



Oregon

Theodore R. Kubongoski, 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

9/24/2010

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

FROM: Plan Amendment Program Specialist

SUBJECT: City of Tualatin Plan Amendment
DLCD File Number 006-10

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: Thursday, October 07, 2010

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

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

*NOTE: The 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: Colin Cortes, City of Tualatin
Gloria Gardiner, DLCD Urban Planning Specialist
Jennifer Donnelly, DLCD Regional Representative

<paa> YA



FORM 2

DLCD

Notice of Adoption

In person electronic mailed

DATE
STAMP

DEPT OF

SEP 17 2010

LAND CONSERVATION
AND DEVELOPMENT

For Office Use Only

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 Tualatin**

Local file number: **PTA-09-08**

Date of Adoption: **9/13/2010**

Date Mailed: **9/17/2010**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? Yes No Date: 7/16/2010

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".

Plan text amendment to (1) make explicit that a plan map amendment (PMA) of increased density/intensity doesn't excuse a developer during site dev/redev from site improvements and public improvements that mitigate greater demand on sewer, stormwater, and water public lines, and (2) requires this as an explicit PMA approval criterion. (Note: Tualatin has an integrated comp pland and land dev code with a single land use map; a PMA and a rezoning are the same thing.)

Does the Adoption differ from proposal? Yes, Please explain below:

The final ordinance language, but not intent, differs from the mailed draft.

Plan Map Changed from: **n/a**

to:

Zone Map Changed from: **n/a**

to:

Location: **n/a**

Acres Involved:

Specify Density: Previous: **n/a**

New:

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. _____

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

None.

Local Contact: **Colin Cortes, Assistant Planner**

Phone: **(503) 691-3024** Extension:

Address: **18876 SW Martinazzi Ave**

Fax Number: **503-692-0147**

City: **Tualatin**

Zip: **97062-7092**

E-mail Address: **ccortes@ci.tualatin.or.us**

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.

ORDINANCE NO. 1310-10

AN ORDINANCE REQUIRING DEVELOPERS TO MITIGATE DEVELOPMENT IMPACTS ON PUBLIC WATER, SANITARY SEWER AND STORMWATER LINES; AND AMENDING TDC 1.020 AND 1.032 (PTA-09-08)

WHEREAS upon the application of the City of Tualatin Engineering Division, a public hearing was held before the City Council of the City of Tualatin on September 13, 2010, related to a Plan Text Amendment of the TDC; amending TDC 1.020 and 1.032 (PTA-09-08); and

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

WHEREAS the Council conducted a public hearing on September 13, 2010, and heard and considered the testimony and evidence presented by the City staff and those appearing at the public hearing; and

WHEREAS after the conclusion of the public hearing, the Council vote resulted in approval of the application by a vote of [6-0] in favor with Councilor Truax absent,

WHEREAS based upon the evidence and testimony heard and considered by the Council and especially the City staff report dated September 13, 2010, the Council makes and adopts as its Findings of Fact the findings and analysis in the staff report attached as "Exhibit C," which are incorporated by this reference; and

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

THE CITY OF TUALATIN ORDAINS AS FOLLOWS:

Section 1. TDC 1.020 is amended by adding in alphabetical order the following definitions with the remainder of TDC 1.020 unchanged:

Development Agreement. An agreement between either the City or the Tualatin Development Commission and a developer that clearly establishes the developer's responsibility regarding project phasing, the provision of public and private facilities, improvements, and any other mutually agreed to terms and requirements.

Urban Growth Management Agreement (UGMA). An agreement between the City and Clackamas County establishing a process for coordinating comprehensive planning and development in a geographically defined area composed of both area within city limits and unincorporated properties.

Urban Planning Area Agreement (UPAA). An agreement between the City and Washington County establishing a process for coordinating comprehensive planning and development in a geographically defined area composed of both area within city limits and unincorporated properties.

