the proposal. One of the required copies may be an electronic copy;
 - (d) Indicate the date of the final hearing on adoption. If a final hearing on adoption is continued or delayed, following proper procedures, the local government is not required to submit a new notice under OAR 660-018-0020.
 - (e) In the case of a map change, include a map showing the area to be changed as well as the existing and proposed designations. Wherever possible, this map should be on 8-1/2 by 11-inch paper;
 - (f) Where a goal exception is being proposed, include the proposed language of the exception. The Commission urges the local government to submit information that explains the relationship of the proposal to the acknowledged plan and the goals, where applicable.
- (2) The text submitted to comply with subsection (1)(c) of this rule must include the specific language being proposed as an addition to or deletion from the acknowledged plan or land use regulations. A general description of the proposal or its purpose is not sufficient. In the case of map changes, the text must include a graphic depiction of the change, and not just a legal description, tax account number, address or other similar general description.

Conclusions of Law: Based upon the Findings of Fact in Section III and supporting record herewith incorporated and adopted, the City Council concludes proper notice was given to DLCD.

OAR 660-018-0040

Submittal of Adopted Material

- (1) Amendments to acknowledged comprehensive plans or land use regulations, new land use regulations adopted by local government, and findings to support the adoption shall be mailed or otherwise submitted to the director within five working days after the final decision by the governing body and shall be accompanied by appropriate forms provided by the department. If the text and findings are mailed, they shall include a signed statement by the person mailing them indicating the date of deposit in the mail.

(2) Local government must notify the department of withdrawals or denials of proposals previously sent to the department under requirements of OAR 660-018-0020.

(3) The local government must clearly indicate in its transmittal which provisions of ORS 196.610(2) are applicable where the adopted amendment was not submitted for review 45 days prior to the first evidentiary hearing on adoption.

NOTE: (ORS 197.610 clearly requires all adopted plan and land use regulation amendments and new land use regulations to be submitted to the director even though they were not required to be submitted for review prior to adoption.)

(4) Where amendments, including supplementary materials exceed 100 pages, a summary of the amendment briefly describing its purpose and requirements shall be submitted to the director. Such amendments should be submitted as an electronic copy.

Conclusions of Law: The City Council herewith concludes that the required submittal of adopted material can feasibly be provided and the same is herewith ordered at the time and in the manner prescribed in the above Administrative Rule.

OAR 660-018-0045

Changes in Proposals

If comprehensive plan or land use regulation amendments or new land use regulations that are adopted by a local government have been substantially amended, the local government must specify the changes that have been made in the notice to the director provided in OAR 660-018-0040.

Conclusions of Law: The City Council herewith concludes that the proposed amendments have not changed a substantial degree from that originally submitted with the 45-day notice and on that basis concludes further specificity is not required by the rule.

CITY OF PHOENIX REQUIREMENTS

Land Use Element Policy 1.1.1.

The Planning Commission and City Council shall only consider major amendments to the Plan during the City's periodic review. In that way, major changes to the City's Plan will be considered in light of their impact on the entire community and their implications on the full breadth of the Comprehensive Plan. Major amendments may also be initiated under the following circumstances;

- A) Statutory or litigated changes either require or significantly affect the Plan,
- B) A major error or inconsistency is found within the Plan, or
- C) A change in Statewide Planning Goals or Oregon Administrative Rules require Plan amendment(s) at times other than during Periodic Review.

The term "major amendment" shall have the following meaning:

Major amendments include land use changes which have widespread and significant impact beyond the immediate area, such as quantitative changes producing large volumes of traffic, a qualitative change in the character of the land use itself, such as conversion of residential to industrial use; a spatial change that affects large areas or many different ownerships; or an amendment to the Urban Growth Boundary. Major amendments shall also include changes that would, if approved, modify one or more Goals and Policies of the Plan. Major amendments are legislative actions.

Conclusions of Law: Based upon the Findings of Fact in Section III and the Conclusions of Law addressing the relevant case law for legislative amendments, the City Council concludes that the amendments will apply City-wide and therefore will have widespread and significant impacts beyond the immediate area and will modify one or more goals of the Comprehensive Plan. On this basis, the Council concludes the proposed changes are a major amendment.

As to timing, the Council concludes this amendment is not made during periodic review, but is properly initiated under circumstances (A)-(C) for several reasons. First, the 'permanent' urban growth boundary concept likely functions as a *rural reserve* under ORS 195.137-143 and those statutes make no provision for creation of a rural reserve except between metropolitan service

districts and a county; moreover, the County has not adopted Rural Reserves into its Comprehensive Plan for the City of Phoenix and therefore even if they were found lawful under this statute they would require County authorization under process prescribed in that statute which has not occurred. Second, it does not appear the City has an acknowledged map that determines which segments of the UGB are 'permanent' and which are 'standard'. The 'Permanent' language is powerful language that is inconsistent where it is not accompanied by a map that explains where this language actually applies. Third, the City concludes that changes to Statewide Planning Goal 14 have been extensive as have changes to OAR 660 Division 9 and that these changes have the potential to cause segments of a 'permanent' urban growth boundary to conflict with urban needs for specific uses. This scenario has the potential to make UGB amendments difficult because application of the 'Permanent' language and the State requirements could be irreconcilable and therefore the City concludes the amendments supported herein are required¹ at this time.

PLDO 4.1.6 (D)

D. Notice of Hearing

1. Required hearings. A minimum of two hearings, one before the Planning Commission and one before the City Council, are required for all Type IV applications.
2. Notification requirements. Notice of public hearings for the request shall be given by the Planning Department in the following manner:
 - a. At least 20 days, but not more than 40 days, before the date of the first hearing on an ordinance that proposes to amend the Comprehensive Plan or any element thereof, or to adopt an ordinance that proposes to rezone property, a notice shall be prepared in conformance with ORS 227.175 and mailed to:
 - (1) Each owner whose property would be rezoned in order to implement the ordinance (i.e., owners of property subject to a Comprehensive Plan amendment shall be notified if a zone change would be required to implement the proposed comprehensive plan amendment);
 - (2) Any affected governmental agency.
 - (3) Recognized neighborhood groups or associations affected by the ordinance;
 - (4) Any person who requests notice in writing;
 - (5) For a zone change affecting a manufactured home or mobile home park, all mailing addresses within the park, in accordance with ORS 227.175.
 - b. The Planning Department shall file an affidavit of mailing in the record as provided by Subsection a.
 - c. The Department of Land Conservation and Development (DLCD) shall be notified in writing of proposed comprehensive plan and development code amendments at least 45 days before the first public hearing at which public testimony or new evidence will be received.
 - d. Notifications for annexation shall follow the provisions of this Chapter, except as required for local government boundary commissions (ORS 199).
3. Content of notices. The notices shall include the following information:
 - a. The number and title of the file containing the application, and the address and telephone number of the Planning Office where additional information about the application can be obtained;
 - b. A description of the location of the proposal reasonably calculated to give notice of the location of the geographic area;
 - c. A description of the proposal in enough detail for people to determine that a change is proposed, and the place where all relevant materials and information may be obtained or reviewed;
 - d. The time, place, and date of the public hearing; a statement that public oral or written testimony is invited; and a statement that the hearing will be held under this title and rules of procedure adopted by the Council and available at City Hall (See subsection E below); and
 - e. Each notice required by Section D shall contain the following statement: Notice to mortgagee, lien holder, vendor, or seller: The City of Phoenix Development Code requires that if you receive this notice it shall be promptly forwarded to the purchaser.
4. Failure to receive notice. The failure of any person to receive notice shall not invalidate the action, providing:

