



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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www.lcd.state.or.us



NOTICE OF ADOPTED AMENDMENT

12/28/2010

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 008-10

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: Monday, January 10, 2011

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: William Harper, City of Tualatin
Gloria Gardiner, DLCD Urban Planning Specialist
Jennifer Donnelly, DLCD Regional Representative

<paa> YA/ph



FORM 2

DLCD

Notice of Adoption

In person electronic mailed

DATE
STAMP

DEPT OF

DEC 22 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-09-09**

Date of Adoption: **12/13/2010**

Date Mailed: **12/17/2010**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? Yes No Date: 10/5/2010

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".

Amend TDC Chapter 40 Low-Density Residential, Section 40.030 Conditional Uses Permitted- to remove certain non-residential uses listed as conditional uses in Residential Planning Districts; revise terms and definitions of certain conditional uses; add public parks and playgrounds to Uses Permitted (Section 40.020); Amend TDC Chapter 35 Non-Conforming Uses to allow certain existing conditional uses removed from the list in Section 40.030 to be altered or expanded and retain non-conforming status;

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: **William Harper, Associate Planner** Phone: **(503) 691-3027** Extension:
Address: **18876 SW Martinazzi Ave** Fax Number: **503-692-0147**
City: **Tualatin** Zip: **97062-7092** E-mail Address: **wharper@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. 1317-10

AN ORDINANCE RELATING TO CONDITIONAL AND PERMITTED USES IN RESIDENTIAL PLANNING DISTRICTS, AND AMENDING TDC 31.060, 35.030, 40.015, 40.020, 40.030, 41.020, AND 41.030; AND ADDING MAP 9-6 (PTA-09-09)

WHEREAS upon the application of the Community Development Department, a public hearing was held before the City Council of the City of Tualatin on November 22, 2010, related to a Plan Text Amendment to amend TDC 31.060, 35.030, 40.015, 40.020, 40.030, 41.020, and 41.030; and adding MAP 9-6 (PTA-09-09); 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 by mailing a copy of the notice to all landowners in Residential Planning Districts within the Tualatin Planning Area, which is evidenced by the Affidavit of Mailing marked "Exhibit C," attached and incorporated by this reference; and

WHEREAS the Council conducted a public hearing on November 22, 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 voted to direct staff to bring back an Ordinance to adopt PTA-09-09 at the December 13, 2010 Council Meeting, which resulted in approval of the Ordinance by a vote of [7-0];

WHEREAS based upon the evidence and testimony heard and considered by the Council and especially the City staff report dated November 22, 2010, the Council makes and adopts as its Findings of Fact the findings and analysis in the staff report attached as "Exhibit D," 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 31.060 the following definitions are amended to read as follows; with the remainder of the definitions remain unchanged:

~~Nursing or Convalescent Home. A home, place or institution which operates and maintains facilities providing convalescent or chronic care, or both, for a period exceeding 24 hours for two or more ill or in-firm patients not related to the nursing home administrator or owner by blood or marriage. Convalescent and chronic care may include, but need not be limited to, the procedures commonly employed in nursing and caring for the sick.~~

Nursing Facility. A State of Oregon Licensed Intermediate or Long-term care facility including facilities identified as a nursing home, skilled nursing facility, or convalescent care as defined in Oregon Revised Statutes (ORS) Chapters 678 and Chapter 442.

Retirement Housing. Housing occupied by persons who are 58 years of age and older, including couples with one person 58 years of age or older, where a more supportive living environment than typically afforded to residents in conventional apartments or single-family residential housing is provided. Retirement housing includes "congregate care facility" and "retirement housing facility," or combinations thereof as defined by this code. Retirement housing does not include "nursing facility or ~~convalescent home~~" as defined below by this code.

Retirement Housing Facility. Retirement housing consisting of dwelling units in a multi-family structure or complex.