Section 2. TDC 1.032 is amended to read as follows:

Before granting an amendment to the Plan Text or Plan Map of the Tualatin Development Code (TDC), including the Tualatin Community Plan, the Council shall find that:

- (1) Granting the amendment is in the public interest.
- (2) The public interest is best protected by granting the amendment at this time.
- (3) The proposed amendment is in conformity with the applicable objectives of the Tualatin Community Plan.
- (4) The following factors were consciously considered: the various characteristics of the areas in the City; the suitability of the areas for particular land uses and improvements in the areas; trends in land improvement and development; property values; the needs of economic enterprises and the future development of the area; needed right-of-way and access for and to particular sites in the area; natural resources of the City and the protection and conservation of said resources; prospective requirements for the development of natural resources in the City; and the public need for healthful, safe, aesthetic surroundings and conditions. Proof of change in a neighborhood or area, or a mistake in the Plan Text or Plan Map for the property under consideration are additional relevant factors to consider.
- (5) The criteria in the Tigard-Tualatin School District Facility Plan for school facility capacity have been considered when evaluating applications for a comprehensive plan

amendment or for a residential land use regulation amendment. The Tigard-Tualatin School District's School Facility Plan criteria (formula) for new school capacity are:

$$(TCR - SMR) * CSR = NC$$

$$(NC * CFF) / CSP = MNP$$

$$(MNP \text{ or } MPS) * CSP = AC$$

Where:

TCR	=	Total number of classrooms.
SM R	=	Special mandated classrooms.
CSR	=	Average class size policy for regular rooms.
NC	=	Normal capacity.
CFF	=	Core facility factor (kitchen, cafeteria, restrooms, offices, gym, music, mechanical: 0.12 for K-8 schools and 0.15 for 9-12 schools.
CSP	=	Average class size policy for portables.
MN P	=	Maximum number of portables, rounded up to the nearest whole number, or
MP S	=	Maximum number of portables allowed on site, as determined by existing school capacity, above, or allowed by the City of Tualatin through land use decisions such as, but not limited to, conditional use permits.
AC	=	Additional capacity.

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

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

(8) Granting the amendment is consistent with Level of Service F for the p.m. peak hour and E for the one-half hour before and after the p.m. peak hour for the Town Center 2040 Design Type (TDC Map 9-4), and E/E for the rest of the 2040 Design Types in the City's planning area.

(9) Granting the amendment is consistent with the objectives and policies regarding potable water, sanitary sewer, and surface water management pursuant to TDC 12.020,

water management issues are adequately addressed during development or redevelopment anticipated to follow the granting of a plan amendment.

(10) The applicant has entered into a development agreement.

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

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

INTRODUCED AND ADOPTED this 13th Day of September, 2010.

CITY OF TUALATIN, OREGON

BY _____

Mayor

ATTEST:

BY _____

City Recorder

APPROVED AS TO LEGAL FORM

Brenda L. Brader
CITY ATTORNEY



6605 SE Lake Road, Portland, OR 97222 • PO Box 22108 Portland OR 97289-2108
 Phone: 503-884-0380 Fax: 503-820-9433
 E-mail: legals@communitynewspapers.com

AFFIDAVIT OF PUBLICATION

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

**City of Tualatin
 Notice of Hearing/PTA 09-08
 TT11488**

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

1
 week in the following issue:
August 26, 2010

Charlotte Allsop

Charlotte Allsop (Accounting Manager)
 Subscribed and sworn to before me this August 26, 2010.

Rob A. Bugas

NOTARY PUBLIC FOR OREGON
 My commission expires

Acct #108462
 Attn: Stacy Crawford
 City of Tualatin
 18880 SW Martinazzi Ave
 Tualatin, OR 97062

Size: 2 x 8.5
 Amount Due: \$153.85*
 *Please remit to address above.

