



# Oregon

Theodore R. Kubongski, 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

3/10/2010

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

FROM: Plan Amendment Program Specialist

SUBJECT: City of Tigard Plan Amendment  
DLCD File Number 006-09

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. 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: Tuesday, March 23, 2010

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 Acknowledgment or 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. NO LUBA Notification to the jurisdiction of an appeal by the deadline, this Plan Amendment is acknowledged.

Cc: Gary Pagenstecher, City of Tigard  
Gloria Gardiner, DLCD Urban Planning Specialist  
Jennifer Donnelly, DLCD Regional Representative

<paa> YA



FORM 2

DLCD

# Notice of Adoption

In person  electronic  mailed

RECEIVED

DEPT OF

March 03 2010

LAND CONSERVATION AND DEVELOPMENT

This Form 2 must be mailed to DLCD within **5-Working Days after the Final Ordinance is signed** by the public Official Designated by the jurisdiction and all other requirements of ORS 197.615 and OAR 660-018-000

Jurisdiction: **City of Tigard**

Local file number: **DCA2009-00004**

Date of Adoption: **2/23/10**

Date Mailed: **3/1/10**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD?  Yes  No Date: 9/4/09

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

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

The Community Development Director requests a development code amendment to amend the text of the Temporary Use Chapter (18.785) of the City of Tigard Community Development Code to expand and clarify the temporary use provisions of the code to provide for seasonal markets within the General Commercial (C-G) and Central Business District (CBD) zones by public benefit/community service organizations.

Does the Adoption differ from proposal? No, no explanation is necessary

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 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19

Was an Exception Adopted?  YES  NO

Did DLCD receive a Notice of Proposed Amendment...

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

DLCD file No. 006-09 (17817) [16021]



Please list all affected State or Federal Agencies, Local Governments or Special Districts:

None

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Local Contact: **Gary Pagenstecher**

Phone: **(503) 718-2434** Extension:

Address: **13125 SW Hall Boulevard**

Fax Number: **503-718-2748**

City: **Tigard**

Zip: **97223**

E-mail Address: **garyp@tigard-or.gov**

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## **ADOPTION SUBMITTAL REQUIREMENTS**

**This Form 2 must be received by DLCD no later than 5 days after the ordinance has been signed by the public official designated by the jurisdiction to sign the approved ordinance(s)**  
per ORS 197.615 and OAR Chapter 660, Division 18

1. This Form 2 must be submitted by local jurisdictions only (not by applicant).
2. When submitting, please print this **Form 2** on light green paper if available.
3. Send this Form 2 and One (1) Complete Paper Copy and One (1) Electronic Digital CD (documents and maps) of the Adopted Amendment to the address in number 6:
4. **Electronic Submittals: Form 2 – Notice of Adoption will not be accepted via email or any electronic or digital format at this time.**
5. The Adopted Materials must include the final decision signed by the official designated by the jurisdiction. The Final Decision must include approved signed ordinance(s), finding(s), exhibit(s), and any map(s).
6. **DLCD Notice of Adoption must be submitted in One (1) Complete Paper Copy and One (1) Electronic Digital CD via United States Postal Service, Common Carrier or Hand Carried to the DLCD Salem Office and stamped with the incoming date stamp.** (for submittal instructions, also see # 5)] **MAIL the PAPER COPY and CD 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**

7. Submittal of this Notice of Adoption must include the signed ordinance(s), finding(s), exhibit(s) and any other supplementary information (see ORS 197.615 ).
8. Deadline to appeals to LUBA is calculated **twenty-one (21) days** from the receipt (postmark date) of adoption (see ORS 197.830 to 197.845 ).
9. In addition to sending the Form 2 - Notice of Adoption to DLCD, please notify persons who participated in the local hearing and requested notice of the final decision at the same time the adoption packet is mailed to DLCD (see ORS 197.615 ).
10. **Need More Copies?** You can now access these forms online at <http://www.lcd.state.or.us/>. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518.

CITY OF TIGARD, OREGON  
TIGARD CITY COUNCIL  
ORDINANCE NO. 10-05

AN ORDINANCE AMENDING THE TIGARD COMMUNITY DEVELOPMENT CODE CHAPTER 18.785, TO ALLOW SEASONAL MARKETS BY CHARTERED PUBLIC SERVICE/NON-PROFIT ORGANIZATIONS IN THE C-G AND MU-CBD ZONES FROM APRIL TO OCTOBER SUBJECT TO TIGARD COMMUNITY DEVELOPMENT CODE STANDARDS (DCA2009-00004), *AS AMENDED*

WHEREAS, the Community Development Director, with direction from the Tigard City Council, initiated the proposed code amendment to amend the text of the Temporary Use Chapter (18.785) of the City of Tigard Community Development Code to expand and clarify the temporary use provisions of the code to provide for seasonal markets by chartered public service/non-profit organizations; and

WHEREAS, the proposed code amendment substantively amends the text of Chapter 18.785, Temporary Uses, by providing explicitly for “seasonal markets” as a type of Seasonal or Special Event and by providing specific approval criteria governing time, place, and manner; and

WHEREAS, notice was provided to the Department of Land Conservation and Development 45 days prior to the first evidentiary public hearing; and

WHEREAS, the Tigard Planning Commission held public hearings on October 19, 2009 and January 4, 2010 and recommended Council approve the proposed code amendment, as amended by it, with a 9-0 vote;

WHEREAS, notice of the public hearings was published in the Tigard Times and the Oregonian Newspapers at least 10 business days prior to the public hearings; and

WHEREAS, the Tigard City Council has considered applicable Statewide Planning Goals and Guidelines adopted under Oregon Revised Statutes Chapter 197; any federal or state statutes or regulations found applicable; any applicable Metro regulations; any applicable Comprehensive Plan Policies; and any applicable provisions of the City’s implementing ordinances; and

WHEREAS, the City Council has found the following to be the applicable review criteria: Community Development Code Chapters 18.380, 18.390 and 18.520; Comprehensive Plan Goal 1, Public Involvement; Goal 2, Land Use Planning; Goals 9.2.1 and 9.3, Economic Development; Goal 15.2, Special Planning Area-Downtown; and Statewide Planning Goals 1, 2 and 9.

WHEREAS, the Tigard City Council held a public hearing on February 23, 2010, to consider the proposed amendment; and

WHEREAS, the Tigard City Council has determined that the proposed development code amendment is consistent with the applicable review criteria, and that approving the request would be in the best interest of the City of Tigard.

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

SECTION 1: The specific text amendments attached as **"EXHIBIT A"** to this Ordinance are hereby adopted and approved by the City Council.

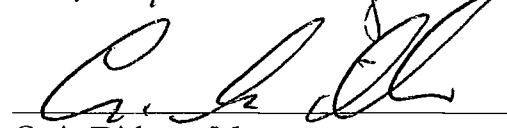
SECTION 2: The findings in the October 9, 2009 Staff Report to the Planning Commission and the Minutes of the October 19, 2009 and January 4, 2010 Planning Commission hearings are hereby adopted in explanation of the Council's decision.

SECTION 3: This ordinance shall be effective 30 days after its passage by the Council, signature by the Mayor, and posting by the City Recorder.

PASSED: By Unanimous vote of all Council members present after being read by number and title only, this 23<sup>rd</sup> day of February, 2010.

  
Catherine Wheatley, City Recorder

APPROVED: By Tigard City Council this 23<sup>rd</sup> day of February, 2010.

  
Craig Dirksen, Mayor

Approved as to form:

  
City Attorney

2/23/10  
Date



## DCA2009-00004 CODE AMENDMENT

### Explanation of Formatting

This text amendment employs the following formatting:

**[Bold/Underlined]** – Text to be added

**[Bold/Double-Underline]** – Text that will be underlined upon codification

~~[Strikethrough]~~ – Text to be removed

### Chapter 18.785 TEMPORARY USES

#### Sections:

- 18.785.010 Purpose
- 18.785.020 Types of Temporary Uses
- 18.785.030 Approval Process
- 18.785.040 Approval Criteria
- 18.785.050 Application Submission Requirements

#### 18.785.010 Purpose

A. Purpose. The purpose of this chapter is to establish standards for the approval of three types of temporary use:

1. Use that is seasonal or directed toward a specific event;
2. Use which is occasioned by an unforeseen event; and
3. Sales offices and model homes in conjunction with the sale of homes.

B. Disclaimer. This chapter is not intended to be a way to circumvent the strict application of the use districts. Therefore, time limits are to be strictly enforced. ~~This chapter is not intended to apply to garage sales.~~

C. Exemptions. This chapter does not apply to **1) seasonal and special events conducted exclusively by and ~~totally~~ for the benefit of a Tigard-based nonprofit organization, 2) garage sales, or 3) temporary construction offices in conjunction with the initial development of residential, commercial or industrial property (three or more dwelling units or lots).**

#### 18.785.020 Types of Temporary Uses

A. Seasonal or special event. This type of temporary use is a use which by its nature will last less than one year. Examples of this type of use are those associated with the sale of goods for a specific holiday, activity or celebration, uses associated with construction, or seasonal use. This type of use does not apply to businesses seeking a temporary or interim location. ~~Examples of this type of temporary use include:~~

1. Use associated with the celebration of a specific holiday such as the sale of Christmas trees and fireworks;
2. Use associated with the sale of fresh fruits, produce, and flowers, **including seasonal markets by a chartered public service/non-profit organization which may offer additional products and**

**services as provided in the organization's "market rules and policies" such as landscaping plants, prepared food, animal products, and art/handcrafts assembled by the vendor;**

3. Use associated with festivals or celebrations or special events;
4. Seasonal activities such as the sale of food at sports events or activities;
5. Use associated with construction such as the storage of equipment during the construction of roads or development, but not a temporary sales office or model home as provided by Section 18.785; and
6. Temporary fund raising and other civic activities in commercial zoning districts.

**18.785.030 Approval Process**

A. Procedure type. Approval of various temporary uses shall be processed as follows:

1. Seasonal or special event: by means of a Type I procedure, as governed by Section 18.390.040, using approval criteria in Section 18.785.040A;
2. Unforeseen/emergency situations: by means of a Type I procedure, as governed by Section 18.390.040, using approval criteria in Sections 18.785.040B;
3. Temporary sales office/model home: by means of a Type I procedure, as governed by Section 18.390.030, using approval criteria in Sections 18.785.040C;
4. Temporary building in commercial and industrial zones: by means of a Type I procedure, as governed by Section 18.390.040, using approval criteria in Sections 18.785.040D.