Section 2. TDC 35.030 is amended to read:

(1) A nonconforming structure or use of land may be continued, but shall not be altered or enlarged, ~~except for the uses listed in (2) below warehouse and distribution center uses existing on April 12, 2000 in the Manufacturing Park District~~ which can be altered and enlarged. For purposes of this chapter, enlargement or alteration of a nonconforming structure or use of land shall not include improvements to required paving, landscaping, or other aesthetic improvements to the premises. Structural expansion or any change in the external dimensions of the building shall be considered an alteration or enlargement, unless such changes are primarily for aesthetic improvements. A structure conforming as to use but nonconforming as to setback or yard requirements may be altered or enlarged, providing the alteration or enlargement does not result in a violation of the Tualatin Community Plan. A non-conforming structure or use of land may be altered or enlarged when such alteration or enlargement will bring the structure or use into conformity with the Planning District Standards for the planning district within which the use or land is located.

(2) (a) Warehouse and distribution center uses existing on April 12, 2000 in the Manufacturing Park District;

(b) The Winona Cemetery (9900 SW Tualatin Road), the PGE Substation (6280 SW Borland Road), and the Stafford Hills Racquet and Fitness Club (5916 SW Nyberg Lane) conditional uses located in the RL Planning District that obtained conditional use approval before January 13, 2011.

(3) (2) See TDC 35.200 for signs.

Section 3. TDC 40.015 is amended to read:

Housing density shall not exceed 6.4 units per net acre, except as set forth below:

(1) The maximum density for small-lot subdivisions, and partitions and subdivisions affected by TDC 40.055, shall not exceed 7.5 dwelling units per net acre.

(2) The maximum density for ~~nursing and convalescent homes~~ and retirement housing in accordance with 34.170(2) shall not exceed 10 dwelling units per net acre.

Section 4. TDC 40.020, Permitted Uses, is amended to read:

(1) Single-family dwellings, including manufactured homes.

(2) Agricultural uses of land, such as truck gardening, horticulture, but excluding commercial buildings or structures and excluding the raising of animals other than normal household pets.

(3) Home occupations as provided in TDC 34.030 to 34.050.

(4) Public transit shelters.

(5) Greenways and Natural Areas, including but not limited to bike and pedestrian paths and interpretive stations.

(6) Residential homes.

(7) Residential facilities for up to 15 residents, not including staff.

(8) Family day care provider, provided that all exterior walls and outdoor play areas shall be a minimum distance of 400 feet from the exterior walls and pump islands of any automobile service station, irrespective of any structures in between.

(9) Sewer and water pump stations and pressure reading stations.

(10) Wireless communication facility attached, provided it is not on a single-family dwelling or its accessory structures.

(11) Accessory dwelling units as provided in TDC 34.300 to 34.310.

(12) Transportation facilities and improvements.

(13) Public park, public playground, and public recreation building.

Section 5. TDC 40.030 is amended to read:

The following uses and their accessory uses are permitted as conditional uses when authorized in accordance with TDC Chapter 32:

(1) Common-wall dwellings.

(2) Condominium dwelling units provided they meet the following standards, notwithstanding other provisions of this Code, and meet the requirements of ORS 91.500.

(a) All units shall be on a primary lot with frontage on a public street or in accordance with TDC 36.470.

(b) Access to secondary lots and to all buildings on the primary lot from public streets shall be guaranteed physically and legally by restrictive covenants and homeowners' association bylaws prior to issuance of building permits for the project and after approval of the state pursuant to state statutes, or in accordance with TDC 36.470.

(3) Small-lot subdivisions conforming to the following standards:

(a) No small lot subdivision shall have less than ten lots.

(b) All subdivision improvements shall conform to TDC Chapter 36.

(c) All dwelling units constructed shall conform to the construction standards of the State of Oregon Uniform Building Code as adopted by the City of Tualatin.

(d) A tree survey shall be prepared and submitted as part of the conditional use application. This tree survey shall show the location of existing trees having a trunk diameter of eight inches or greater, as measured at a point four feet above ground level. The purpose of this survey shall be to show that, by utilizing the small lot subdivision provisions, a greater number of trees can be preserved than would be

possible without use of the small lot subdivision provisions. As used in this section, the word "tree" means a usually tall, woody plant, distinguished from a shrub by having comparatively greater height and characteristically, a single trunk rather than stems.