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

NOTICE IS HEREBY GIVEN that a public hearing will be held before the City of Tualatin City Council at **7:00 p.m., Monday, September 13, 2010**, at the Council Building, Tualatin City Center, at 18880 SW Martinazzi Avenue, to consider:

PLAN TEXT AMENDMENT (PTA)—AN ORDINANCE REQUIRING DEVELOPER TO MITIGATE DEVELOPMENT IMPACTS ON PUBLIC WATER, SANITARY SEWER AND STORMWATER LINES; AND ADDING A NEW SECTION TO TDC CHAPTER 1 (PTA-09-08)

In plain language, this amendment makes explicit that developers must increase the capacity of public lines if their developments generate demand that exceeds operating capacities.

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

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

Copies of the application, all documents and evidence relied upon by the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost. A copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing, and will be provided at reasonable cost. **For information contact Colin Cortes at (503) 691-3024.** This meeting and any materials being considered can be made accessible upon request.

CITY OF TUALATIN, OREGON

By: Sherilyn Lombos
 City Recorder
 Publish 8/26/2010

TT11488

AFFIDAVIT OF POSTING

STATE OF OREGON)
) SS
COUNTY OF WASHINGTON)

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

That at the request of Sherilyn Lombos, City Recorder for the City of Tualatin, Oregon; that I posted four copies of the Notice of Hearing on the 19th day of August, 2010, a copy of which Notice is attached hereto; and that I posted said copies in four public and conspicuous places within the City, to wit:

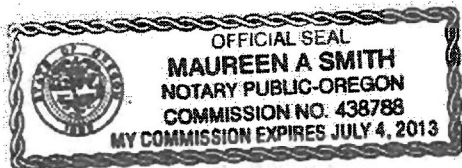
1. City of Tualatin - Police Department
2. City of Tualatin - City Center Building
3. City of Tualatin - Community Development
4. City of Tualatin - Library

Dated this 19th day of August, 2010.

Stacy Crawford
Stacy Crawford

Subscribed and sworn to before me this 19th day of August, 2010.

Maureen A Smith
Notary Public for Oregon
My Commission expires: July 4, 2013



RE: AN ORDINANCE REQUIRING DEVELOPERS TO MITIGATE DEVELOPMENT IMPACTS ON PUBLIC WATER, SANITARY SEWER AND STORMWATER LINES; AND ADDING A NEW SECTION TO TDC CHAPTER 1 (PTA-09-08)

EXHIBIT B



City of Tualatin

www.ci.tualatin.or.us

NOTICE OF HEARING CITY OF TUALATIN, OREGON

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In plain language, this amendment makes explicit that developers must increase the capacity of public lines if their developments generate demand that exceeds operating capacities.

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

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

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CITY OF TUALATIN, OREGON

By: Sherilyn Lombos
City Recorder

PTA-09-08: ANALYSIS AND FINDINGS

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

1. Granting the amendment is in the public interest.

Protecting public infrastructure and the public investment in it is a prime objective of municipal government to meet the goal of protecting public health, safety, and welfare.

The issue that the amendment addresses began with the Alexan Bridgeport project (AR-08-09) at 18067 and 18075 SW Lower Boones Ferry Road. The Alexan was made possible through a Plan Map Amendment (PMA-07-01) that rezoned 0.75 acres of a 9.0-acre site from Light Manufacturing (ML) to General Commercial (CG) Planning District. Following the PMA, the applicant applied for a PTA (PTA-07-04) to apply the Mixed Use Commercial Overlay District (MUCOD). This allowed the project to be mixed use and include residences.

Upon site development, the City and the developer conflicted over the need to upsize public lines for sewer, stormwater, and water. The master plans for these lines set their capacity and were premised on the planning district designations illustrated on the Community Plan Map (Map 9-1), including the original designations of the site, which were General Commercial (CG) and Light Manufacturing (ML) Planning Districts. The developer erroneously claimed that the City's approval of the PTA exempted the developer from upsizing these lines to accommodate greater development.