¹ The City concludes that the word require under circumstance (C) is ambiguous because it could be read to mean that the Goal and/or Rule language changes themselves must require the change before periodic review or it could be read to mean that Council's understanding of the OAR and/or Goal changes are such that amendments will be required at some point and the Council elects to change them at this time. The second interpretation is the one on which the Council relies upon and concludes that it is consistent with general legal principal that a legislative body cannot create a paradox in its laws that preclude the law from being changed by a future elected body that otherwise can lawfully change the law.

- a. Personal notice is deemed given where the notice is deposited with the United States Postal Service;
- b. Published notice is deemed given on the date it is published.

Conclusions of Law: Based upon the record and evidence of notices provided herewith incorporated and adopted, the City Council concludes proper notice was provided.

E. Hearing Process and Procedure

1. Unless otherwise provided in the rules of procedure adopted by the City Council:
 - a. The presiding officer of the Planning Commission and of the City Council shall have the authority to:
 - (1) Regulate the course, sequence, and decorum of the hearing;
 - (2) Direct procedural requirements or similar matters; and
 - (3) Impose reasonable time limits for oral presentations.
 - b. No person shall address the Commission or the Council without:
 - (1) Receiving recognition from the presiding officer; and
 - (2) Stating their full name and residence address.
 - c. Disruptive conduct such as applause, cheering, or display of signs shall be cause for expulsion of a person or persons from the hearing, termination or continuation of the hearing, or other appropriate action determined by the presiding officer.
2. Unless otherwise provided in the rules of procedures adopted by the Council, the presiding officer of the Commission and of the Council, shall conduct the hearing as follows:
 - a. The presiding officer shall begin the hearing with a statement of the nature of the matter before the body, a general summary of the procedures, a summary of the standards for decision-making, and whether the decision which will be made is a recommendation to the City Council or the final decision of the Council;
 - b. The Planning Director's report and other applicable staff reports shall be presented;
 - c. The public shall be invited to testify;
 - d. The public hearing may be continued to allow additional testimony or it may be closed; and
 - e. The body's deliberation may include questions to the staff, comments from the staff, and inquiries directed to any person present.

Conclusions of Law: Based upon the record of the proceedings, the Council concludes the hearing procedures have been applied.

F. Continuation of the Public Hearing. The Planning Commission or the City Council may continue any hearing, and no additional notice of hearing shall be required if the matter is continued to a specified place, date, and time.

Conclusions of Law: The Council concludes that all hearing continuations were done to a place, date and time certain.

H. Approval Process and Authority

1. The Planning Commission shall:
After notice and a public hearing, vote on and prepare a recommendation to the City Council to approve, approve with modifications, approve with conditions, deny the proposed change, or adopt an alternative.
2. If the Planning Commission fails to adopt a recommendation to approve, approve with modifications, approve with conditions, deny the proposed change, or adopt an alternative proposal, within 30 days of its first public hearing on the proposed change, the Planning Director shall:
 - a. Report the failure together with the proposed change to the City Council; and
 - b. Provide notice and put the matter on the City Council's agenda, a public hearing to be held, and a decision to be made by the Council. No further action shall be taken by the Commission.
3. The City Council shall:
 - a. Approve, approve with modifications, approve with conditions, deny, or adopt an alternative to an application for legislative change, or remand the application to the Planning Commission for rehearing and reconsideration on all or part of the application;
 - b. Consider the recommendation of the Planning Commission; however, it is not bound by the Commission's recommendation; and
 - c. Act by ordinance, which shall be signed by the Mayor after the Council's adoption of the ordinance.

Conclusions of Law: Based upon the record herewith incorporated and adopted, the City Council concludes that the Planning Commission provided a recommendation on the matter after a properly noticed and held public hearing and that the Council by motion and vote approved the amendments supported by the findings provided herein.

I. Vote Required for a Legislative Change

1. A vote by a majority of the qualified voting members of the Planning Commission present is required for a recommendation for approval, approval with modifications, approval with conditions, denial, or adoption of an alternative.
2. A vote by a majority of the qualified members of the City Council present is required to decide any motion made on the proposal.

Conclusions of Law: Based upon the evidence in the record, the Council concludes proper votes were taken.

J. Notice of Decision. Notice of a Type IV decision shall be mailed to the applicant, all participants of record, and the Department of Land Conservation and Development, within five business days after the City Council decision is filed with the City Official. The City shall also provide notice to all persons as required by other applicable laws.

Conclusions of Law: The Council concludes that upon signature of the ordinance the required notices can feasibly and will be provided.

K. Final Decision and Effective Date. A Type IV decision, if approved, shall take effect and shall become final as specified in the enacting ordinance, or if not approved, upon mailing of the notice of decision to the applicant.

Conclusions of Law: The Council concludes the ordinance will go into effect on the 30th day following the enacting of the ordinance as specified in the ordinance supported by these findings.

L. Record of the Public Hearing

1. A verbatim record of the proceeding shall be made by stenographic, mechanical, or electronic means. It is not necessary to transcribe an electronic record. The minutes and other evidence presented as a part of the hearing shall be part of the record;
2. All exhibits received and displayed shall be marked to provide identification and shall be part of the record;
3. The official record shall include:
 - a. All materials considered by the hearings body;
 - b. All materials submitted by the Planning Director to the hearings body regarding the application;
 - c. The verbatim record made by the stenographic, mechanical, or electronic means; the minutes of the hearing; and other documents considered;
 - d. The final ordinance;
 - e. All correspondence; and
 - f. A copy of the notices that were given as required by this Chapter.

Conclusions of Law: The Council concludes the City has maintained record of the public hearing consistent with the above requirements.