(e) The small lots:

(i) Shall be no less than 5,000 and no more than 6,499 square feet.

(ii) When a small lot abuts an existing lot in a City approved and recorded subdivision or partition the small lot shall be no more than 500 square feet smaller than the size of the abutting lot. For example, a new small lot shall be no less than 5,500 square feet if it abuts an existing lot of 6,000 square feet; 5,600 square feet if it abuts an existing lot of 6,100 square feet; 5,700 square feet if it abuts an existing lot of 6,200 square feet; and so on, up to 5,999 square feet if it abuts an existing lot of 6,499 square feet.

(iii) When a small lot is directly across a local street from an existing lot in a City approved and recorded subdivision or partition the small lot shall be no more than 500 square feet smaller than the lot directly across the street.

(iv) When a Tract or easement is between a small lot and an existing lot in a City approved and recorded subdivision or partition the small lot shall be separated from the existing lot by at least 50 feet.

(v) For purposes of this subsection, a small lot is directly across the street if one or more of its lot lines, when extended in a straight line across the local street, intersect the property line of the lot across the street.

(vi) When a subdivision is constructed in phases, a small lot in a later phase may abut or be directly across a local street from an existing lot in an earlier phase.

(f) The small lots shall be part of a development that contains lots of at least 7,000 square feet that are necessitated by trees, steep terrain or other topographic constraints.

(g) The small lots shall not exceed 35 percent of the lots in the total subdivision.

(h) The number of lots having a minimum area of 7,000 square feet shall equal or be greater than the number of small lots in the subdivision.

(i) The average lot width shall be at least 30 feet.

(j) When a lot has frontage on a public street, the minimum lot width shall be 50 feet on a street and 30 feet around a cul-de-sac bulb.

(k) The maximum building coverage for lots 5,000 to 6,499 square feet shall be 45 percent and for lots greater than 6,499 square feet shall be 35 percent.

(l) For flag lots, the minimum lot width at the street shall be sufficient to comply with at least the minimum access requirements contained in TDC 73.400(7) - (12).

(4) Other uses as specified below:

~~(a) Cemeteries.~~

~~(ab) Churches or other places of religious worship and accessory uses.~~

~~(c) Colleges.~~

~~(d) Community buildings (public).~~

~~(be) Child day care center, if all exterior walls and outdoor play areas are a minimum distance of 400 feet from the exterior walls and pump islands of any automobile service station, irrespective of any structures in between.~~

~~(cf) Governmental structure or land use including public park, playground, recreation building, community buildings (public), fire station, public library or museum.~~

~~(gd) Retail nursery.~~

~~(eh) Hospital or sanitarium.~~

~~(fi) Kindergarten through grade 12 school.~~

~~(gj) Water reservoir with a maximum height of 75 feet.~~

~~(k) Any business, service, processing, storage or display essential or incidental to any permitted use in this zone and not conducted entirely within an enclosed building.~~

~~(hl) Golf course, country club with golf course, private club.~~

~~(jm)~~ Agricultural animals, limited to cattle, horses and sheep, and agricultural structures such as barns, stables, sheds, but excluding feed lots, in areas designated on ~~the Tualatin Community Plan Map~~ Map 9-6 Conditional Use of Agricultural Animals. The City Council may limit the number of animals to be allowed on a specific parcel of property.

~~(jn)~~ Increased building height to a maximum of ~~75~~50 feet, if all yards adjoining said building are not less than a distance equal to 1 1/2 times the height of the building.

~~(o) Nursing or convalescent home.~~

~~(kp)~~ Retirement housing conforming to the standards in TDC 34.160 - 34.170.

~~(q) Electrical substation and above ground natural gas pump station.~~

Section 6. TDC 41.015 is amended to read:

Housing density shall not exceed 10 dwelling units per net acre, except as set forth below:

(1) Where provided by TDC 41.150.