Though the conflict abated in the City's favor, it prompted the City Engineer to consider a PTA to make more explicit that approval of a PMA or PTA does not exempt a developer from needed public infrastructure improvements that are determined through Architectural Review (AR). The Plan Map Amendment criterion in Tualatin Development Code (TDC) Section 1.031(4) can be read such that it addresses the issue, yet it doesn't explicitly address the issue.

The master plans assume development as indicated by planning district designations and system development charges (SDCs) are premised on planned development increasing demand for sewer, stormwater, and sewer. Rezoning are typically upzonings, which further increase demand on public lines. SDCs do not account for such discrepancies.

The TDC provides the City the authority to require developers to mitigate the effects of redevelopment on public infrastructure and services, including sanitary sewer, stormwater, and potable water lines, when proposed development would generate demand at or in excess of capacity. Making the requirement more explicit for this class of infrastructure would be redundant, yet would provide clearer and more explicit signal to developers that a PMA does not preclude mitigating the effects of development or redevelopment through AR and precludes the waste of City time and energy that might have again been spent in conflict with a future developer.

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

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

As examined for Criterion A, granting the amendment is in the public interest. Granting the amendment at this time is best because making the requirement more explicit for public lines would provide clearer and more explicit signal to developers that a PMA does not preclude mitigating the effects of development or redevelopment through AR and precludes the waste of City time and energy that might have again been spent in conflict with a future developer.

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

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

The master plans for sewer, stormwater, and water are part of the Tualatin Community Plan (TDC Chapters 12-14). These establish the objectives and policies against which the City compares a PMA to determine if a PMA meets plan amendment criteria relating to these public facilities and services.

Of the three classes, malfunction of sanitary sewer is most hazardous to public health. TDC 13.055 acknowledges that prohibition of sanitary sewer overflows (SSOs) that might occur during worst case system demand. Prohibition is in keeping with both Clean Water Services (CWS), the Washington County sewer and stormwater agency, and the U.S. Environmental Protection Agency (EPA). The EPA defines SSOs as "discharges of raw sewage from municipal sanitary sewer systems" (25 August 2010 <http://cfpub.epa.gov/npdes/faqs.cfm#74>). The EPA website explains that while SSOs occasionally occur in almost every sewer system, when SSOs happen frequently it means a sewer system is malfunctioning and that six common problems can cause chronic SSOs, of which two are relevant to the issue that the amendment addresses:

- Undersized Systems: Sewers and pumps are too small to carry sewage from newly-developed subdivisions or commercial areas.

- **Sewer Service Connections:** discharges occur at sewer service connections to houses and other buildings; some cities estimate that as much as 60% of overflows comes from the service lines.

Though the City prevailed in the conflict that led to the amendment, without the amendment, further conflicts could arise and there would remain the chance that the City might not always prevail, leading to systems becoming undersized relative to redevelopment and discharges occurring at sewer service connections.

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

4. The following factors were consciously considered:

The various characteristics of the areas in the City.

The factor applies in that as the city matures, there will be more redevelopment. Redevelopment can involve Plan Map Amendments that introduce greater density and intensity of land use that conflicts with the land uses assumed by the City master plans for sanitary sewer, stormwater, and potable water lines. Because of this, the amendment addresses an incident that otherwise would likely repeat itself. In short, the development characteristics of a near built-out Tualatin factor as support for the amendment.

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

The factor is not relevant to the proposed amendment because as a legislative Plan Text Amendment it does not affect any planning district designation or related regulation and involves no physical improvements.

Trends in land improvement and development.

As examined earlier for Criterion B, because there will be further development and redevelopment within the city, without the amendment there would be a continued amount of conflict over mitigation of the effects of redevelopment than there would otherwise be.

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

The factor is not relevant to the proposed amendment because as a legislative Plan Text Amendment it does not logically affect the needs of economic enterprises and the future development of an area.

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

The proposed amendment has no relation to any particular planning district and needed rights-of-way or access.

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

The proposed amendment has no relation to the protection and conservation of natural resources.