LEGISLATIVE FINDINGS OF FACT

- 1. Most Current Land Use Information:** The City of Phoenix finds it is beneficial to use current land use information when analyzing alternative sites for UGB inclusion. The City recognizes that changing circumstances may result in changing agricultural priorities. For example, the City recognizes that wine grape production has grown in the valley and that some areas poorly suited to other agricultural commodities might be put to vineyard use significantly changing their priority for preservation under Goal 3. Similarly, land capability is often driven by irrigation rights and opportunities; water rights and services can change over time in ways that may not be predicted at the time when a 'Permanent' urban growth boundary is established.

Also, current information on land needs of the City may result in certain types of needs being unanticipated in the plan. Under these circumstances, it is possible that the lands necessary to meet newly-identified urban needs are thwarted by the existence of a 'permanent' urban growth boundary that was established before the needs have even been identified. This scenario is most likely for employment land needs where site requirements can be very specific in ways that limit the potential of many site types to meet the identified need. For example, a specific industrial use that cannot be located near railroad tracks and heavy trucks because the industry is vibration sensitive, some semi-conductor processes are vibration sensitive.

- 2. Extensive State Process for UGB Amendments:** The City of Phoenix finds that the Urban Growth Boundary is a fundamental component of the Oregon Statewide Planning program and for this reason the State of Oregon has developed an extensive process for analyzing and selecting lands for UGB inclusion. The City concludes that there is the potential for conflicting requirements where the City would establish segments of the UGB as 'permanent' and then some years in the future be subject to an extensive State review process. This is especially likely where significant changes to State requirements occur from the time segments of the UGB might be designated 'permanent' and when the next UGB review actually occurs. Moreover, since the 'Permanent' UGB concept was developed by the City this is precisely what has happened. The State of Oregon has almost completely rewritten Goal 14 and its implementing rule OAR 660-024. Significant changes may also occur as a result of the work being done by the State's *Big Look Committee*.

The City also finds that the State process to amend an Urban Growth Boundary requires the analysis of alternative sites to meet identified urban needs. The City finds that process should not be preempted and that, while the City may have policies and provisions that would guide future urbanization toward some areas and away from others, there is a benefit to the City to consider all lands near its urban growth boundary and compare said lands to identified needs.

- 3. Environmental Setting Objectives:** The Comprehensive Plan's rationale for creating the 'Permanent' UGB concept was to protect the City's environmental setting. The City finds that the concept was not fully implemented because segments of the UGB have not actually been designated as 'Permanent' in the acknowledged Plan. Despite the incomplete implementation of the concept, the City's environmental setting has changed little over the last 10-years. On this basis, the City concludes the last ten years of development history does not demonstrate a strong utility of the policy. Moreover, the City notes that preservation of

the City's environmental setting is more of an open space issue rather than a true urban recreation issue typically addressed by City's Goal 8 plans. Open Space is typically a Goal 5 resource issue not a Goal 8 Recreation Element issue and the City finds that neither the City nor the County has conducted a Goal 5 ESEE analysis to determine whether protection (in addition to that afforded by Goal 3) is warranted.

4. **Regional Problem Solving:** The City finds that it has participated for many years in the Regional Problem Solving process (RPS). RPS has sought as its goal to establish Urban Reserves for the City of Phoenix with other cities in the Bear Creek Valley. The City finds that this process has identified lands suitable for future urbanization and establishes a regional framework under which the City will pursue future UGB amendments. The City finds that the 'Permanent' UGB concept is not included in the RPS planning project and that the 'Permanent' language and policies in the Phoenix Comprehensive Plan could potentially conflict with future implementation of the RPS plan.
5. **Priority Lands Statute:** The City finds that ORS 197.298 includes specific statutory language for the inclusion of lands into an Urban Growth Boundary. The City finds that this statute limits urbanization of farm lands and that the statute has the effect of making some segments of the UGB much more difficult to move than others. The City finds that this statutory framework serves many of the objectives embodied in the 'Permanent' UGB concept.
6. **City-County UGBA and Jackson County Comprehensive Plan:** The City of Phoenix finds that the County's Comprehensive Plan includes a number of protections for agricultural lands and that the County's Plan is acknowledged by the State of Oregon to comply with Statewide Planning Goal 3 and Goal 14. The City finds that the County's Comprehensive Plan functions to prevent urbanization of rural lands. The City further finds that the County's Comprehensive Plan does not contemplate the designation of UGB segments as 'Permanent'.

The City finds that the 'Permanent' UGB is not discussed or included in the joint City-County Urban Growth Boundary Agreement. The City finds that the agreement does include provisions for an 'Area of Mutual Planning Concern' and that this language is focused on assuring notification and opportunity to coordinate and respond to planning issues within this area; the Area of Mutual Planning Concern does not contemplate the creation of 'Permanent' UGB segments.

7. **Rural Reserve Law:** The City finds that the 2007 Legislature created the statutes governing the creation of *Rural Reserves*. The City finds that the statutory definition of *Rural Reserve* is similar in concept to that of a 'Permanent' UGB. The City finds that the statutes authorizing the creation of Rural Reserves requires them to be jointly adopted with the County and the statute only makes reference to their being allowed in conjunction with a Metropolitan Service District [Metro in Portland area]. The City finds that the statute first requires the creation of Urban Reserves and that is something Phoenix and the County have not yet designated.

LEGISLATIVE CONCLUSIONS OF LAW

STATE OF OREGON CRITERIA

- (2) Pursuant to ORS chapters 195, 196 and 197, each city and county in this state shall:
- (a) Prepare, adopt, amend and revise comprehensive plans in compliance with goals approved by the commission;
 - (b) Enact land use regulations to implement their comprehensive plans;
 - (c) If its comprehensive plan and land use regulations have not been acknowledged by the commission, make land use decisions and limited land use decisions in compliance with the goals;
 - (d) If its comprehensive plan and land use regulations have been acknowledged by the commission, make land use decisions and limited land use decisions in compliance with the acknowledged plan and land use regulations; and
 - (e) Make land use decisions and limited land use decisions subject to an unacknowledged amendment to a comprehensive plan or land use regulation in compliance with those land use goals applicable to the amendment.

Conclusions of Law: The Council concludes the City has an adopted and acknowledged Comprehensive Plan that is implemented by the Phoenix Land Development Ordinance.