(2) The maximum density for singlewide manufactured dwelling parks or parts of parks used for singlewide units shall not exceed 12 dwelling units per net acre.

(3) The maximum density for residential facilities, nursing facilities and ~~convalescent homes~~ and retirement housing in accordance with 34.170(2) shall not exceed 15 dwelling units per net acre.

Section 7. TDC 41.030 is amended to read:

No building, structures or land shall be used, and no building or structures shall be erected, enlarged or altered, except for the following uses:

(1) Townhouses and multi-family dwellings, including duplexes and triplexes.

(2) Condominiums constructed in accordance with TDC 40.030(2).

(3) Manufactured dwelling parks, in the locations designated by the Tualatin Community Plan Map and constructed in accordance with TDC 34.190.

(4) Single family dwellings in a small lot subdivision.

(5) Greenways, and Natural Areas, including but not limited to bike and pedestrians paths and interpretive stations.

(6) Density transfer project approved by the City prior to April 25, 1994, subject to TDC 41.320.

(7) Residential homes.

(8) Residential facilities.

(9) Nursing facility.

~~(10)~~ Family day care provider, provided that all exterior walls and outdoor play areas shall be a minimum distance of 400 feet from the exterior walls and pump islands of any automobile service station, irrespective of any structures in between.

~~(11)~~ Sewer and water pump stations and pressure reading stations.

~~(12)~~ Wireless communication facility attached, provided it is not on a single-family dwelling or its accessory structures.

(13) Wireless communication facility located within 300 feet of the centerline of I-5.

~~(14)~~ Accessory dwelling units in a small lot subdivision as provided in TDC 34.300 - 34.310.

(15) Transportation facilities and improvements.

Section 8. Map 9-6 is added to the TDC, which is attached and incorporated by reference:

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

CITY OF TUALATIN, OREGON

BY [Signature]
Mayor

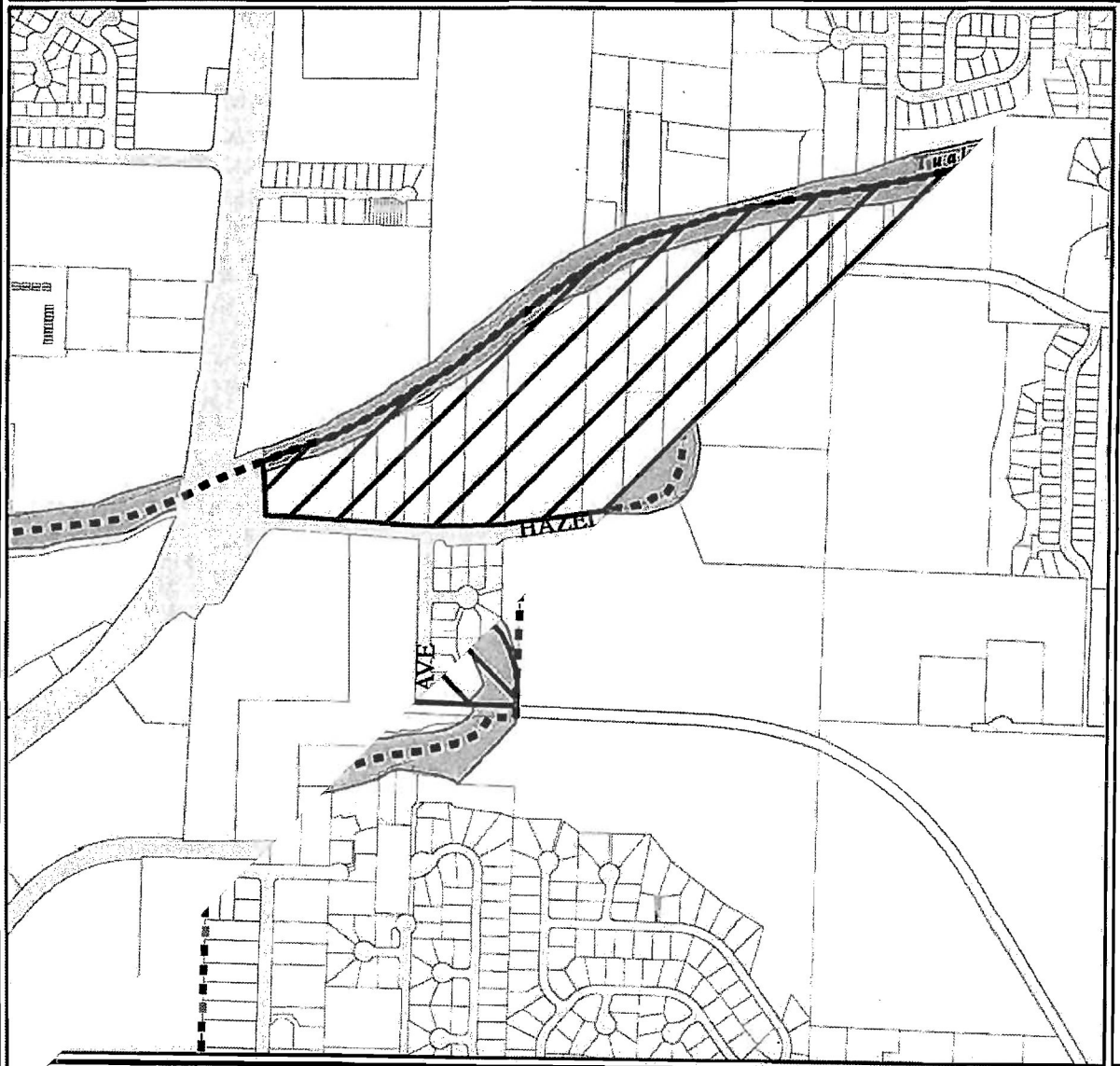
APPROVED AS TO LEGAL FORM

[Signature]
CITY ATTORNEY

ATTEST:

BY [Signature]
City Recorder

Map 9-6: Conditional Use of Agricultural Animals - DRAFT



EXHIBIT

D

PTA-09-09: ANALYSIS AND FINDINGS

The approval criteria of the Tualatin Development Code (TDC) 1.032 must be met if the proposed PTA is to be granted. The Plan Amendment criteria are addressed below.

A. 1. Granting the amendment is in the public interest.

The proposed amendment to the Tualatin Development Code (TDC) amends the lists of uses in TDC Chapters 40 Low-Density Residential (RL) and 41 Medium Low-Density Residential (RML), amends the provisions allowing expansion of certain non-conforming uses in TDC Chapter 35 and amends terms and definitions in TDC 31.060. The public interest is to:

- 1) Review the conditional uses allowed in residential planning districts and determine whether the uses are or are not suitable or desirable for location within a residential area. Determine uses to be retained as a conditional use, changed to a permitted use, or removed as an allowed use in all or certain residential districts. Modify the terms and definitions of certain uses for suitability in residential districts and consistency with current State of Oregon provisions and development practices.
- 2) Consider the impacts on existing conditional uses in residential planning districts when removing or revising the lists of conditional uses. Consider providing existing conditional uses that become non-conforming through the proposed amendment and are determined to be an appropriate facility in a particular location, a viable means to continue a reasonable operation or to change the planning district designation to a one that allows the use.
- 3) Consider the effect of changing the list of allowed uses in residential planning districts on the residential land supply in respect to Statewide Land Use Planning Goal 10-Housing and the Metro Urban Growth Management Functional Plan (MUGMFP) Title 1-Table 1 Dwelling Unit Capacity.

Based on the Council's discussions and direction from the five Work Sessions on conditional uses in residential planning districts, staff prepared draft language amending the lists of uses in TDC Chapters 40 (RL), 41 (RML), amending the provisions allowing expansion of certain non-conforming uses in TDC Chapter 35 and amending terms and definitions in TDC 31.060.