B. Effective Approval period. An approval for a temporary use by the Director shall be ~~effective~~ **valid** for a period of one year unless otherwise stipulated by the approval.

C. Lapsing of approval. An approval for the temporary use by the Director shall lapse if:

1. Substantial construction of the approved plan or onset of the approved activity has not begun within the approval period; and
2. Construction or activity on the site is a departure from the approved plan.

D. Renewal of approval. A temporary use approval may be renewed once by the Director for a period not to exceed one year. **Approval for a seasonal or special event use may be renewed on an annual basis in the same manner as if it were an original application.** Notice of the decision shall be provided to the applicant.

E. Renewal for temporary residential sales office/model homes. A permit for temporary sales offices and model homes may be renewed on an annual basis in the same manner as if it were an original application as long as 50% or less of the total number of dwelling units have been issued occupancy permits.

**18.785.040 Approval Criteria**

A. Seasonal and special events. Using a Type I procedure, as governed by Section 18.390.030, the Director shall approve, approve with conditions or deny based on findings that all of the following criteria are satisfied:

1. The use occurs only once in a calendar year and for no longer a period than 30 **consecutive** days, **except as provided in paragraph 6.**

2. The use is permitted in the underlying zoning district.
3. The applicant has proof of the property-owner's permission to place the use on his/her property;
4. There will be no parking utilized by the customers and employees of the temporary use which is needed by the property owner to meet his/her minimum parking requirement, as governed by Chapter 18.765, Parking and Loading.
5. The use will provide adequate vision clearance, as governed by Chapter 18.795, Vision Clearance, and shall not obstruct pedestrian access on public rights-of-way.
6. **Seasonal markets are permitted in the C-G and MU-CBD zones and may operate from April through October. The applicant shall provide "market rules and policies" for City approval, which are consistent with the seasonal market use description in 18.785.020.A.2 and will be observed for the duration of the permit. Market rules and policies shall include hours of operation, location, product guidelines, vendor obligations, vehicle loading/unloading, and any other applicable policies guiding the operation of the market. The City may also consider the following criteria:**
  - a. **Provide documentation demonstrating adequate and safe ingress and egress exist when combined with the other uses of the property, consistent with applicable standards of Chapter 18.705, Access, Egress and Circulation;**
  - b. **Provide documentation demonstrating the use will not create a traffic hazard, including coordination with ODOT if applicable;**
  - c. **Provide documentation that the use will not create adverse off-site impacts related to noise, odors, vibrations, glare or lights that would be greater than otherwise allowed by uses permitted outright in the zone; and**
  - d. **Signs are allowed as permitted in Chapter 18.780, however, the permitted period for temporary signs may be approved to correspond to the duration of the permitted seasonal market use.**

#### **18.785.050 Application Submission Requirements**

- A. **General submission requirements.** The applicant shall submit an application containing all of the general information required for a Type I, depending on the type of temporary use for which the approval is sought.
- B. **Additional information.** In addition to the information described in Subsection A above, the applicant shall provide a site plan, narrative and other information as specified in a detailed hand-out provided by the Director.
- C. **Emergency situations.** The Director may waive any of the requirements in this chapter or request additional information in accordance with Chapter 18.390 for cases which involve destruction of an existing structure due to fire, natural causes, or other circumstances that are beyond the control of the applicant. An emergency as allowed by this subsection shall not include failure by the applicant to submit a temporary use request as provided in this Chapter.■



**CITY OF TIGARD  
PLANNING COMMISSION  
Meeting Minutes  
January 4, 2010**

**1. CALL TO ORDER**

Vice President Walsh called the meeting to order at 7:01 pm. The meeting was held in the Tigard Civic Center, Town Hall, at 13125 SW Hall Blvd.

**2. ROLL CALL**

**Present:** Commissioners Anderson (came in slightly later than roll call), Caffall, Doherty, Fishel, Gaschke, Hasman, Muldoon, Vermilyea, and Walsh; Alternate Commissioners Schmidt & Shavey

**Absent:** None

**Staff Present:** Ron Bunch, Community Development Director; Dick Bewersdorff, Planning Manager; Gary Pagenstecher, Associate Planner; John Floyd, Associate Planner; Doreen Laughlin, Sr. Administrative Specialist

**3. COMMUNICATIONS**

Dick Bewersdorff, Planning Manager, introduced the new planning commissioner and alternates, Tim Gaschke, Don Schmidt, and Richard Shavey.

**4. CONSIDER MEETING MINUTES**

**12-07-09 Meeting Minutes:** Vice President Walsh asked if there were any additions, deletions, or corrections to the minutes - taking into account a small correction that had been phoned in earlier correcting the date on page 2, second sentence, to 1-4-10. Walsh then declared the minutes approved.

Walsh moved on to the work session and elections.

**5. WORK SESSION - ELECTIONS**

Walsh opened up the floor to nominations. [The former president of the Commission left in December after serving 8 years as a Commissioner. This left the balance of that position (1 year – to end 1-1-11) open]. Commissioner Vermilyea moved to nominate Commissioner David Walsh as President. The motion was seconded by Commissioner Hasman. There were

no other nominations. There was a verbal vote, and Commissioner Walsh was elected to the office of Planning Commission President.

Commissioner Hasman moved to nominate Commissioner Vermilyea for the office of Vice President. The motion was seconded by Commissioner Caffall. Commissioner Walsh nominated Commissioner Muldoon. There was no second. There was a secret ballot with Commissioner Vermilyea getting the majority of votes and thus being elected.

President Walsh opened up the public hearing.

## **6. PUBLIC HEARING**

### **6.1 DEVELOPMENT CODE AMENDMENT (DCA) 2009-00004. SEASONAL OUTDOOR SALES CODE AMENDMENT – Cont'd from 12-07-09**

#### **STAFF REPORT**

Gary Pagenstecher, Associate Planner, gave the staff report on behalf of Staff. [Staff reports are available one week before each scheduled meeting.] Pagenstecher noted that this matter had been continued from 10-19-09, to 11-2-09, to 12-7-09, to this date. He gave a brief background on what had been said at the previous meetings. He acknowledged the presence of a gentleman from the Tigard Grange named Phil Yount who had participated in the meeting on 10/19. Pagenstecher said that at previous meetings Phil Yount (representing the Tigard Grange) and Stan Baumhofer (representing the Tigard Area Farmer's Market) had raised several issues in response to the proposed code amendments. In addition, Commissioners had raised several issues in response to the proposed amendments, including qualifying the type of organization, duration of the seasonal use, less onerous and more user-friendly approval criteria, and a call out for hours of operation. These issues were addressed in the staff analysis portion of the memorandum Pagenstecher wrote to the Planning Commission dated 12-28-09, and reflected in the revised Development Code Amendment. Pagenstecher went over the code sections that had been revised (18.785.020 – "Types of Temporary Uses"; and 18.785.040 "Approval Criteria") and noted that the other sections addressed in the October 9, 2009 staff report remained unchanged.

After reviewing the changes noted on the memorandum, Pagenstecher said staff is asking the Planning Commission to recommend this Development Code Amendment to the City Council.

At this point, Pagenstecher asked if the commissioners had any questions of staff.

## QUESTIONS FROM COMMISSIONERS OF STAFF

I have a concern regarding the time references – there are multiple references where it says less than one year as opposed to 7 months – and other places where time references aren't universally applicable. Did you review this for consistency for time references? *The chapter "temporary uses" covers a number of uses. We have clarified and added "Seasonal Market" section here and the duration relates specifically to that use.*

I understand your definition of "seasonal" is 30 days? *Well, the seasonal market is one type of season.*

I suggest we change the language of 18.785.040 A.1. to say "except as provided in paragraph 6."

Commissioner Vermilyea said "it appears the intent of the language is to be very flexible for the applicant – in that there is no definition of what "documentation" is in 6b. Also in saying you must provide some form of market rules and policies that contain at least these items. My suggestion would be to put A in the body of 6, making it a mandatory requirement and change it to say something like "The applicant shall provide... etc." This last sentence says the City may consider the following additional approval criteria for seasonal markets. I think, in my mind, there are pretty significant differences between those rules and policies and what other issues may arise depending on a given market. I think there needs to be kind of a structural adjustment. One way to do it would be to move A up – make it #6, and make everything else #7 – another way would be to move the body of A up and put it in as the 2<sup>nd</sup> sentence in #6 and then have B become A, and C become B, etc. etc. But one of those two things I think we ought to do because we need to distinguish between A and the rest in this list.

There were more ideas discussed about how to go about changing the verbiage; and then the questions continued.

My question revolves around two terms that are used. One in 17.785.020 sub A2 "chartered public service/non-profit organization etc." - the word "charter" – that word makes me uncomfortable because it's not really defined anywhere. I deal with non-profits and am not aware of what a "charter non-profit" is. If we're going to use that word, I'd like to see it defined. Secondly, the word in 18.785.040 6.B, C, & D - "documentation" - what kind of documentation does staff intend when you use that term rather than the specific kinds of reports that you're talking about. What sorts of documentation would a party use to satisfy these criteria? Could you please speak to these? Pagenstecher answered *"Possibly some mitigation plan, a sketch, fairly simple, a written plan, in some situations these could be sufficient. It all depends on the circumstances – the simpler the circumstance, the simpler the documentation can be."*



Pagenstecher went on to speak about the definition of charter – “a document outlining the principals functions and organizations of the corporate body” - a constitution, again, just a very basic thing. It is a simple statement of the purpose of the group.” So you’re not intending that an organization be... for example... licensed with the state as corporate entity as a state charter/ non-profit necessarily? They could be a Girl Scout troop, or some other organization that may not have all the formal documents in place. Yes – that’s right. Conceivably getting a tax filing status costs money and effort that the group wouldn’t want to front and typically it’s a hurdle to get that although groups like it because it can fundraise if they do get that but in this case, it’s theoretical. We don’t really know who’s going to “come out of the woodwork” to want a market. Right now we’re just throwing out an “all comers welcome” – “try this out if you can meet these standards” and we can’t presume who those groups are going to be. It’s as wide as possible.” One of the commissioners summarized “So, for example, what you’re looking for is an organization that has a constitution, a charter, but they are not be through the “State of Oregon.” So you’re looking at groups that would be organized, have a charter, have a purpose, that kind of thing. Is that the purpose behind the language?” Yes.