ORS 195.137 Definitions for ORS 195.137 to 195.145. As used in ORS 195.137 to 195.145:

- (1) "Rural reserve" means land reserved to provide long-term protection for agriculture, forestry or important natural landscape features that limit urban development or help define appropriate natural boundaries of urbanization, including plant, fish and wildlife habitat, steep slopes and floodplains.
- (2) "Urban reserve" means lands outside an urban growth boundary that will provide for:
 - (a) Future expansion over a long-term period; and
 - (b) The cost-effective provision of public facilities and services within the area when the lands are included within the urban growth boundary. [2007 c.723 §1]

ORS 195.139 Legislative findings. The Legislative Assembly finds that:

- (1) Long-range planning for population and employment growth by local governments can offer greater certainty for:
 - (a) The agricultural and forest industries, by offering long-term protection of large blocks of land with the characteristics necessary to maintain their viability; and
 - (b) Commerce, other industries, other private landowners and providers of public services, by determining the more and less likely locations of future expansion of urban growth boundaries and urban development.
- (2) State planning laws must support and facilitate long-range planning to provide this greater certainty. [2007 c.723 §2]

ORS 195.141 Designation of rural reserves and urban reserves pursuant to intergovernmental agreement; rules.

- (1) A county and a metropolitan service district established under ORS chapter 268 may enter into an intergovernmental agreement pursuant to ORS 190.003 to 190.130, 195.025 or 197.652 to 197.658 to designate rural reserves pursuant to this section and urban reserves pursuant to ORS 195.145 (1)(b).
- (2) Land designated as a rural reserve:
 - (a) Must be outside an urban growth boundary.
 - (b) May not be designated as an urban reserve during the urban reserve planning period described in ORS 195.145 (4).
 - (c) May not be included within an urban growth boundary during the period of time described in paragraph (b) of this subsection.
- (3) When designating a rural reserve under this section to provide long-term protection to the agricultural industry, a county and a metropolitan service district shall base the designation on consideration of factors including, but not limited to, whether land proposed for designation as a rural reserve:
 - (a) Is situated in an area that is otherwise potentially subject to urbanization during the period described in

- subsection (2)(b) of this section, as indicated by proximity to the urban growth boundary and to properties with fair market values that significantly exceed agricultural values;
- (b) Is capable of sustaining long-term agricultural operations;
 - (c) Has suitable soils and available water where needed to sustain long-term agricultural operations; and
 - (d) Is suitable to sustain long-term agricultural operations, taking into account:
 - (A) The existence of a large block of agricultural or other resource land with a concentration or cluster of farms;
 - (B) The adjacent land use pattern, including its location in relation to adjacent nonfarm uses and the existence of buffers between agricultural operations and nonfarm uses;
 - (C) The agricultural land use pattern, including parcelization, tenure and ownership patterns; and
 - (D) The sufficiency of agricultural infrastructure in the area.

(4) The Land Conservation and Development Commission shall, after consultation with the State Department of Agriculture, adopt by goal or by rule a process and criteria for designating rural reserves pursuant to this section. [2007 c.723 §3]

ORS 195.143 Coordinated and concurrent process for designation of rural reserves and urban reserves.

(1) A county and a metropolitan service district must consider simultaneously the designation and establishment of:

- (a) Rural reserves pursuant to ORS 195.141; and
- (b) Urban reserves pursuant to ORS 195.145 (1)(b).

(2) An agreement between a county and a metropolitan service district to establish rural reserves pursuant to ORS 195.141 and urban reserves pursuant to ORS 195.145 (1)(b) must provide for a coordinated and concurrent process for adoption by the county of comprehensive plan provisions and by the district of regional framework plan provisions to implement the agreement. A district may not designate urban reserves pursuant to ORS 195.145 (1)(b) in a county until the county and the district have entered into an agreement pursuant to ORS 195.145 (1)(b) that identifies the land to be designated by the district in the district's regional framework plan as urban reserves. A county may not designate rural reserves pursuant to ORS 195.141 until the county and the district have entered into an agreement pursuant to ORS 195.141 that identifies the land to be designated as rural reserves by the county in the county's comprehensive plan.

(3) A county and a metropolitan service district may not enter into an intergovernmental agreement to designate urban reserves in the county pursuant to ORS 195.145 (1)(b) unless the county and the district also agree to designate rural reserves in the county.

(4) Designation and protection of rural reserves pursuant to ORS 195.141 or urban reserves pursuant to ORS 195.145 (1)(b):

- (a) Is not a basis for a claim for compensation under ORS 195.305 unless the designation and protection of rural reserves or urban reserves imposes a new restriction on the use of private real property.
- (b) Does not impair the rights and immunities provided under ORS 30.930 to 30.947.

Conclusions of Law: Based upon the Findings of Fact in Section V above, the City concludes that there is no legal precedent upon which to determine whether the 'Permanent' UGB concept is subject to the Rural Reserves statutes. The City further concludes that Rural Reserves are not required by statute and the 'Permanent' UGB concept is at least similar in nature and is therefore, by inference, not required a matter of statute.

Goal 1: Citizen Involvement

To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process...

Conclusions of Law: The Council concludes the City has maintained record of the public process and the City herewith incorporates its procedural findings of fact and conclusions of law in Sections III and IV as evidence that the City has properly conducted achieved Goal 1 for the subject legislative text amendment.

Goal 2: Land Use Planning

PART I -- PLANNING

To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions...

Conclusions of Law: The Council herewith incorporates and adopts the balance of the Findings of Fact in Section V and Conclusions of Law in Section VI as its basis to conclude the City has dutifully conducted its Goal 2 Planning Requirements.

Goal 3: Agricultural Lands

To preserve and maintain agricultural lands...

Conclusions of Law: Based upon its Findings of Fact in Section V above, the Council Concludes that Goal 3 itself, the priority lands statute, the County's Comprehensive Plan, and the City-County UGBA are all aimed at accomplishing Goal 3 and therefore the City need not include plan provisions that induce quality distinctions of 'Permanent' versus 'Standard' Urban Growth Boundaries.

Goal 4: Forest Lands

To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture...

Conclusions of Law: The Council concludes the City is not near lands protected by Goal 4 and therefore the proposed Comprehensive Plan amendments will not affect attainment of Goal 4.

Goal 5: Natural Resources, Scenic and Historic Areas, and Open Spaces

To protect natural resources and conserve scenic and historic areas and open spaces...

Conclusions of Law: The Council concludes that the proposed amendments will not affect any identified Goal 5 resource nor is any additional Goal 5 review required for this amendment.

Goal 6: Air, Water and Land Resources Quality

To maintain and improve the quality of the air, water and land resources of the state...

Conclusions of Law: The Council concludes the Comprehensive Plan amendments will have no appreciable impact on Goal 6 objectives.

Goal 7: Areas Subject to Natural Hazards

To protect people and property from natural hazards...

Conclusions of Law: The Council concludes the Comprehensive Plan amendments will have no appreciable impact on Goal 7 objectives.