As proposed in the draft language, schools, churches, child day-care centers, governmental structures, hospital, water reservoir, golf course (country club), and retirement housing will remain as conditional uses allowed in residential districts. Public parks, playgrounds and recreation buildings will be classified as permitted uses. Nursing homes will be removed from RL, redefined, and allowed in the RML, RMH (Medium-High Density Residential), RH (High Density Residential) and RH/HR (High Density/High Rise Residential) Planning Districts.

Cemeteries; colleges; business, services, storage & other activities incidental to permitted uses; retail nursery; sanitarium; private club; keeping of agricultural animals; and electrical substation or above ground natural gas pump station will no longer be

EXHIBIT D

Analysis and Findings

listed as allowed uses in residential planning districts. The existing cemetery and power substation currently with conditional use permits in RL will become non-conforming and allowed to expand or enlarge on the property.

A "school" use in residential district will be specified as "Kindergarten-12th Grade" and "country club" will be specified as "Country Club with golf course". Additional building height is proposed to be reduced from the 75 ft. currently allowed as a conditional use in residential planning districts to a maximum 50 ft. height. (Attachment A, pg. 2)

Public Interest #1. The City Council began the review of conditional uses in residential planning districts in response to concerns about the suitability and appropriateness of the conditional uses currently allowed in the RL planning district and other residential districts and the Council's ability to address development issues in the conditional use and quasi-judicial land use process.

The list of conditional uses in residential areas in the current TDC is similar to the list of conditional uses in earlier versions of Tualatin's Zoning Code from the 60's & 70's and the Community Plan/ Development Code from 1978 thru today. Allowing schools, churches, community buildings, parks, country clubs, hospitals, government and public facilities in residential areas as a conditional use is very common among cities in Oregon and other states. Traditionally and practically, these uses (especially schools & churches) have been considered semi-public uses that belong with and are supportive of residential neighborhoods, subject to conditions deemed necessary by the local government.

With changing urban and residential development trends and with changes to how residents view the benefits and impacts of public and private facilities located in or near their neighborhood, the older or existing lists of conditional uses may include outdated terms or in today's development marketplace, include activities that may not be viewed as compatible with residential areas as they maybe once were. From just the aspect of building or facility size, siting even a traditionally acceptable and desired use such as a new school or church in a residential area can be a controversial and difficult land use issue to consider in a conditional use permit process.

Since the current lists were established, another change significantly affected how a City can address a conditional use permit land use application. Conditional use permits can no longer be employed as a way to restrict locating a listed use and its improvements on a property where decision makers, neighboring property owners or other interests believe it is unsuitable. Following decisions by Oregon courts on land use and conditional uses, local decision-makers are constrained from denying a conditional use permit unless it can be shown that the proposal does not meet the conditional use criteria and any specific harms or impacts cannot be legally or physically mitigated. A conditional use permit applicant must show that the applicable Development Code provisions are met (eg. specific Planning District standards for setbacks or lot size and TDC Chapter 73 Community Design standards for screening of outdoor activities, etc.) and the five criteria for conditional use approval in TDC 32.030

(1-5) are satisfied. In the public hearing, the local decision makers must make a judgment if the applicable standards or the conditional use permit criteria are met as proposed, or not. If a standard or criteria could be met or mitigated by a limitation or required improvement, the City can grant the particular conditional use with conditions of approval such as requiring additional parking or screening of outdoor storage.

The conditions of approval must meet the legal tests of having a direct relationship between the proposed use and meeting a particular standard, and are proportional to the specific impacts of the use to public facilities or surrounding properties. A condition requiring a large-scale (ie. costly), off-site public facility improvement may not meet legal tests in a conditional use permit process, but may be legally defensible as a condition in a specific development project in an Architectural Review or Subdivision decision. Denial of a conditional use permit is difficult because it would require detailed findings of fact showing that the proposed use will cause specific harms or impacts that cannot be legally or physically mitigated.