#### **PUBLIC TESTIMONY – IN FAVOR:**

**Phil Yount**, 11222 SW Cottonwood Lane, Tigard, manager for Tigard Grange had what he said was a really basic question. “It seems as if the Tigard Grange is exempted from all this in 18.785.010 C “Exemptions” – the first one says “seasonal and special events conducted by and totally for the benefit of a Tigard-based nonprofit organization.” If we’re exempted... does any of this apply to us? The word “totally” makes the grange non-exempt. Pagenstecher: Can you clarify how this would work? Yount: “The Tigard Grange would ask members (or non-members) to rent a little space from us and we’d get a share of their profits from whatever stuff they sell. We’d use that as a fundraiser. Pagenstecher: So, in that case, I’m thinking you would not be exempt. You would have vendors who would profit also. Yount: “Oh – because of the word “totally”... “totally for the benefit of...” that would explain it.

Some of the commissioners thought this language might be a bit confusing to others as well and thought it would be best in 18.785.010 C to drop the word “totally” out and add the words “exclusively by and for.”

**PUBLIC TESTIMONY – OPPOSED:** None.

**PUBLIC TESTIMONY CLOSED**

**DELIBERATIONS**

There were no further questions or deliberations and the following motion was made by Commissioner Muldoon, seconded by Commissioner Caffall:

**“I move to forward a recommendation of approval to City Council of application DCA 2009-00004 continued from Dec 7<sup>th</sup> 2009, and adoption of the findings and conditions of approval contained in the staff report and the deliberations tonight and based on the testimony tonight.”**

**“Do I need to itemize the differences?”** Planning Commission Secretary Laughlin answered, “Yes, please.”

[The differences follow:]

Under “18.785.010 – under Part C, “Exemptions,” it would read “events conducted exclusively by and for,” rather than the prior language.

Under 18.785.040 – at the end of sentence A.1, it would have “except as provided in paragraph 6”; and under the same section “Part 6” we would move sub-par A up to the part of the main paragraph, second sentence, where it would say “the applicant shall provide” and then otherwise the remainder of the language in par-A would be the same and an additional sentence would say “The City may also consider the following criteria: and then B, C, D, & E would be labeled A thru D.”

The motion CARRIED on a recorded vote, the Commission voted as follows:

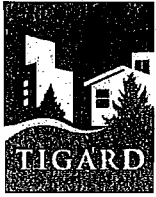
<b>AYES:</b>	Commissioner Anderson, Commissioner Caffall, Commissioner Doherty, Commissioner Fishel, Commissioner Gaschke, Commissioner Hasman, Commissioner Muldoon, Commissioner Vermilyea, and Commissioner Walsh (9)
<b>NAYS:</b>	None (0)
<b>ABSTAINERS:</b>	None (0)
<b>ABSENT:</b>	None (0)

Walsh stated that this would go to Council on February 9<sup>th</sup>.

## **7. STUDY SESSION Re Joint Meeting with Council Regarding Trees**

### **STAFF REPORT**

John Floyd, Associate Planner, introduced himself and gave the staff report on behalf of the City. [Staff reports are available to the public upon request one week in advance of any meeting.] Floyd said the purpose of this session is to help them prepare for the upcoming joint Council/Planning Commission meeting scheduled for January 19<sup>th</sup>. Walsh asked him



## City of Tigard Memorandum

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**To:** Planning Commission

**From:** Gary Pagenstecher

**Re:** DCA2009-00004 Seasonal Outdoor Sales: Revised Development Code Amendment addressing testimony and Commissioner Comments from the October 19<sup>th</sup> Hearing

**Date:** December 28, 2009

The City initiated the proposed code amendment to facilitate the Tigard Grange and other public benefit/service organizations such as the Tigard Area Farmers' Market to hold season-long events. The proposal substantively amends the text of Chapter 18.785, Temporary Uses, by providing explicitly for "seasonal markets" as a type of Seasonal or Special Event and by providing specific approval criteria governing time, place, and manner.

At the Planning Commission's October 19, 2009 hearing, the Commission received testimony from the Phil Yount of the Tigard Grange and Stan Baumhofer of the Tigard Area Farmers Market. Mr. Yount was generally in favor of the proposed code amendments but worried that the approval criteria would require specialized findings and the need to pay for consultant services. Mr. Baumhofer expressed concern that the proposed code amendments included regulations which could stifle new business development. In addition, Commissioners raised several issues in response to the proposed code amendments including qualifying the type of organization, duration of the seasonal use, less onerous and more user-friendly approval criteria, and a call out for hours of operation. These issues are addressed in the following analysis and reflected in the attached Revised Development Code Amendment.

### **STAFF ANALYSIS**

The following code sections have been revised as discussed below, while the proposed amendments to other sections addressed in the October 9, 2009 Staff Report remain unchanged.

#### **18.785.020      Types of Temporary Uses**

This section contains the new temporary use "seasonal markets by chartered public service/non-profit organizations." Commissioner's wanted to clarify staff's intention with respect to "chartered public service/non-profit organizations." Staff supports the proposed language as a means to make the seasonal market use available to a wide range of organizations and not just those that are non-profits registered with the State's Corporation Division. Some public service organizations, such as a flower guild or social club may not be legal non-profits but nevertheless have a charter outlining the principles, functions, and organization of the group. As Stan Baumhofer testified, the Tigard Area Farmers Market started out as a civic event. In addition, the dictionary definition of the terms provides sufficient detail to determine if an organization qualifies.



## 18.785.040

### Approval Criteria

A sixth approval criterion is proposed to establish the location, timing, and manner of the seasonal market use. This criterion provides a special term for seasonal markets of seven months to accommodate weekend or weekday markets. Originally proposed from May through October, the revised code amendment lengthens the period to include April as suggested by Mr. Yount. The period could be extended to a full year, as suggested by Mr. Baumhofet, to provide maximum flexibility. However, given the focus on seasonal markets for agricultural products, staff proposes the seven month period.

Five additional approval criteria are listed (18.780.040.A.6.a-e), applicable to seasonal markets only. Commissioners expressed concern that some of these criteria may potentially be too onerous for non-profit organizations to meet for the ephemeral seasonal market use. The following changes are proposed for criteria a through c to make them less onerous under the proposed revised code amendment:

- a. The sponsoring organization's "market rules and policies" describe the operating procedures and product mix allowed in a seasonal market. The City will require this document at the time of application to ensure seasonal markets comply with the character of the seasonal temporary use type as described in Section 18.785.020.A.2. The revised code amendment additionally lists basic elements that should be included in the rules and policies, including the hours of operation. Seasonal markets would then be held to the terms of rules and policies as reviewed and approved by the City at the time of application.
- b. In demonstrating safe ingress and egress, "access plan" is replaced by "documentation" to allow the applicant more flexibility. The expectation of a formal "Plan" can otherwise be substantively addressed by findings, letters of concurrence, or other documentation.
- c. To address potential traffic hazards, "traffic study" is replaced by "documentation" and "ODOT review" is replaced by "coordination with ODOT." The expectation of a formal traffic study and review by ODOT can otherwise be substantively addressed through findings, consultation, or other available information.

**CITY OF TIGARD  
PLANNING COMMISSION  
Meeting Minutes  
October 19, 2009**

**1. CALL TO ORDER**

President Inman called the meeting to order at 7:00 pm. The meeting was held in the Tigard Civic Center, Town Hall, at 13125 SW Hall Blvd.

**2. ROLL CALL**

**Present:** Commissioners Anderson, Caffall, Doherty, Fishel, Hasman, Inman, Muldoon, and Vermilyea

**Absent:** Commissioner Walsh, Alternate Commissioner Gaschke

**Staff Present:** Community Development Director Ron Bunch  
Assistant CD Director Susan Hartnett  
Planning Manager Dick Bewersdorff  
Downtown Redevelopment Manager Sean Farrelly  
Associate Planner Gary Pagenstecher  
Senior Administrative Specialist Doreen Laughlin

**3. COMMUNICATIONS - none**

**4. CONSIDER MEETING MINUTES**

**10-05-09 Meeting Minutes:** President Inman asked if there were any corrections, deletions, or additions to the minutes; there was one correction (Commissioner Doherty's name had inadvertently been misspelled), President Inman declared the minutes approved with the noted correction.

**5 PUBLIC HEARINGS**

**5.1 DOWNTOWN TIGARD CODE AMENDMENTS COMPREHENSIVE PLAN AMENDMENT (CPA) 2009-00003, DEVELOPMENT CODE AMENDMENT (DCA) 2009-00005, ZONING MAP AMENDMENT (ZON) 2009-00001**

## 5.2 DEVELOPMENT CODE AMENDMENT (DCA) 2009-00004. SEASONAL OUTDOOR SALES CODE AMENDMENT

### STAFF REPORT

Associate Planner Gary Pagenstecher went over the staff report on behalf of the City. (Staff reports are available to the public one week before the scheduled meeting.)

### QUESTIONS OF STAFF & COMMENTS FROM COMMISSIONERS

**Is there a City goal of having a single “Tigard Farmer’s Market?”** Pagenstecher: The Comp Plan calls for Farmer’s Markets Downtown. That’s a goal expressed in the Comp Plan. I think in the staff report we find this language allowing for a Farmer’s Market consistent with that goal. Do we have a specific plan to provide a certain area in City owned property? No.

Bunch interjected that a city can provide a place/opportunity for a Farmer’s Market. He said it’s very rare for a city to be the actual sponsor of a Farmer’s Market kind of activity. Cities throughout the state in our research and experience worked with the organizations that establish a charter (inaudible) Farmer’s Market. It is a City goal to provide opportunities for Farmer’s Markets who operate in a community.

**So what I’m hearing is it’s possible for several Farmer’s Markets could be operating in the City at the same time? This has me concerned - so on any Saturday and Sunday – are we talking about a Farmer’s Market at the Grange, a Farmer’s Market Downtown, and maybe a Farmer’s Market someplace else within the confines of the City all at the same time?**

Bunch: This provides the opportunity for that to happen if the market will allow it to occur according to the specific criteria, yes.