Goal 8: Recreational Needs

To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts...

Conclusions of Law: The Council concludes the Comprehensive Plan amendments will amend the City's Goal 8 Recreation Element, but in a limited way. The City concludes any recreational benefits derived from the changes to the City's Environmental Setting are passive in nature and which are not central to the City's urban recreational objectives and obligations under Goal 8.

Goal 9: Economic Development

To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens...

Conclusions of Law: The City concludes that the administrative rule implementing Goal 9 has been amended since the 'Permanent' UGB concept was adopted. The City concludes the Goal 9 rule includes detailed analysis of site requirements. Goal 9 requirements must be balanced against Goal 3 requirements when making alternative sites analysis decisions for urban growth boundary expansion. For this reason, the City Council concludes the Comprehensive Plan amendments supported by these Findings of Fact and Conclusions of Law may make it procedurally easier for the City to comply with Goal 9.

Goal 10: Housing

To provide for the housing needs of citizens of the state...

Conclusions of Law: The City Council concludes that the Comprehensive Plan amendments to eliminate the 'Permanent' UGB language may affect compliance with Goal 10 when housing needs cannot be met within the existing UGB and require a UGB amendment. At that future time, removing the 'Permanent' UGB concept from the Comprehensive Plan may make it easier to complete the necessary alternative sites analyses to support inclusion of additional lands to meet required land needs.

Goal 11: Public Facilities and Services

To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development...

Conclusions of Law: The City Council concludes that the Comprehensive Plan amendments to eliminate the 'Permanent' UGB language may affect compliance with Goal 11 when urban land needs cannot be met within the existing UGB and require a UGB amendment. At that future time, removing the 'Permanent' UGB concept from the Comprehensive Plan may make it easier to appropriately take into consideration Goal 11 issues as part of the required alternative sites analyses to support inclusion of additional lands to meet required land needs.

Goal 12: Transportation

To provide and encourage a safe, convenient and economic transportation system...

Conclusions of Law: The City Council concludes that the Comprehensive Plan amendments to eliminate the 'Permanent' UGB language may affect compliance with Goal 12 when urban land needs cannot be met within the existing UGB and require a UGB amendment. At that future time, removing the 'Permanent' UGB concept from the Comprehensive Plan may make it easier to appropriately take into consideration Goal 11 issues as part of the required alternative sites analyses to support inclusion of additional lands to meet required land needs.

Goal 13: Energy Conservation

To conserve energy...

Conclusions of Law: The City Council concludes that the Comprehensive Plan amendments to eliminate the 'Permanent' UGB language may affect compliance with Goal 13 when urban land needs cannot be met within the existing UGB and require a UGB amendment. At that future time, removing the 'Permanent' UGB concept from the Comprehensive Plan may make it easier

to appropriately take into consideration Goal 11 issues as part of the required alternative sites analyses to support inclusion of additional lands to meet required land needs.

Goal 14: Urbanization

To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.

Urban Growth Boundaries

Urban growth boundaries shall be established and maintained by cities, counties and regional governments to provide land for urban development needs and to identify and separate urban and urbanizable land from rural land. Establishment and change of urban growth boundaries shall be a cooperative process among cities, counties and, where applicable, regional governments. An urban growth boundary and amendments to the boundary shall be adopted by all cities within the boundary and by the county or counties within which the boundary is located, consistent with intergovernmental agreements, except for the Metro regional urban growth boundary established pursuant to ORS chapter 268, which shall be adopted or amended by the Metropolitan Service District.

Land Need

Establishment and change of urban growth boundaries shall be based on the following:

- (1) Demonstrated need to accommodate long range urban population, consistent with a 20-year population forecast coordinated with affected local governments; and
- (2) Demonstrated need for housing, employment opportunities, livability or uses such as public facilities, streets and roads, schools, parks or open space, or any combination of the need categories in this subsection(2).

In determining need, local government may specify characteristics, such as parcel size, topography or proximity, necessary for land to be suitable for an identified need.

Prior to expanding an urban growth boundary, local governments shall demonstrate that needs cannot reasonably be accommodated on land already inside the urban growth boundary.

Boundary Location

The location of the urban growth boundary and changes to the boundary shall be determined by evaluating alternative boundary locations consistent with ORS 197.298 and with consideration of the following factors:

- (1) Efficient accommodation of identified land needs;
- (2) Orderly and economic provision of public facilities and services;
- (3) Comparative environmental, energy, economic and social consequences; and
- (4) Compatibility of the proposed urban uses with nearby agricultural and forest activities occurring on farm and forest land outside the UGB.

Urbanizable Land

Land within urban growth boundaries shall be considered available for urban development consistent with plans for the provision of urban facilities and services. Comprehensive plans and implementing measures shall manage the use and division of urbanizable land to maintain its potential for planned urban development until appropriate public facilities and services are available or planned.

Unincorporated Communities

In unincorporated communities outside urban growth boundaries counties may approve uses, public facilities and services more intensive than allowed on rural lands by Goal 11 and 14, either by exception to those goals, or as provided by commission rules which ensure such uses do not adversely affect agricultural and forest operations and interfere with the efficient functioning of urban growth boundaries.

Single-Family Dwellings in Exception Areas

Notwithstanding the other provisions of this goal, the commission may by rule provide that this goal does not prohibit the development and use of one single-family dwelling on a lot or parcel that:

- (a) Was lawfully created;
- (b) Lies outside any acknowledged urban growth boundary or unincorporated community boundary;

- (c) Is within an area for which an exception to Statewide Planning Goal 3 or 4 has been acknowledged; and
- (d) Is planned and zoned primarily for residential use.

Rural Industrial Development

Notwithstanding other provisions of this goal restricting urban uses on rural land, a county may authorize industrial development, and accessory uses subordinate to the industrial development, in buildings of any size and type, on certain lands outside urban growth boundaries specified in ORS 197.713 and 197.714, consistent with the requirements of those statutes and any applicable administrative rules adopted by the Commission.

GUIDELINES

A. PLANNING

1. Plans should designate sufficient amounts of urbanizable land to accommodate the need for further urban expansion, taking into account (1) the growth policy of the area; (2) the needs of the forecast population; (3) the carrying capacity of the planning area; and (4) open space and recreational needs.
2. The size of the parcels of urbanizable land that are converted to urban land should be of adequate dimension so as to maximize the utility of the land resource and enable the logical and efficient extension of services to such parcels.
3. Plans providing for the transition from rural to urban land use should take into consideration as to a major determinant the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources.
4. Comprehensive plans and implementing measures for land inside urban growth boundaries should encourage the efficient use of land and the development of livable communities.