As discussed by the Council in the Work Sessions and proposed in the draft language, schools, churches, child day-care centers, governmental structures, hospital, water reservoir, golf course (country club), and retirement housing will remain as conditional uses allowed in residential districts. The Council agreed that the uses were desirable facilities in the community and generally appropriate in a residential planning district given the level of activity in comparison to residential uses, the scale of typical facilities and agreed that the existing facilities located in residential districts were examples of that appropriateness. The proposed language includes revisions for clarity such as adding "Kindergarten thru 12th Grade" to the "schools" conditional use and specifying that a country club "with golf course" is the allowed use.

Also the Council believed that "additional building height" conditional use be reduced from 75 ft. to 50 ft. for compatibility with neighboring residential development. The need for a future review of the criteria and standards for conditional uses with an additional review of the list of conditional uses was discussed at Work Sessions IV and V.

In discussion, the Council believed that public parks, playgrounds and recreation buildings were very appropriate uses in residential areas and recommended they be allowed as permitted uses. Each public park in Tualatin has conditional use approval for location in a residential planning district. The City's parks and recreation facilities are designed to fit in a residential setting and City park siting and design is subject to an extensive public involvement process administered by the Community Services Department and the Tualatin Parks Advisory Committee.

Out of the Council's concern for the appropriateness of the scale of a large nursing home facility in comparison to nearby single family residential properties, the proposed amendment would remove Nursing Homes from the RL Planning District. Nursing homes are redefined in respect to current Oregon Department of Human Services terminology and the residential care services marketplace (ie. recently with the Marquis Companies assisted living, skilled nursing and independent living project). As proposed,

nursing homes will be allowed as conditional uses in the RML, RMH (Medium-High Density Residential), RH (High Density Residential) and RH/HR (High Density/High Rise Residential) Planning Districts where the scale of a care facility is comparable to multi-family developments allowed in those districts.

In Work Session, the Council determined that cemeteries; colleges; business, services, storage & other activities incidental to permitted uses; retail nursery; sanitarium; private club; keeping of agricultural animals; and electrical substation or above ground natural gas pump station are not appropriate as new conditional uses in residential planning districts. Concerns were expressed about the uses listed above for potential higher levels of on-site and off-site activity, the larger scale of buildings and facilities, an increase in traffic in residential areas and for potential conflicts with single family and multi-family residential use. The Council was also concerned about the ability to address issues of the compatibility of larger scale buildings compared to nearby residential development and traffic impacts to residential streets in the conditional use permit process.

The proposed language in amendment PTA-9-09 is a product of the Council's review of conditional uses in residential planning districts and the Council's determinations of uses that are desired and suitable for location in a residential area. The proposed language provides clarification, specifies certain forms of uses and provides updated terms and definitions of conditional uses allowed. The proposed amendment satisfies the Public Interest #1.

Public Interest #2. In Work Session, the Council examined existing conditional uses located in residential districts as examples of how the use was suitable for the residential location and to consider the impact on individual facilities such as schools, churches, day care centers, cemeteries and others if the use was no longer listed as an allowed use and became a non-conforming use. The Council members believed that the existing Winona Cemetery (Only cemetery in residential area)(Located in RML on SW Tualatin Road) and the existing PGE Substation (Only power substation in residential area) (Located in RL on SW Borland Road) conditional uses are suitable in their current locations and, subject to their respective conditional use permits, should be allowed to expand or enlarge on the property the facility was approved on. The proposed amendment to TDC Chapter 35 is intended to allow the "grandfathering" of the Winona Cemetery and the PGE substation as exceptions to standards in TDC 35.020 limiting the expansion or enlargement of non-conforming uses.

The revisions to the Non-conforming Use provisions and identification of the existing cemetery and existing electrical substation as eligible for grandfathering satisfies Public Interest #2.

Public Interest #3. The Council was observant of the effects of actions such as creating non-conforming uses that would have the potential to remove land from the City's residential land inventory. The proposed PTA-09-09 amendments to conditional uses in the residential districts will not change schools, churches and parks as allowed uses.