Commissioner Vermilyea said he had a technical question – [Re: Page 6 of 10 – 18.785.020]. **What do you mean by the word “charter”? Is that meant to be a licensed, registered, non-profit with the state corporation division – is that what the intent is there? Or is there some other charter that I’m not aware of? Is the City intending to issue a charter? No. So my suggestion then would be to put in language something along the lines of a public service or non-profit organization duly and properly licensed by the State of Oregon – or something along those lines because in order for a non-profit to operate legally in Oregon you have to register and file annual reports with the state corporations division. So something along those lines to me seems to be a more specific set of language than “charter”.**

Commissioner Doherty – **So, in other words, when you talk about charter your intent was an organization that has a charter, a by-laws, a constitution, that kind of thing?**



Or was your intent that they had some recognition from the state? I really think that needs to be defined – I agree with Commissioner Vermilyea.

Pagenstecher - We ran this by the City Attorneys and they had no problem with this language. Neither did they didn't suggest another language. They can be chartered public service – in other words by-laws and documents that they have this organization and operate under these rules, or they can be a non-profit organization.

## QUESTIONS OF APPLICANT

**TESTIMONY IN FAVOR:** Phil Yount, 11222 Cottonwood Lane, Tigard – introduced himself as the “treasurer/janitor/rental manager” of the Tigard Grange. He’s also a 17 year resident of the City of Tigard. He wanted to publically thank Ron Bunch and Gary Pagenstecher for their recognition of the problem confronting the Tigard Grange last spring and summer when they wanted to implement a Farmer’s Market activity on the Tigard Grange property and were not allowed to do so for longer than 30 days. When asked how the Tigard Farmer’s Market could operate for longer than 30 days, he said they didn’t really have an answer to that question – and thus, this meeting tonight. He said the Grange needs to have a way to earn funds to support the activities at the Grange. He hopes that the Planning Commission will see fit to recommend this to the City Council and they will end up passing it so that a year from now they can implement their Farmer’s Market. He said he was concerned about one thing in the staff report. The one that says they will need to enumerate how they are satisfying all these different things, like visual access, parking, so on and so on. He said he’s relatively confident they can do it but whether they can write it – they don’t have writers and if they have to hire an attorney to write that application for them, that might be somewhat of a disadvantage... but they might just have to overcome it. He ended saying he encourages them to recommend this to the City Council.

## QUESTIONS OF YOUNT:

**What’s your take on actually calling out specific months (such as May to October) as opposed to just giving a specific duration of time?** We would probably be happier if it said “April to October” but I’m satisfied with May to October. That would fulfill all the requirements that we currently have. We have a strawberry vendor that works within the 30 day requirement. We also have a Christmas tree vendor that works within the 30 day requirement. If we could have the six months – seven would be better – but I don’t think that’s a critical need.

**Do you have concerns with dealing with traffic that might be coming in and out of the grange during the market on Hwy 99?** No – because we have entrance and egress as it stands and we have to deal with that during the Christmas tree season and the strawberry vending season as it is and haven’t had any particular complaints about that.

## TESTIMONY AGAINST

Mr. Stan Baumhofer, PO Box 230421, Tigard 97281, President of the Tigard Area Farmers Market at 12950 SW Pacific Hwy, said he signed up as “against” the proposals, not so much that he’s against anything that is proposed in the current code, but more the concept is that the more regulations you provide, the less chance a new business has of starting. His testimony is as follows: We have no objection to the grange having a market or any other body – so far as we’re concerned – the more the better. Like a gas station on 4 corners. Some of the things being considered should include a definition of what a Farmer’s Market is. To make it easier on staff so that if someone comes to the counter, there should probably be a definition of what’s a “bazaar,” and what’s a “food cart”, what’s a “Farmer’s Market,” what’s a “garage sale” – so there’s a definition as to where this potential applicant falls into your codes here. Also – considering whether it’s a business for profit or a business not for profit. We started ours as a civic event and a venue for other non-profits to come at no charge by the market to display whatever they had – the Boy Scouts, the Chamber, the Red Cross Blood Drive, or the City itself, when it’s promoting an issue, we’re glad to have you there at no charge – cause that’s what we’re all about. We’re run by volunteers – we do hire a manager for the actual market – I’d like to introduce Pat Benson here. She is our Market Manager.

Whether the organization is a profit or non-profit should be of some concern. If Landmark Ford came in and said they wanted to have a market in their parking lot on Saturdays - that might be a separate concern or issue as to whether in comparison to a non-profit such as ourselves who are here for a civic purpose. We are registered with the Oregon Corporation Commission as a tax-paying corporation and we file a tax return every year. If we were to get to specific issues here I have a couple points. Specifically: the code exempts markets and yet you’re trying to put allowances for temporary uses. If you want to talk about a timeframe in the context of running a market, I think it should say something like “less than a year.” That way you don’t have to worry about it being May 10<sup>th</sup> or May 12<sup>th</sup> or May 20<sup>th</sup> or something that specific. So you say less than a year – are you expecting us to come in every year and pay a new fee each time we renew our license? Is this code intended just to generate some more revenue for the City and therefore run up the expense of the Market itself? Limiting the type of products to be sold is another can of worms because – where do you stop – or where do you start on the different types of items to be sold. And if we do need approval every year, would you expect a fee from us? As to a new market starting and having to do a lot of studies... a “traffic study” – obviously we want to be concerned about the traffic but if you require so many studies – they’re spending 4, 5, 7, 8, \$10,000 just to go into business – they’re never going to go into business. That is contrary to what I think the City should be doing.

We’ve had over 75,000 people at our markets this summer – we compete with the Balloon Festival. Signage is an important thing for a market to succeed. What we would like to have is a permanent sign that says “This is the Home of the Tigard Area Farmer’s Market” so

people could contemplate 12 months of the year where we are and where we're going to appear when the market products come into vogue.

### **QUESTIONS OF MR. BAUMHOFER**

**With respect to the timeframe - is May to October as enumerated in the statute sufficient? Is it better to make it April to October as Mr. Haagen suggested, or is it best to make it a range of 6 months, or 7 months, in terms of how you're going to operate and when you're going to operate?** That pretty much hinges on what your product is going to be. If you're going to sell something that's winter month oriented, you require during that time of year and that's why I say you can't guess correctly and fit all... one size doesn't fit all. We found that those six months from the middle of May to the end of October fits the kind of product that we are focusing on. That might not always be true for us or some other market.

**So are you suggesting that we change it to be a range of a number of months to give that kind of flexibility?** With any 12 month period I think would be the flexibility that would work best.

At this point, President Inman asked if anyone else was in the audience who wished to testify. There were none.

### **QUESTIONS OF STAFF**

**Regarding the criteria – they could tend to lean toward being onerous... such as letter “C,” the traffic study. It could be a very expensive endeavor. That and “D,” documentation that there is no adverse off-site impacts etc. How do you achieve that without paying consultants, and experts, and studies? I do see that, depending on how this is interpreted, you could end up spending thousands of dollars documenting something. Is there a way to soften the language so an applicant can address their plan and these concerns and then the planning director or somebody can require further documentation if they deem it necessary - to sort of allow somebody to “get in the door”?** Pagenstecher: Not every site will have the same set of problems. It's entirely appropriate to attempt to make these standards achievable by non-profits who are doing something maybe once a week.

**I'd like a common sense approach – a less onerous approach. We need to take another look at these 5 criteria of 18.785.040 No. 6. And come up with a way to get to what you're talking about because I don't think the language that's in there now, gets there. Can you wordsmith this so that the goal is workable – allowing permitted uses for both of these entities?** Yes – we can certainly do that. We have a few months until May to work this out.

President Inman asked for a general consensus from the Planning Commission. If I'm hearing this correctly, we'd like to go back and address these approval criteria, see if we can soften them up, get more of a sliding scale – something in there that's a little more potentially "user friendly." Is that correct? The Commission concurred. Commissioner Vermilyea added one thing that he wanted to be specific criteria – and that would be a call out for hours of operation.

**So the way it's written right now the modification is good for one year? So would they come in every year for a modification? Yes – they would renew it each year. What are the fees associated with that? Currently non-profits have no fees for renewal.**

## **PUBLIC HEARING CLOSED**

## **DELIBERATION**

The commission decided to continue this meeting and deliberations to November 2<sup>nd</sup>.

## **6. OTHER BUSINESS – None.**

## **7. ADJOURNMENT**

President Inman adjourned the meeting at 8:50 pm.

  
\_\_\_\_\_  
Doreen Laughlin, Planning Commission Secretary

  
\_\_\_\_\_  
ATTEST: President Jodie Inman

Agenda Item: 5.2  
 Hearing Date: October 19, 2009 Time: 7:00 PM

**STAFF REPORT TO THE  
 PLANNING COMMISSION  
 FOR THE CITY OF TIGARD, OREGON**



**SECTION I. APPLICATION SUMMARY**

**CASE NAME:** SEASONAL OUTDOOR SALES  
**CASE NO.:** Development Code Amendment (DCA) DCA2009-00004

**PROPOSAL:** The City of Tigard requests approval for a development code amendment to amend the text of the Temporary Use Chapter (18.785) of the City of Tigard Community Development Code to expand and clarify the temporary use provisions of the code to provide for seasonal markets by public benefit/community service organizations.

**APPLICANT:** City of Tigard  
 13125 SW Hall Blvd.  
 Tigard, OR 97223

**ZONES:** C-G: General Commercial District. The C-G zoning district is designed to accommodate a full range of retail, office and civic uses with a City-wide and even regional trade area. Except where non-conforming, residential uses are limited to single-family residences which are located on the same site as a permitted use. A wide range of uses, including but not limited to adult entertainment, automotive equipment repair and storage, mini-warehouses, utilities, heliports, medical centers, major event entertainment, and gasoline stations, are permitted conditionally.

\*CBD: Central Business District. The CBD zoning district is designed to provide a concentrated central business district, centered on the City's historic downtown, including a mix of civic, retail and office uses. Single-family attached housing, at a maximum density of 12 units/net acre, equivalent of the R-12 zoning district, and multi-family housing at a minimum density of 32 units/acre, equivalent to the R-40 zoning district, are permitted outright. A wide range of uses, including but not limited to adult entertainment, utilities, facilities with drive-up windows, medical centers, major event entertainment and gasoline stations, are permitted conditionally.