B. IMPLEMENTATION

1. The type, location and phasing of public facilities and services are factors which should be utilized to direct urban expansion.
2. The type, design, phasing and location of major public transportation facilities (i.e., all modes: air, marine, rail, mass transit, highways, bicycle and pedestrian) and improvements thereto are factors which should be utilized to support urban expansion into urbanizable areas and restrict it from rural areas.
3. Financial incentives should be provided to assist in maintaining the use and character of lands adjacent to urbanizable areas.
4. Local land use controls and ordinances should be mutually supporting, adopted and enforced to integrate the type, timing and location of public facilities and services in a manner to accommodate increased public demands as urbanizable lands become more urbanized.
5. Additional methods and devices for guiding urban land use should include but not be limited to the following: (1) tax incentives and disincentives; (2) multiple use and joint development practices; (3) fee and less-than-fee acquisition techniques; and (4) capital improvement programming.
6. Plans should provide for a detailed management program to assign respective implementation roles and responsibilities to those governmental bodies operating in the planning area and having interests in carrying out the goal.

Conclusions of Law: Based upon the Findings of Fact in Section V, the City Council concludes the 'Permanent' UGB concept is not required by Goal 14 nor do the Goal's guidelines and implementation strategies recommend the creation of a 'Permanent' UGB. Based upon the Findings of Fact in Section V, the City Council concludes there are good reasons to eliminate the 'Permanent' UGB concept from the City of Phoenix Comprehensive Plan and the same is fully consistent with Goal 14.

660-024-0000

Purpose and Applicability

(1) The rules in this division clarify procedures and requirements of Goal 14 regarding local government adoption or amendment of an urban growth boundary (UGB).

(2) The rules in this division interpret Goal 14 as amended by Land Conservation and Development Commission (LCDC) on or after April 28, 2005, and are not applicable to plan amendments or land use decisions governed by previous versions of Goal 14 still in effect.

(3) The rules in this division are effective April 5, 2007, except as follows:

- (a) A local government may choose to apply this division prior to April 5, 2007;
- (b) A local government may choose to not apply this division to a plan amendment concerning the evaluation or amendment of a UGB, regardless of the date of that amendment, if the local government initiated the evaluation or amendment of the UGB prior to April 5, 2007;
- (c) For purposes of this rule, "initiated" means that the local government either:
 - (A) Issued the public notice specified in OAR 660-018-0020 for the proposed plan amendment concerning the evaluation or amendment of the UGB; or
 - (B) Received LCDC approval of a periodic review work program that includes a work task to evaluate the UGB land supply or amend the UGB;
- (d) A local government choice whether to apply this division must include the entire division and may not differ with respect to individual rules in the division.

660-024-0010

(3) "UGB" means "urban growth boundary."

Conclusions of Law: Based upon the Findings of Fact in Section V, the City Council concludes the 'Permanent' UGB concept is not required by OAR 660-24 nor does the rule include language that contemplates qualitative distinctions between UGB segments. Based upon the Findings of Fact in Section V, the City Council concludes there are good reasons to eliminate the 'Permanent' UGB concept from the City of Phoenix Comprehensive Plan and the same is fully consistent with OAR 660-024.

CITY-COUNTY UGBA CRITERIA

PHOENIX/JACKSON COUNTY URBAN GROWTH BOUNDARY AND POLICY AGREEMENT

This agreement made and entered into this 17th day of May, 1995, by and between the City of Phoenix, a municipal corporation, hereinafter called "City" and Jackson County, a political subdivision of the State of Oregon, hereinafter called "County".

WHEREAS, Under ORS 197, State Land Use Goal 14, Urbanization, the "Establishment and change of the boundary shall be a cooperative process between a city and the county or counties that surround it;" and

WHEREAS, pursuant to authority granted by Oregon Revised Statutes and Charter of the City of Phoenix, the City and County propose to enter into an Agreement to adopt an Urban Growth Boundary, Policies, and Revision Procedures for the Phoenix Urbanizable Area.

THEREFORE, the City and County adopt the following Urban Growth Policies which shall serve as the basis for decisions pertaining to development and land uses in the area between the City limits of Phoenix and its Urban Growth Boundary, and other lands that are of mutual interest or are of significant importance to Phoenix's long-range growth and development.

SECTION I. THE PHOENIX URBANIZABLE AREA

The Phoenix Urbanizable Area includes lands currently within the City and encompasses selected land around the City which are planned for future City growth, and which are likely to require the extension of City services. The area is delineated by an Urban Growth Boundary imposed on the Official Comprehensive Plan and Zoning Map of Jackson County.

The Policies, Revision Procedures, and other discussion noted in this section of the Plan were developed as part of a coordinated process involving the City and County governing bodies, affected agencies, and local citizens' planning advisory groups.

Policies: The following policies will guide the administration of the Urban Growth Boundary for the City of Phoenix:

- 1) An Urban Growth Boundary adopted herein or hereinafter amended for the Phoenix area will establish the limits of urban growth to the year 2000, and is designed to accommodate a population of 6,465.
 - A) City annexation shall occur only within the officially adopted Urban Growth Boundary.
 - B) Specific annexation decisions shall be governed by the official annexation policy of the City. The City will provide an opportunity for the County to respond to pending requests for annexation
 - C) Establishment of an Urban Growth Boundary does not imply that all land within the boundary will be annexed to the City.
- 2) A change in the use of urbanizable land from land uses designated on the Jackson County Comprehensive Plan and Zoning map to uses shown on the City of Phoenix Comprehensive Plan and Zoning Maps shall only occur upon annexation to the City, or a contract of annexation between the City, County, and other involved parties.
 - A) Development of land for uses designated on the City Comprehensive Plan will be encouraged to occur on underdeveloped lands adjacent to or encompassed by the existing City limits prior to the conversion of other lands within the boundary.
 - B) Urban facilities and services must be adequate in condition and capacity to accommodate the additional level of growth, as allowed by the City Comprehensive Plan, prior to or concurrent with the land use changes.
- 3) Except in cases where a contract for annexation has been executed, or after proclamation of an annexation having a delayed effective date pursuant to ORS 222.180(2), Jackson County shall retain jurisdiction over land use decisions within the unincorporated urbanizable area and such decisions shall conform to these adopted policies:
 - A) Recognizing that unincorporated areas within the Urban Growth Boundary could ultimately become part of Phoenix, the City's recommendations will be given due consideration. It is the intent of the County to administer a mutually adopted City/County policy in the urbanizable area until such time as the area is annexed.
 - B) The city will be requested to respond to pending applications for land use changes in the unincorporated urbanizable area. If no response is received within fourteen (14) days, the County will assume the City has no objection to the request.
 - C) The City will request the County to respond to pending applications for land use changes within the incorporated area which could affect land under County jurisdiction. If no response is received within fourteen (14) days, the City will assume the County has no objection to the request.
 - D) Any application for a subdivision, land partition, or other land division within the established Urban Growth Boundary of Phoenix shall include the City's written approval of a Conversion Plan for the subject property, in accordance with the requirements of Section 14, Conversion Plan Regulations, of the Phoenix Zoning Ordinance.
- 4) Any land use actions within the unincorporated urbanizable area shall conform to urban standards and public improvement requirements as contained in the City's and County's Land Development Codes, except that in the case of a conflict between the two, those of the City shall apply.
- 5) Within the unincorporated urbanizable area, execution and recording of an irrevocable consent to annex to the City, pursuant to ORS 222.115, shall be required for:
 - A) Single-Family Residential permits
 - B) City sanitary sewer and City water hook-up permits
 - C) All land use actions subject to County site plan review
- 6) The City, County and affected agencies shall coordinate the expansion and development of all urban facilities and services within the Phoenix urbanizable area.