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

The proposed amendment has no relation to development of natural resources in the city.

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

Protecting public infrastructure and the public investment in it is a prime objective of municipal government to meet the goal of protecting public health, safety, and welfare. Granting the amendment factors in the public need for healthful, safe, aesthetic surroundings and conditions because making the mitigation requirement more explicit for public lines would provide clearer and more explicit signal to developers that a PMA does not preclude mitigating the effects of development or redevelopment through AR. This ensures that these lines function to maintain public health and prevents their hazardous malfunction from exceeding capacity.

Proof of change in a neighborhood or area

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

Mistake in the Plan Text or Plan Map.

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

5. The criteria in the Tigard-Tualatin School District Facility Plan for school facility capacity have been considered when evaluating applications for a comprehensive plan amendment or for a residential land use regulation amendment.

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

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

Of the 19 statewide planning goals, staff determined that the applicable one is Goal 11, "Public Facilities and Services," which is, "To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development." Oregon Administrative Rules (OAR) 660-015-0000(11) explains that "timely, orderly, and efficient arrangement" refers to "a system or plan that coordinates the type, locations, and delivery of public facilities and services in a manner that best supports the existing and proposed land uses."

The TDC provides the City the authority to require developers to mitigate the effects of redevelopment on public infrastructure and services, including sanitary sewer, stormwater, and potable water lines, when proposed development would generate demand at or in excess of capacity. A Plan Map Amendment (i.e. rezoning) that is an upzoning often introduces a discrepancy between the capacity planned for the original land use and the capacity needed for redevelopment. Making more explicit the requirement to mitigate this discrepancy would provide clearer and more explicit signal to developers that a PMA does not preclude mitigating the effects of development or redevelopment through AR and preserves a timely, orderly, and efficient arrangement of public facilities and services.

Of the three classes, malfunction of sanitary sewer is most hazardous to public health. TDC 13.055 acknowledges that prohibition of sanitary sewer overflows (SSOs) that might occur during worst case system demand. Prohibition is in keeping with both Clean Water Services (CWS), the Washington County sewer and stormwater agency, and the U.S. Environmental Protection Agency (EPA). The EPA defines SSOs as "discharges of raw sewage from municipal sanitary sewer systems" (25 August 2010 <http://cfpub.epa.gov/npdes/faqs.cfm#74>). The EPA website explains that while SSOs occasionally occur in almost every sewer system, when SSOs happen frequently it means a sewer system is malfunctioning and that six common problems can cause chronic SSOs, of which two are relevant to the issue that the amendment addresses:

- **Undersized Systems:** Sewers and pumps are too small to carry sewage from newly-developed subdivisions or commercial areas.
- **Sewer Service Connections:** discharges occur at sewer service connections to houses and other buildings; some cities estimate that as much as 60% of overflows comes from the service lines.

Though the City prevailed in the conflict that led to the amendment, without the amendment, further conflicts could arise and there would remain the chance that the City might not always prevail, leading to systems becoming undersized relative to redevelopment and discharges occurring at sewer service connections.

The amendment would broaden and strengthen these requirements and therefore continue to comply with Goal 11 and meet the minimum statute requirements.

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

The Urban Growth Management Functional Plan (UGMFP), codified in Metro Code 3.07, neither precludes the amendment nor directly addresses the issue that the amendment addresses. The criterion is met.

8. Granting the amendment is consistent with Level of Service F for the p.m. peak hour and E for the one-half hour before and after the p.m. peak hour for the Town Center 2040 Design Type (TDC Map 9-4), and E/E for the rest of the 2040 Design Types in the City's planning area.

Because the amendment does not relate to vehicle trip generation, the criterion is not applicable.



049J82043608

\$0 1.39₀

09/16/2010

Mailed From 97062

US POSTAGE

neopost



City of Tualatin

18880 SW Martinazzi Avenue
Tualatin, Oregon 97062-7092

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