\*Note: The CBD zone is scheduled to be enlarged and rezoned MU-CBD when the Council reviews and, if acceptable, approves the Downtown Code Amendments on December 8, 2009. Therefore, the proposed revision to the Temporary Use Chapter text which identifies the applicable zones for seasonal markets includes the new zone in anticipation of its adoption by Council (18.785.040.2, page 7).

**LOCATION:** Land zoned General Commercial (C-G) and Mixed Use-Central Business District (MU-CBD).

**APPLICABLE  
 REVIEW  
 CRITERIA:**

Community Development Code Chapters 18.380, 18.390 and 18.520; Comprehensive Plan Goals 1, Public Involvement; Goal 2, Land Use Planning; Goals 9.2.1 and 9.3, Economic Development; Goal 15.2, Special Planning Area- Downtown; and Statewide Planning Goals 1, 2 and 9.

## SECTION II. STAFF RECOMMENDATION

Staff recommends that the Planning Commission find in favor of the proposed text amendment providing for seasonal markets by public benefit/community service organizations, with any alterations as determined through the public hearing process, and make a final recommendation to the Tigard City Council.

## SECTION III. BACKGROUND INFORMATION

Earlier this year, the Tigard Grange proposed a seasonal outdoor sales event at its property on Highway 99W to occur on the weekends through late spring to early fall. This was proposed as a "farmer's market" type of activity with vendors using Grange property in exchange for a fee. The purpose was to raise funds to repair the Grange building and support the organization's activities.

However, the Community Development Code does not allow seasonal or special events of the duration (in excess of 30 days) proposed by the Grange nor did the proposal qualify as an exemption granted when seasonal events are conducted by and totally for the benefit of a Tigard-based nonprofit organization. Instead, staff had to consider the request as an outdoor commercial use, which would require substantial and expensive site improvements. The Grange felt this was disproportionate with the intensity of the use proposed.

Therefore, in order to make it possible for the Grange and other public benefit/service organizations such as the Tigard Area Farmers Market to hold season-long events, the Director requested Council's approval to initiate a code amendment.

On July 21, 2009, City Council held a Workshop meeting to discuss the initiation of the code amendment to expand opportunities for outdoor sales events by public benefit/community service organizations. Councilors acknowledged the code currently does not address temporary outdoor sales sufficiently and mentioned specific issues that should be addressed upon expansion of the use including parking, visual clearance, neighborhood impact and prohibition of flea markets and garage sales.

Additionally, staff discussed a draft code amendment with representatives of the Tigard-Area Farmers' Market and Tigard Grange, whose comments have been addressed in this report.

## SECTION IV. APPLICABLE CRITERIA, FINDINGS AND CONCLUSIONS

### APPLICABLE PROVISIONS OF THE TIGARD DEVELOPMENT CODE

**Tigard Development Code Section 18.380.020, Legislative Amendments to this Title and Map, states that legislative zoning map and text amendments shall be undertaken by means of a Type IV procedure, as governed by Section 18.390.060G.**

The proposed text amendment would apply to all C-G and MU-CBD zoned lands within the City. Therefore, the amendment will be reviewed under the Type IV legislative procedure as set forth in the chapter. This procedure requires public hearings by both the Planning Commission and City Council.

**Section 18.390.060.G establishes standard decision-making procedures for reviewing Type IV applications. The recommendation by the Commission and the decision by the Council shall be based on consideration of the following factors: 1) The Statewide Planning Goals and Guidelines adopted under Oregon Revised Statutes Chapter 197; 2) Any federal or state statutes or regulations found applicable; 3) Any applicable METRO regulations; 4) Any applicable comprehensive plan policies; and 5) Any applicable provisions of the City's implementing ordinances.**

Findings and conclusions are provided below for the five listed factors on which the recommendation by the Commission and the decision by the Council shall be based.



## STATEWIDE PLANNING GOALS AND GUIDELINES

### **Statewide Planning Goal 1 – Citizen Involvement:**

**This goal outlines the citizen involvement requirement for adoption of Comprehensive Plans and changes to the Comprehensive Plan and implementing documents.**

This goal has been met by complying with the Tigard Development Code notice requirements set forth in Section 18.390. A notice was published in the Tigard Times newspaper prior to the hearing. After the Planning Commission public hearing, additional notice will be published prior to the City Council hearing. Two public hearings are held (one before the Planning Commission and the second before the City Council) at which an opportunity for public input is provided.

### **Statewide Planning Goal 2 – Land Use Planning:**

**This goal outlines the land use planning process and policy framework.**

The Department of Land Conservation and Development (DLCD) has acknowledged the City's Comprehensive Plan as being consistent with the statewide planning goals. The Development Code implements the Comprehensive Plan. The Development Code establishes a process and standards to review changes to the Comprehensive Plan. As discussed within this report, the Development Code process and standards have been applied to the proposed amendment.

### **Statewide Planning Goal 9 – Economic Development:**

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

The Department of Land Conservation and Development (DLCD) has acknowledged the City's Comprehensive Plan as being consistent with the statewide planning goals. Consistency with the City's Comprehensive Plan Economic Development goal and policies is discussed later in this report.

**FINDING:** Based on the analysis above and the applicable findings below, staff finds that the proposed text amendment is consistent with applicable Statewide Planning Goals.

## TIGARD COMPREHENSIVE PLAN

### **Comprehensive Plan Goal 1: Citizen Involvement**

**Goal 1.1 Provide citizens, affected agencies and other jurisdictions the opportunity to participate in all phases of the planning process.**

The City has mailed notice of the Planning Commission hearing to interested citizens and agencies. The City published notice of the Planning Commission hearing October 1, 2009. After the Planning Commission public hearing, additional notice will be published prior to the City Council hearing. Two public hearings are held (one before the Planning Commission and the second before the City Council) at which an opportunity for public input is provided.

With these public involvement provisions, the proposed Development Code Amendment is consistent with applicable Citizen Involvement policies.

### **Comprehensive Plan Goal 2: Land Use Planning**

**Goal 2.1: Maintain an up-to-date Comprehensive Plan, implementing regulations and action plans as the legislative foundation of Tigard's land use planning program.**

**Policy 2: The City's land use regulations, related plans, and implementing actions shall be consistent with and implement its Comprehensive Plan.**

The current development code does not provide for seasonal outdoor sales of the type and duration provided by the Tigard Area Farmers' Market. Therefore, the Director requested Council's approval to develop a code amendment to amend the text of the Temporary Use Chapter (18.785) of the City of Tigard Community

Development Code to expand and clarify the temporary use provisions of the code to provide for seasonal markets by public benefit/community service organizations. The request updates the implementing regulations of the Comprehensive Plan, consistent with the applicable provisions of the Land Use Planning Goal.

### **Comprehensive Plan Goal 9: Economic Development**

**Goal 9.1: Develop and maintain a strong, diversified, and sustainable local economy.**

**Policy 3: The City's land use and other regulatory practices shall be flexible and adaptive to promote economic development opportunities, provided that required infrastructure is made available.**

**Policy 12: The City shall assure economic development promotes other community qualities, such as livability and environmental quality that are necessary for a sustainable economic future.**

The proposed code amendment would provide for farmers' markets by public benefit organizations, which is not currently allowed under the code. Proposed approval criteria (18.785.040.6/7) would ensure required infrastructure would be available.

Farmers' markets provide economic opportunity for farmers to have direct sales to end buyers and buyers the opportunity to buy direct from farmers. Markets provide a civic function by providing community gathering places.

*... purchasing food at a local farmers' market has a positive global impact. Farmers that sell at farmers' markets are dedicated to keeping small family farms alive and thriving, and investing in sustainable farming practices that make a huge difference to our environment, economy and social well being.*

*The most obvious way that a small, sustainable farm makes a global difference is by reducing the consumption of fossil fuels. Producing and distributing conventionally grown food requires an enormous amount of resources. A 2000 study found that 10 percent of the United States' annual energy consumption is used by the food industry. The shorter distance food travels, the less fuel is needed to transport it.*

*Sustainable farming techniques used by many of Oregon's small, family-run farms can produce truly dramatic reductions in resource consumption. The U.S. Department of Agriculture estimates that we could save 80 million gallons of diesel fuel a year used to pump water onto crops simply by improving the efficiency of our irrigation systems by 10 percent. Likewise, reducing the amount of petroleum-based pesticides and fertilizers used on our nation's major cropland would not only save us around \$1 billion, but also help prevent water and soil pollution. Portland Farmers' Market (PFM), September 2009 Newsletter.*

**Goal 9.3 Make Tigard a prosperous and desirable place to live and do business.**

**Policy 3. The City shall commit to improving and maintaining the quality of community life (public safety, education, transportation, community design, housing, parks and recreation, etc.) to promote a vibrant and sustainable economy.**

**Recommended Action Measures, xvi: Recognize and promote community events as having potential for positive economic impacts and as important for community identity.**

*Oregonians are hungry for the fresh, nutritious food and community gathering places that farmers' markets provide. Farmers' markets offer the unique opportunity to make cities feel like small towns and strangers feel like neighbors. By forging connections between consumers and farmers and food producers, it creates a strong constituency for growing the local food economy – the backbone of a truly sustainable community. PFM September 2009 Newsletter.*

### **Comprehensive Plan Goal 15: Downtown Tigard Urban Renewal District**

**Goal: 15.2 Facilitate the development of an urban village.**

**Policy 2. The downtown's land use plan shall provide for a mix of complementary land uses such as:**

- A. retail, restaurants, entertainment and personal services;**
- B. medium and high-density residential uses, including rental and ownership housing;**
- C. civic functions (government offices, community services, public plazas, public transit centers, etc);**
- D. professional employment and related office uses; and**
- E. natural resource protection, open spaces and public parks.**

**Recommended Action Measures, v. Provide areas in the downtown where community events, farmer's markets, festivals and cultural activities can be held.**

Amending the development code to provide for farmers' markets explicitly implements the Downtown Urban Renewal District goal to facilitate the development of an urban village. To further facilitate this goal, the City may consider identifying a City-owned location downtown as a permanent site for a Tigard-Area farmers' market.

**FINDING:** As shown in the analysis above, the Citizen Participation and Land Use goals have been satisfied. The proposed development code amendment provides for economic development that promotes other community qualities, such as livability and environmental quality that are necessary for a sustainable economic future. Staff finds that the proposed text amendment is consistent with the applicable goals and policies contained in the Tigard Comprehensive Plan.