- A) Provisions for urban facilities and services shall be planned in a manner limiting duplication in an effort to provide greater efficiency and economy of operation.
 - B) A single urban facility or service extended to the urbanizable area must be coordinated with the planned future development of all other urban facilities and services appropriate to that area, and shall be provided at levels necessary for expected uses, as designated on the City's Comprehensive Plan.
 - C) The City shall be responsible for adopting and maintaining a public facilities plan for the City and urbanizable area pursuant to OAR 660-11.
 - D) When development occurs within the unincorporated urbanizable areas subject to a contract for annexation, or after proclamation of an annexation having a delayed effective date, any or all City services may be extended to these areas, pursuant to ORS 222.180(2) and Jackson County Land Development Ordinance Chapter 251. All associated fees and charges which are applicable within the City shall be applicable to these areas and shall be paid to the City pursuant to City regulations.
- 7) Provision of City sewer and water services may only occur beyond the Urban Growth Boundary after approval by the provider agency and Jackson County, and when a "danger to public health" as defined by ORS 431.705(5) exists. The services thus authorized shall serve only the area in which the danger exists and shall provide a level of service consistent with the County's Comprehensive Plan designation.
- 8) The Highway 99 area north of the City is designated as an Area of Mutual Concern. The City and County will coordinate their land use and transportation planning activities for the area.
- 9) Long-range transportation and air quality planning for the urbanizable area shall be a joint City/County process coordinated with all affected agencies.
- 10) All County road construction and reconstruction resulting from new development, redevelopment, or land division in the urbanizable area shall be to urban standards, except that the term "reconstruction" does not include normal road maintenance by the County.
- 11) The City and the County acknowledge the importance of permanently protecting agricultural lands that are zoned Exclusive Farm Use (EFU), other than those that may be within the urbanizable area or in the identified direction of urban growth. Both jurisdictions will continue to maintain policies regarding the buffering of said lands. Urban development will be allowed to occur on land adjacent to land zoned EFU when the controlling jurisdiction determines that such development will be compatible with the adjacent farm use. Buffering shall occur on the urbanizable land adjacent to the Urban Growth Boundary. The amount and type of buffering required will be considered in light of the urban growth and development policies of the City and circumstances particular to the agricultural land. Buffering options may include:
- A) Special setbacks for new urban structures adjacent to the Urban Growth Boundary;
 - B) Acquisition by public agencies;
 - C) Lower densities at the periphery of the Urban Growth Boundary than allowed elsewhere in the City;
 - D) Strategic location of roads, golf courses, or other public areas or facilities; and/or,
 - E) Use of vegetative screens, earthen berms, and fences of sufficient height and substance to help reduce trespass of people, animals, and vehicles. In addition, a deed declaration recognizing common, customary, and accepted farming practices shall be required for all development that is allowed to occur within three-hundred (300) feet of any land zoned for Exclusive Farm Use. The City shall request the County's recommendations concerning the buffering of any such urban development proposals adjacent to lands zoned EFU.

Definitions:

- 1) Area of Mutual Planning Concern: A geographical area lying beyond the adopted Urban Growth Boundary in which the City and County have an interest in terms of that area's types and levels of development, land uses, environment, agriculture, and other unique characteristics. The area is not subject to annexation within the current planning period but may be in the path of longer-range urban growth. Therefore, the City and County will fully coordinate land use activity within this area.
- 2) Contract Annexation: A process whereby the City, County, and other involved parties enter into a contract that permits:
- A) The parties to administer urban land use regulations on the development of property following an annexation decision while the property remains under County jurisdiction; and

- B) The City to annex property developed to City densities and uses, with the improvement to appear on the County tax rolls prior to the effective date of annexation, resulting in a greater benefit to the tax base of the City.
- 3) Develop: To bring about growth or create new opportunities for growth, to extend public facilities or services; to construct, alter or expand a structure; to conduct a mining operation; to make a change in the use or appearance of land; to divide into smaller parcels; to create or terminate rights of access; etc.
- 4) Subdivide or Partition Land: The act of dividing the legal ownership of land into smaller units, as set forth in Oregon Revised Statutes 92.010.
- 5) Urban/Public Facilities and Services: Basic facilities that are planned for and provided by either the private or public sector, and are essential to the support of development in accordance with the City's Comprehensive Plan. Such facilities and services include, but are not limited to, police and fire protection, sanitary facilities, public water and storm drain facilities, planning, zoning, and subdivision controls, health services, recreation facilities and services, energy and communication services, and community governmental services including schools and transportation.
- 6) Urban Growth Boundary: A site specific line on the Official Plan and Zoning Map of Jackson County, which identifies and encompasses urban and urbanizable lands within the County, including:
- A) Urban Land: Residential areas generally comprised of parcels smaller than one (1) acre, or highly developed commercial and industrial areas which are within incorporated cities or which contain concentrations of persons who reside or work in the areas, including land adjacent to and outside cities, and which have supporting urban/public facilities and services.
- B) Urbanizable Land: Areas within an officially adopted Urban Growth Boundary which are needed for the expansion of urban uses, and which have been determined to be necessary and suitable for development as future urban land and which can be served with necessary urban public facilities and services. Amendments and Corrections: The procedure for joint City and County review and amendment of the Urban Growth Boundary and Urbanization Policies is as follows:
- 1) Amendment Procedures for UGB and Urbanization Policies:
- A) Major revisions in boundary or policies will be considered amendments to both the City and County Comprehensive Plans and, as such, are subject to a legislative review process.
- B) A major revision shall include any boundary change that has widespread and significant impact beyond the immediate area, such as quantitative changes allowing for substantial changes in population or significant increases in resource impacts; qualitative changes in the land use itself, such as conversion of residential to industrial use; or spatial changes that affect large areas or many different ownerships. Any change in the Urbanization Policies is considered a major revision.
- C) Major revisions will be considered by the City and County at five (5) year intervals from the date of adoption of the Urban Growth Boundary and Urbanization Policies. If the City and County governing bodies find that circumstances prevail which have a significant effect on the public health, safety or general welfare of the community, a major revision could be considered at intervals of less than five (5) years.
- D) A request for a major revision can be initiated by an individual or group, citizen advisory committees, affected agencies, and governing bodies. The party who seeks the revision shall be responsible for filing adequate written documentation with the City and County governing bodies. Final legislative action on major revision requests shall be based on the following factors:
1. Demonstrated need to accommodate long-range urban population growth requirements consistent with LCDC goals;
 2. Need for housing, employment opportunities, and livability;
 3. Orderly and economic provision for public facilities and services;
 4. Maximum efficiency of land uses within and on the fringe of the existing urban area;
 5. Environmental, energy, economic and social consequences;
 6. Retention of agricultural land as defined, with Class I being the highest priority for retention and Class VI the lowest priority; and,