## **PROPOSED TEXT AMENDMENT TO THE TIGARD DEVELOPMENT CODE**

**DCA2009-00004  
CODE AMENDMENT**

**Explanation of Formatting**  
This text amendment employs the following formatting:  
**[Bold/Underlined]** – Text to be added  
**[Bold/Double-Underline]** – Text that will be underlined upon codification  
~~Strikethrough~~ – Text to be removed

### **Chapter 18.785 TEMPORARY USES**

**Sections:**

- 18.785.010 Purpose**
- 18.785.020 Types of Temporary Uses**
- 18.785.030 Approval Process**
- 18.785.040 Approval Criteria**
- 18.785.050 Application Submission Requirements**

**18.785.010 Purpose**

- A. Purpose. The purpose of this chapter is to establish standards for the approval of three types of temporary use:
1. Use that is seasonal or directed toward a specific event;
  2. Use which is occasioned by an unforeseen event; and
  3. Sales offices and model homes in conjunction with the sale of homes.
- B. Disclaimer. This chapter is not intended to be a way to circumvent the strict application of the use districts. Therefore, time limits are to be strictly enforced. ~~This chapter is not intended to apply to garage sales.~~

- C. Exemptions. This chapter does not apply to **1) seasonal and special events** conducted by and totally for the benefit of a Tigard-based nonprofit organization, **2) garage sales**, or **3) temporary construction offices** in conjunction with the initial development of residential, commercial or industrial property (three or more dwelling units or lots).

#### 18.785.020 Types of Temporary Uses

- A. Seasonal or special event. This type of temporary use is a use which by its nature will last less than one year. Examples of this type of use are those associated with the sale of goods for a specific holiday, activity or celebration, uses associated with construction, or seasonal use. This type of use does not apply to businesses seeking a temporary or interim location. Examples of this type of temporary use include:
1. Use associated with the celebration of a specific holiday such as the sale of Christmas trees and fireworks;
  2. Use associated with the sale of fresh fruits, produce, and flowers, **including seasonal markets by a chartered public service/non-profit organization which may offer additional products and services as provided in the organization's "market rules and policies" such as landscaping plants, prepared food, animal products, and art/handcrafts assembled by the vendor;**
  3. Use associated with festivals or celebrations or special events;
  4. Seasonal activities such as the sale of food at sports events or activities;
  5. Use associated with construction such as the storage of equipment during the construction of roads or development, but not a temporary sales office or model home as provided by Section 18.785; and
  6. Temporary fund raising and other civic activities in commercial zoning districts.

#### 18.785.030 Approval Process

- A. Procedure type. Approval of various temporary uses shall be processed as follows:
1. Seasonal or special event: by means of a Type I procedure, as governed by Section 18.390.040, using approval criteria in Section 18.785.040A;
  2. Unforeseen/emergency situations: by means of a Type I procedure, as governed by Section 18.390.040, using approval criteria in Sections 18.785.040B;
  3. Temporary sales office/model home: by means of a Type I procedure, as governed by Section 18.390.030, using approval criteria in Sections 18.785.040C;
  4. Temporary building in commercial and industrial zones: by means of a Type I procedure, as governed by Section 18.390.040, using approval criteria in Sections 18.785.040D.
- B. Effective Approval period. An approval for a temporary use by the Director shall be ~~effective~~ **valid** for a period of one year unless otherwise stipulated by the approval.
- C. Lapsing of approval. An approval for the temporary use by the Director shall lapse if:
1. Substantial construction of the approved plan or onset of the approved activity has not begun within the approval period; and
  2. Construction or activity on the site is a departure from the approved plan.
- D. Renewal of approval. A temporary use approval may be renewed once by the Director for a period not to

exceed one year. Approval for a seasonal or special event use may be renewed on an annual basis in the same manner as if it were an original application. Notice of the decision shall be provided to the applicant.

E. Renewal for temporary residential sales office/model homes. A permit for temporary sales offices and model homes may be renewed on an annual basis in the same manner as if it were an original application as long as 50% or less of the total number of dwelling units have been issued occupancy permits.

#### 18.785.040 Approval Criteria

A. Seasonal and special events. Using a Type I procedure, as governed by Section 18.390.030, the Director shall approve, approve with conditions or deny based on findings that all of the following criteria are satisfied:

1. The use occurs only once in a calendar year and for no longer a period than 30 consecutive days.
2. The use is permitted in the underlying zoning district.
3. The applicant has proof of the property-owner's permission to place the use on his/her property;
4. There will be no parking utilized by the customers and employees of the temporary use which is needed by the property owner to meet his/her minimum parking requirement, as governed by Chapter 18.765, Parking and Loading.
5. The use will provide adequate vision clearance, as governed by Chapter 18.795, Vision Clearance, and shall not obstruct pedestrian access on public rights-of-way.
6. Seasonal markets are permitted in the C-G and MU-CBD zones and may operate from May through October. Additional approval criteria for seasonal markets include the following:
  - a. Provide "market rules and policies" for City approval, which are consistent with the seasonal market use description in 18.785.020.A.2 and will be observed for the duration of the permit.
  - b. Provide an access plan demonstrating adequate and safe ingress and egress exist when combined with the other uses of the property, consistent with applicable standards of Chapter 18.705, Access, Egress and Circulation;
  - c. Provide a traffic study demonstrating the use will not create a traffic hazard, including ODOT review, if applicable;
  - d. Provide documentation that the use will not create adverse off-site impacts related to noise, odors, vibrations, glare or lights that would be greater than otherwise allowed by uses permitted outright in the zone; and
  - e. Signs are allowed as permitted in Chapter 18.780, however, the period may correspond to the duration of the permitted seasonal market use.

#### 18.785.050 Application Submission Requirements

A. General submission requirements. The applicant shall submit an application containing all of the general information required for a Type I, depending on the type of temporary use for which the approval is sought.

B. Additional information. In addition to the information described in Subsection A above, the applicant shall

provide a site plan, narrative and other information as specified in a detailed hand-out provided by the Director.

- C. Emergency situations. The Director may waive any of the requirements in this chapter or request additional information in accordance with Chapter 18.390 for cases which involve destruction of an existing structure due to fire, natural causes, or other circumstances that are beyond the control of the applicant. An emergency as allowed by this subsection shall not include failure by the applicant to submit a temporary use request as provided in this Chapter. ■

## **SECTION V. STAFF ANALYSIS**

The proposed code text amendment incorporates comments from City staff and representatives of the Tigard-Area Farmers' Market and Tigard Grange. The proposed amendment includes 1) minor changes for readability of the existing language, and 2) changes that provide for the farmers' market use under the Seasonal and Special Use type. The following analysis is divided by Chapter section:

### **18.785.010 Purpose**

At the July 21st Council Workshop to discuss initiation of the code amendment, Councilors mentioned specific issues that should be addressed upon expansion of the seasonal temporary use including parking, visual clearance, neighborhood impact and prohibition of flea markets and garage sales. The proposed amendment moves the existing reference to "garage sales" from the Disclaimer to the Exemption section of the chapter for clarity. Disclaimer now refers solely to the use districts and the enforcement of time limits. Exemptions now includes garage sales in addition to two other exempt uses to which the Chapter does not apply. The three listed uses are considered of a type, scale, and duration where any expected impacts would be limited and should be allowed without permit.

Council's concern that seasonal markets not resemble flea markets or garage sales is ensured through the qualifying language that requires seasonal markets to be sponsored by chartered public service/non-profit organizations and approval criteria requiring City review and approval of "market rules and policies."

### **18.785.020 Types of Temporary Uses**

This section contains the new temporary use "seasonal markets by chartered public service/non-profit organizations" and extends the types of products that could be sold at such markets by listing examples and requiring consistency with the organization's market rules and policies that guide the sales agreements with vendors. The list of allowed products closely follows the Tigard-Area Farmers' Market guidelines. Other markets in the metropolitan area are more restrictive, for example, allowing farm products by not crafts.

### **18.785.030 Approval Process**

This section changes the wording of the Approval period to be consistent with code construction found elsewhere in the development code. In addition, explicit provision for renewing a seasonal or special event has been added to balance the general renewal language.

### **18.785.040 Approval Criteria**

This section clarifies that the existing 30-day term for the general seasonal and special event use type is intended to be *consecutive* days.

A sixth approval criterion is proposed to establish the location, timing, and manner of the seasonal market use. Seasonal markets are restricted to the General Commercial (C-G) zone and the new Mixed Use-Central Business District (MU-CBD) zone which correlates to the Downtown Urban Renewal District boundary. The CBD zone is scheduled to be enlarged and rezoned MU-CBD when the Council reviews and, if acceptable, approves the Downtown Code Amendments on December 8, 2009. Ultimately, as provided for in



Comprehensive Plan Policy 15.2, a location downtown would be developed to host a farmers' market.

The C-G zoning district is designed to accommodate a full range of retail, office and civic uses with a City-wide and even regional trade area. Allowing outdoor seasonal markets as a temporary use in this zone would result in the least conflict with other permitted uses and affords organizations like the Tigard Grange to use their facilities.

The section provides a special term for seasonal markets of six months to accommodate weekend or weekday markets for the typical period from May through October.

Council expressed concern for parking, visual clearance, and neighborhood impact issues on expansion of the seasonal temporary use to include seasonal markets. Existing approval criteria #4 and #5 already require that parking and visual clearance, respectively, be addressed. Five additional approval criteria are listed, applicable to seasonal markets only. The sponsoring organization's "market rules and policies" describe the operating procedures and product mix allowed in a seasonal market. The City will require this document at the time of application to ensure seasonal markets comply with the character of the seasonal temporary use type as described in Section 18.785.020.A.2. Additional approval criteria are proposed to address access and egress, traffic hazards, off-site impacts, and signs. The applicant would need to demonstrate in their narrative and application materials that these criteria are satisfactorily met.

#### **18.785.050 Application Submission Requirements**

In addition to the proposed development code text amendment discussed above, staff proposes to amend the Temporary Use Type I Application form, pursuant to 18.390.030.B.2.b, to additionally require the Applicant's Statement "to address the relevant criteria in sufficient detail for review and action." Currently, the application form requires an Applicant's Statement but does not detail what should be included. The proposed additional language would require the applicant's statement to address each of the applicable Approval Criteria in 18.785.040.

Staff's discussion with representatives of the Tigard-Area Farmers' Market also included the possibility of a fee structure that would acknowledge public service/non-profit organizations as seasonal market providers. Currently, Non-Profits are exempt from the \$304.00 filing fee for temporary uses.