7. Compatibility of the proposed urban uses with nearby agricultural activities.
- E) Major revision proposals shall be subject to a mutual City and County review and an agreement process that involves affected agencies, citizen advisory committees, and the general public.
- 2) Minor Boundary Line Adjustments:
 - A) Minor adjustments to an Urban Growth Boundary may be considered subject to similar procedures used by the City and County in hearing zoning requests. A minor amendment is defined as focusing on specific individual properties and not having significant impact beyond the immediate area of the change.
 - B) Application for a minor boundary line amendment can only be made by property owners, their authorized agents, or by a City or County governing body. Written applications for amendments may be filed in the office of the Jackson County Department of Planning and Development on forms prescribed by the County. The standards for processing an application are as follows:
 1. Documentation must exist indicating the minor adjustment is based on:
 - a) A demonstrated need for the change consistent with the Urbanization Policies of the City and County;
 - b) Maximum efficiency of land use and urban facilities and services;
 - c) The effect on the existing land use character in the immediate area of the request; and,
 - d) Findings of fact addressing the seven urbanization factors required by Goal 14, as listed above for major revisions.
 2. Applications will be reviewed by the affected City and County Planning Advisory Committees annually.
 3. The City and County may schedule a joint meeting of their respective planning commissions annually for the express purpose of considering minor boundary line adjustment.
 4. The Planning Commissions are required to forward a recommendation and findings on each application to the City and County governing bodies for final consideration.
 5. Amendments cannot be made to the Urban Growth Boundary unless mutually agreed to by a majority from each governing body. The County governing body shall be responsible for the preparation of the actual legal instrument which officially amends the boundary line.
- 3) Correction of Errors:
 - A) An error is generally considered to be a cartographic mistake, or a misprint, omission, or duplication in the text. They are technical in nature and not the result of new information or changing attitudes or policies.
 - B) If the City Council and Board of County Commissioners become aware of an error in the map(s) or text of this mutually-adopted urbanization program, both bodies may cause an immediate amendment to correct the error, after mutual agreement is reached.
 - C) Corrections shall be made by ordinance, following a public hearing conducted by both governing bodies. Public hearings before the planning commissions shall not be required when an amendment is intended specifically to correct an error.

SECTION II. An Urban Growth Boundary and Area of Mutual Planning Concern for the City of Phoenix as described in this Agreement shall be established in a manner conforming to exhibit Map "A", attached hereto and by this reference considered a part hereof.

SECTION III. The Urban Growth Boundary and Urbanization Policies contained in this ordinance are hereby declared to be based upon and supported by the Findings of Fact, attached as Exhibit "B" to this Agreement.

SECTION IV: This AGREEMENT is intended to supersede all prior Agreements between the parties on the same subject matter, including the ordinance adopted by the Board of County Commissioners on July 28, 1978. This AGREEMENT shall be made effective upon execution by the representatives of the City and County as

authorized by their respective governing bodies. Exhibits A and B are considered as part of this Agreement and have been referenced and made part of adopting ordinances.

Conclusions of Law: Based upon the Findings of Fact in Section V and review of the UGBA, the City Council concludes the 'Permanent' UGB concept is not required by the City-County UGBA nor does the UGBA include language that contemplates qualitative distinctions between UGB segments. Based upon the Findings of Fact in Section V, the City Council concludes there are good reasons to eliminate the 'Permanent' UGB concept from the City of Phoenix Comprehensive Plan and the same is fully consistent with the City-County UGBA.

PHOENIX LAND DEVELOPMENT ORDINANCE CRITERIA

G. Decision-Making Considerations. The recommendation by the Planning Commission and the decision by the City Council shall be based on consideration of the following factors:

1. The Statewide Planning Goals and Guidelines adopted under Oregon Revised Statutes Chapter 197 (for comprehensive plan amendments only);

Conclusions of Law: The City Council herewith incorporates and adopts its Conclusions of Law to each the Statewide Planning Goals herein above and on that basis concludes that the Statewide Planning Goals have been considered and the Comprehensive Plan amendment supported herein is consistent with the Statewide Planning Goals applicable in Jackson County.

2. Comments from any applicable federal or state agencies regarding applicable statutes or regulations;

Conclusions of Law: Based upon the record, the City concludes it has made reasonable effort to obtain comments from affected agencies and that the City has considered said comments and made changes to the amendments where appropriate.

3. Any applicable intergovernmental agreements; and

Conclusions of Law: The City Council herewith concludes that the City-County UGBA is the only affected intergovernmental agreement and the City herewith incorporates and adopts its Findings of Fact in Section V and Conclusions of Law herein above regarding the UGBA and therefore concludes this intergovernmental agreement has been considered and the amendments are found to be consistent with said agreement.

4. Any applicable comprehensive plan policies and provisions of this Code that implement the comprehensive plan. Compliance with Chapter 4.7 Land Use District Map and Text Amendments shall be required for Comprehensive Plan Amendments, and Land Use District Map and Text Amendments.

Conclusions of Law: Based upon the record and the Findings of Fact in Section III and V, the Council concludes it has reviewed the individual plan and code provisions and policies and has identified those that are specifically applicable and written Conclusions of Law demonstrating consistency and the same are provided herein. The Council further concludes that the Comprehensive Plan as a whole has been considered and the amendments supported by these Findings of Fact and Conclusions of Law will not structurally impair the balance of the Plan and will be consistent in all ways with the Plan.



CITY OF PHOENIX



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