## **SECTION VI. ADDITIONAL CITY STAFF & OUTSIDE AGENCY COMMENTS**

**The City of Tigard Current Planning and Planning and Engineering Techs** reviewed the proposal and provided comment that has been incorporated into the proposed amendment.

**The City of Tigard Code Enforcement Officer** reviewed the proposal and provided comment that has been incorporated into the proposed amendment.

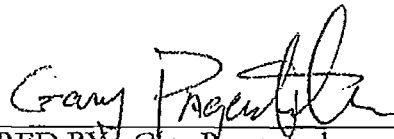
**The City of Tigard Police Department** reviewed the proposal and had no objections to it.

**The City of Tigard Public Works Department** reviewed the proposal and had no objections to it.

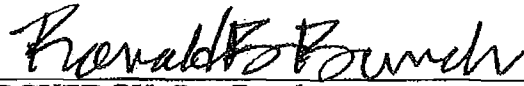
**The City of Tigard Long Range Planning Division** was notified of the proposed code text amendment but did not comment.

**The City of Tigard Engineering Department** was notified of the proposed code text amendment but did not comment.

**METRO, ODOT, and DLCD** were notified of the proposed code text amendment but provided no comment.

  
PREPARED BY: Gary Pagenstecher  
Associate Planner

October 9, 2009  
DATE

  
APPROVED BY: Ron Bunch  
Community Development Director

October 9, 2009  
DATE



# City of Tigard

## Tigard Business/Workshop Meeting - Minutes

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### TIGARD CITY COUNCIL & LOCAL CONTRACT REVIEW BOARD (LCRB)

**MEETING DATE/TIME:** July 21, 2009/6:30 Business/Workshop Meeting

**MEETING LOCATION:** City of Tigard – Town Hall, 13125 SW Hall Blvd., Tigard, OR 97223

#### • BUSINESS MEETING

a. At 6:35:44 PM Mayor Dirksen called to order the Tigard City Council and Local Contract Review Board.

b. Deputy City Recorder Krager called the roll.

	Present	Absent
Councilor Webb		x
Council President Wilson	x	
Councilor Buehner	x	
Mayor Dirksen	x	
Councilor Henderson		x

c. Pledge of Allegiance

d. Council Communications & Liaison Reports - None

e. Call to Council and Staff for Non-Agenda Items - None

#### 1. CONSENT AGENDA: (Tigard City Council and Local Contract Review Board)

1.1 Approve City Council Minutes for May 26, 2009

1.2 Extend Intergovernmental Agreement through June 30, 2010, with Metro Providing Police Department Support for the Enforcement of Metro's Illegal Disposal Ordinance

1.3 Local Contract Review Board:

a. Award Pavement Overlay Pavement Major Maintenance Program (PMMP) Contract

b. ~~Approve Purchase of Five New Patrol Vehicles through the State of Oregon Contract~~

*Note:* Item 1.3.b removed from Agenda on July 17, 2009.

Councilor Buehner moved to approve the Consent Agenda. Council President Wilson seconded the motion and all voted in approval.

### TIGARD CITY COUNCIL/LCRB MINUTES – July 21, 2009

		Yes	No
Councilor Webb	Absent		
Council President Wilson		x	
Councilor Buehner		x	
Mayor Dirksen		x	
Councilor Henderson	Absent		

• **WORKSHOP MEETING**

2. DISCUSSION WITH CITIZENS ON THE FORMATION OF AN AQUATIC DISTRICT TO FUND THE OPERATION OF THE TIGARD-TUALATIN SCHOOL DISTRICT'S SWIMMING POOLS

6:38:20 PM Public Works Director Koellermeier introduced this item. He said the swimming pools at the high schools in Tigard and Tualatin are suffering financially and the Tigard-Tualatin School District (TTSD) is talking about closing them. He said a group of concerned citizens has proposed a solution to keep the pools open. He introduced spokesperson Pam Griffith, representing a group of citizens wanting to preserve the pools at each high school for the community's benefit.

Ms. Griffith said the swimming pools have been operating at a loss for the Tigard-Tualatin School District (TTSD) and the District indicates that they cannot continue to accept these annual losses, which are calculated to be \$500,000 to \$600,000 per year. Options include mothballing or closing the pools, on which construction costs are still being paid by people in the TTSD and will be until the year 2016.

She said the group proposes the formation of a special Aquatics Park and Recreation District under ORS Chapter 266. The essential features of the proposal are:

- 1) District boundary would be the same as the current TTSD boundary.
- 2) The District would be managed by a five-person board of directors, elected at-large from members of the new District.
- 3) The District would be funded by a permanent tax levy (9 cents per \$1,000 of assessed property in the district)
- 4) TTSD would continue to own the pools and the new District would operate them. They are considering a lease arrangement.

This is a limited special district request, and is only for the purpose of continuing the status quo operation of the pools. No expansion is being contemplated. The communities are major users of these pools, at a level of 100% in the summer and 80% the rest of the year. Benefits to the cities (Tigard, Tualatin, King City and Durham) include swimming lessons, recreational opportunities for all ages, family swims, lap swims, water polo, swim teams, rehabilitation and exercise, and training for law enforcement, firefighters and the FBI. Swimming pools also provide added value to neighborhood homes.

Regarding process, Ms. Griffith said the group has spoken with representatives from the cities of Tigard and Tualatin, Washington County, both city's park boards and the TTSD. She said they are asking the cities for certified resolutions of support, consenting to the formation of this special district. She said they need to present a petition to Washington County by September, 2009 and this needs to be on the ballot by May of 2010. People would be voting on:

- Approving the formation of the district
- Approving the tax levy
- Electing a board of directors

**TIGARD CITY COUNCIL/LCRB MINUTES – July 21, 2009**

8. DISCUSS INITIATION OF A CODE AMENDMENT EXPANDING OPPORTUNITIES FOR OUTDOOR FUNDRAISING EVENTS

8:53:27 PM Associate Planner Pagenstecher said the purpose of this item was to open a discussion on whether a Community Development Code amendment should be issued to expand opportunities for public benefit and community service organization outdoor sales events.

He said this was precipitated by the Tigard Grange wanting to hold outdoor sales in their parking lot and finding that it is not allowed under the current Development Code. They questioned how the Tigard Farmers Market is allowed to operate in the parking lot of Young's Funeral Home.

Mayor Dirksen said the current Code doesn't really prohibit this; it just doesn't address it very well. Councilor Buehner asked if seasonal temporary sales, such as Christmas trees or berries, were a problem with the current Code. Associate Planner Pagenstecher said these uses are listed in the Code but "Saturday Markets" or farmers markets are not and they would not meet the current criteria of a limited duration to 30 days, for example.

8:55:46 PM Community Development Director Bunch pointed out another difference with the Grange's request is it is undertaken solely by a non-profit entity for the benefit of that entity. He said with Saturday markets, it is a chartered organization but the people who actually sell the goods are making a profit for themselves. He said the Grange wants to sponsor a farmer's market where operators would pay a small rental fee to the Grange, but make an individual profit. This does not follow the Code.

8:56:40 PM Councilor Buehner asked if the City can specify what is governed by this Code, i.e. flea markets, or farmer's markets, etc. Associate Planner Pagenstecher said that can be handled simply by issuing a permit that specifies time, place, manner and type of product. Farmers' market products are fruits, produce and flowers. Sometimes arts and crafts can be added if they are secondary to the produce sales, and food may be allowed.

Councilor Buehner and Council President Wilson mentioned these concerns:

- Parking issues
- Visual Clearance
- Impacts on nearby neighborhoods
- Perpetual flea markets or on-going garage sales should not be allowed

Associate Planner Pagenstecher said currently visual clearance and parking can be regulated with very specific, time-tested regulations. He said these uses can be limited to Commercial, Light Industrial or Heavy Industrial Zones. Associate Planner Pagenstecher said Lake Oswego, for example, limits these events to east and west end Commercial Zones and the Lake Grove Industrial zone. Tigard currently limits seasonal sales to the Commercial, Heavy and Light Industrial Zones but there are also cities that pre-approve certain properties for this use, such as the City of Portland does by leasing public parks for the purpose of Saturday Markets.

9:01:27 PM Council President Wilson commented that these uses are most viable on arterials since they depend on drive-by traffic for customers.

9:02:31 PM Community Development Director Bunch said staff will develop a proposal taking into account Council's concerns, and bring it forward to the Planning Commission. Mayor Dirksen said, "As always, our goal should be to make our Code such that citizens are allowed to do things as long as they don't impose a burden on others."

9. ADJOURNMENT

**TIGARD CITY COUNCIL/LCRB MINUTES – July 21, 2009**

At 9:03:16 PM Council President Wilson moved for adjournment. Councilor Buehner seconded the motion and all voted in favor.

		Yes	No
Councilor Webb	Absent		
Council President Wilson		x	
Councilor Buehner		x	
Mayor Dirksen		x	
Councilor Henderson	Absent		

/s/ Carol A. Krager  
Deputy City Recorder

Attest:

/s/ Craig Dirksen  
Mayor, City of Tigard

Date: August 25, 2009

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**TIGARD CITY COUNCIL/LCRB MINUTES – July 21, 2009**



Meeting Minutes Excerpt – February 23, 2010 Legislative Public Hearing before the Tigard City Council to allow seasonal markets:

7:49:11 PM

5. LEGISLATIVE PUBLIC HEARING – CONSIDER PLANNING COMMISSION RECOMMENDATION TO AMEND THE TIGARD DEVELOPMENT CODE TEMPORARY USE CHAPTER (18.785) TO ALLOW SEASONAL MARKETS (DCA2009-00004)

- a. 7:49:26 PM Mayor Dirksen opened the public hearing.
- b. City Attorney Hall advised the same rules of procedure applicable to the hearing in Item No. 4 above apply to this hearing. Mayor Dirksen asked confirmed that all present had heard the rules of procedure for the previous item.
- c. Declarations or challenges: None
- d. Summation by Public Works Department

7:49:56 PM

Associate Planner Pagenstecher presented the staff report. A copy of the staff report is on file in the City Recorder's office. He summarized past City Council review of this item:

- In July 2009 City Council reviewed this item and gave staff guidance as to how this Code amendment should be addressed. He referred to discussions that precipitated this proposed amendment with the Tigard Grange. He advised that a member of the Grange is available tonight to give information, if needed, about the proposed Development Code Amendment.
- There were two hearings with the Planning Commission, which resulted in some word changes in the proposed amendment to improve the original draft that was more restrictive with regard to providing required documentation for seasonal market activities.

Council President Wilson advised he read the Planning Commission minutes after he read the proposed Code amendments. He found that he had some of the same questions as did some of the Planning Commissioners. While he thinks the language of the Planning Commissioners helps, he still thinks it could be tightened up. He referred to the exemptions listed on the first page of Exhibit A. Council President Wilson said it looks as if the difference between a use that would be exempt from the ordinance and one that is not exempt is whether there is a profit involved. Associate Planner Pagenstecher affirmed that a profit is involved to a third party. Council President Wilson suggested it might be better to say, "This chapter does not apply to seasonal and special events conducted by volunteers, exclusively for the benefit of a Tigard-based non-profit organization." Associate Planner Pagenstecher said this could be a reasonable alternative.

Council President Wilson asked why this needs to be a Tigard-based, non-profit? For example his daughter is on a dance team at South Ridge High School in Beaverton, but lives in Tigard. Would this affect the car wash the students have at a Tigard business? He said he thought this chapter was intending to benefit things such as the example he gave. Associate Planner Pagenstecher said the language for the “Tigard-based non-profit” was original language and had not been raised as an issue.

Assistant Community Development Director Harnett said that it is not uncommon for non-profit organizations to have hired staff who organize the operations of these kinds of activities. She said she would be a little concerned about limiting this section of the Code specifying “volunteers” only. She said the language Council President Wilson referred to is an exception to what the Code allows and the provision stating “Tigard-based” would provide limitations and avoid the potential of opening Tigard as the community that hosts seasonal activities. She reiterated that this is an exception to the Code; it is not something that we are making a decision to allow on a routine and ongoing basis.

7:55:48 PM

Assistant Community Development Director Harnett, in response to a question from Council President Wilson regarding the example of the car wash above, advised the exception in the Code is for outdoor sales and she did not think the activity of a car wash would fall in this category.

Council President Wilson acknowledged the point made with regard to volunteers and said the wording might say “primarily volunteers.” If the booth is earning money as a business, then it becomes something that is not intended to be exempt.

Council President Wilson referred to the old Code language, which listed examples of what would be allowed; 18.785.020, *Types of Temporary Uses, A., Seasonal or special event*. Those uses that follow (listed) implies to him that there would only be six types of uses possible. He said he does not think we want to be that broad. Mayor Dirksen asked Council President Wilson if he wanted the exceptions to be limited to those six uses? Council President Wilson said he was not sure what would prevent any kind of profitable outdoor business, which operates April through October. Council President Wilson said he is concerned that Paragraph A in 18.785.020, by listing *examples* of the types of uses to fall under the seasonal or special event permit would mean that almost any type of use would be allowable. Associate Planner Pagenstecher asked if this would be a problem and Council President Wilson responded that it would be a problem because it would allow almost anything to operate April through October, and circumvent parking rules, etc. Associate Planner Pagenstecher agreed that this would be the case. He said the purpose of the Development Code Amendment to provide explicitly for an additional use that was not listed.

Council President Wilson referred to the City Council workshop discussion on this subject. The City Council raised the concern in that they did not want a “permanent garage sale, flea market on 99, and it appears to me that that, under these rules, would be allowed.”

City Attorney Hall referred to language in Exhibit A: *18.785.040 Approval Criteria*. One of the approval criteria is that the use is limited to 30 consecutive days once a year. Another criteria addresses the parking concern: *There will be no parking utilized by the customers and employees of the Temporary Use which is needed by the property owner to meet... the parking requirement*. Council President Wilson pointed out that the above limitations apply to those uses *except* if the use falls under *seasonal markets* in Paragraph 6.

Associate Planner Pagenstecher said he thought the temporary use for a seasonal or special event is like a “holding basket” for a type of use. There are four temporary uses in the chapter. With regard to the seasonal market, it will be very limited by the approval criteria in Paragraph 6. Associate Planner Pagenstecher said he did not understand this amendment would be used to address the Code to address temporary uses in general. What is before the City Council this evening addresses seasonal markets and they have been specifically limited in the approval criteria. Councilor Buehner noted she agreed with Council President Wilson that this needs to be tightened up to be specific and exclusive. She said the City Council needs to give staff clear, delineated structure.

8:03:40 PM

Assistant Community Development Director Harnett acknowledged that she has not been comfortable with the Temporary Use Chapter as a whole. She said staff was attempting to achieve what they understood was the City Council direction, which was to add the opportunity for an outdoor market for the primary purpose of selling fresh produce, plants, etc. She said that, through the approval criteria, we are limiting the kinds of temporary, seasonal markets that can be approved. She said she did not disagree that there are a number of places throughout the Code where the current lists of examples are not in our best interests for a clean, tight Code. These types of changes would require major review and rewriting. Assistant Community Development Director Harnett said she understood there was a desire to get the amendment in place to address the opportunity for a seasonal outdoor market in the coming season. With regard to the issues raised above, she said she does not think these are simple work fixes; rather, these would be structural changes. She suggested they might be able add text within the approval criteria to try to strengthen the language.

7:56:57 PM City Attorney Ramis arrived and sat in the audience.

Councilor Henderson, in response to a question from Council President Wilson, advised the Tigard Farmers Market is open May to October.

Council President Wilson said he thinks the Code language needs a lot of work. Assistant Community Development Director Harnett referred to an issue concerning a temporary use that occurred during the Christmas holiday season. Staff was aware that this chapter needs to be revisited. The City Manager asked staff to address this before the next holiday season. Staff is planning to include this Code language review within their current work program.

8:07:22 PM

Council President Wilson referred to the six types of temporary uses listed that would allow the particular uses the City is wanting to allow. Assistant Community Development Director Harnett said, “Yes, it will get you where you want to be, for now. Does it leave the door open for other things? Possibly.”

Council President Wilson suggested that rather than use examples, we identify the six types of uses allowed under this type of permit. In response to a question from Associate Planner Pagenstecher, Council President Wilson said he is concerned about certain types of uses that are for profit, cheaply done, and undesirable for the corridor. Discussion followed on how the existing Code language could be easily “gotten around.”

8:10:05 PM

Mayor Dirksen said the scope of the matter given to staff was to look at how changes could be made to the existing chapter to allow seasonal markets. He said he understands Council President Wilson’s concern; however, he said he was not sure if the language should be restrictive thereby limiting the creativity of individuals. He said the concerns raised, in his opinion, should not be used to prevent the City Council from doing tonight what “we set out to do to allow the seasonal markets to take place. If we need to go back and review this entire chapter for its appropriateness, that is something we could do, but that is not within the scope of what we are looking at tonight.”

8:11:11 PM

Councilor Buehner said she is concerned that we make sure that we’ve made arrangements for the Farmers Market. She suggested that as a temporary measure, that the City Council change the language to say “the uses include...”

8:11:37 PM

Mayor Dirksen, in response to Councilor Buehner’s remark above suggested the following wording amendment in the last phrase of “18.786.020 *Types of Temporary Uses – A. Seasonal or special event... Examples of this* ~~*These types of temporary uses include: ...*~~”

8:11:47 PM

Councilor Buehner agreed with Mayor Dirksen’s suggestion above. She said, “... and then we can go back and have this long debate when they come back with the amendments to the entire Code.” Councilor Webb and Mayor Dirksen said this was acceptable. Councilor Henderson said he would agree also and would like to see the ability to have more markets and private sales. Associate Planner Pagenstecher, in response to a statement by Councilor Henderson, clarified that the Farmers Market would have to obtain a permit; however, they would not have to pay for the application because they are non-profit organization. Previously there was no permit available for this type of use. It will be a Type I review, which is approved by staff (10-day review period).

8:13:39 PM

Associate Planner Pagenstecher referred to the criteria (18.785.040A.6) for a Farmers Market, which were designed to limit the impacts to adjacent neighbors, promote safety, and assure that the public welfare components are met. Councilor Henderson said he thought staff did a good job.

8:14:12 PM

Mayor Dirksen said that these types of public markets are important to a community such as the City of Tigard. It allows for the creation of true community and opportunities for events where citizens can gather to share. To be able to adjust the Code to allow this already accepted market within our community is a good thing to do.

8:15:08 PM

e. Public testimony: None.

8:15:34 PM

f. Mayor Dirksen closed the public hearing.

g. Council Consideration: Ordinance No. 10-05

Mayor Dirksen noted that as City Council is considering this item to keep in mind the revision made to 18.785.020A.

Motion by Councilor Buehner, seconded by Councilor Webb, to adopt Ordinance No. 10-05 as amended in Section 18.785.020A.

Mayor Dirksen clarified that the change would be to strike the reference to examples and the phrase would read: *These types of temporary uses include:*

City Attorney Hall confirmed the above motion was adequate to amend the language to the proposed ordinance as cited.

ORDINANCE NO. 10-05 – AN ORDINANCE AMENDING THE TIGARD COMMUNITY DEVELOPMENT CODE CHAPTER 18.785, TO ALLOW SEASONAL MARKETS BY CHARTERED PUBLIC SERVICE/NON-PROFIT ORGANIZATIONS IN THE C-G AND MU-CBD ZONES FROM APRIL TO OCTOBER SUBJECT TO TIGARD COMMUNITY DEVELOPMENT CODE STANDARDS (DCA2009-00004), AS AMENDED.

8:17:15 PM

The motion was approved by a unanimous vote of City Council present.

Mayor Dirksen	Yes
Council President Wilson	Yes
Councilor Buehner	Yes
Councilor Henderson	Yes
Councilor Webb	Yes

Councilor Henderson asked about the procedure for the review of this section of the Code. Mayor Dirksen advised that as a Council, they just needed to direct staff, through the City Manager, to block out time in the future for a review of this chapter. There was a consensus of City Council that this matter be added to the staff's work schedule.

Draft prepared by Cathy Wheatley  
Tigard City Recorder

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City of Tigard  
Current Planning Division  
13125 SW Hall Blvd.  
Tigard, OR 97223

ATTN: PLAN AMENDMENT SPECIALIST  
OR Dept. of Land Conservation & Development  
635 Capital Street NE, Suite 150  
Salem, OR 97301-2540



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