The typically large property size of the three uses represents the largest amount acreage of non-residential uses in RL and other residential districts. The proposed amendment does not force or encourage school, church or public park facility to seek a change to a commercial or institutional planning district. The existing cemetery and electrical substation are allowed to expand at their existing locations, remaining in the residential district. The uses proposed to be removed from residential districts (and not grandfathered) are not existing conditional uses and do not represent a reduction of the residential land supply.

The City's residential land supply, minimum residential density, multi-family mix and residential capacity obligations for Oregon Goal 12 and Metro Regional Urban Growth Functional Plan are not expected to be affected by the proposed amendment. Public Interest #3 is met.

The public interest items 1-3 are met and granting the amendment is in the public interest. Criterion "1" is met.

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

As stated above, the proposed amendment is the product of City Council interest in having suitable and appropriate uses in residential areas. The Council has responded to concerns about the non-residential use currently allowed in the RL- RH Planning Districts and carefully considered which ones are suitable and represent minimal impacts on residential development. Granting the amendment at this time, rather than delaying its implementation to a later date, will ensure that non-residential development and larger scale development in the residential areas can be compatible and adequately mitigated where necessary.

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

Criterion "2" is met.

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

The applicable objectives of the Tualatin Community Plan are presented below.

TDC 4.050 Community Growth Objectives (6) "Arrange the various land uses so as to minimize land use conflicts and maximize the use of public facilities as growth occurs."

The proposed changes to the list of conditional uses allowed in residential planning districts is intended to minimize conflicts between residential development and non-residential uses that have an activity level, scale of building and facility and traffic impacts that are not suitable or appropriate for residential areas. The proposed amendment conforms to TDC 4.050(6).

The proposed amendments conform to the applicable objectives of the Tualatin Community Plan.

Criterion "3" is met.

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

The various characteristics of areas in the City.

RL Planning Districts are primarily characterized by low-density, detached, single-family dwelling development. The RML, RMH, RH Planning Districts are primarily characterized by the attached, 2-3 story, multi-family housing developments. Schools, churches, parks are the predominant non-residential use in terms of land acreage and facility size.

The proposed amendment changing the lists of allowed uses in the RL and RML Planning District acknowledges the compatibility of schools, churches and parks and retains other non-residential uses that are consistent with the scale, appearance, activity levels and traffic patterns of residential housing development. The intent of the proposed amendment is to maintain or improve compatibility with the characteristics of the residential areas of Tualatin .

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

As discussed above, the Council examined the suitability of the non-residential conditional uses currently allowed in RL thru RH/HR Planning Districts. The proposed amendment refines the existing list somewhat and removes uses with the accompanying development improvements and activities that are considered unsuitable in the residential districts.

Trends in land improvement and development.

At this time, the existing re-developable or undeveloped land in Tualatin's residential districts is limited and often constrained by irregular lot configurations and environmental restrictions on natural features such as streams and wetlands. Market trends to smaller residential lot sizes and the prevalence of the physical constraints reduces the interest of residential development on the re-developable or undeveloped lots and makes the properties more viable for non-residential uses allowed by conditional use. In the future if Tualatin adds additional territory for residential uses, It will be important to have the desired kinds of uses such as schools, churches and infrastructure as allowed uses and a revised list of conditional uses deemed appropriate for residential districts.

Property values.

The proposed amendment is focused on residential districts and would not be expected to have effects on residential property values. The proposed changes to the list of conditional uses allowed in residential districts will have no effect on the property value of developments such as schools, churches and parks. There is little or no effect for

uses that are not established at this time or for the “grandfathered” uses of cemetery and power substation. Existing conditional uses proposed for removal from the list such as “private club” would become legal non-conforming and can remain as established or approved.

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

The proposed amendment emphasizes residential uses and residentially supporting uses in the RL, RML, RMH, RH and RH/HR Planning Districts.

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

The amendment does not affect right of way and access.

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

Not applicable because the proposed amendments do not impact or alter natural resources associated with a development.

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

Not applicable because proposed amendments do not impact or alter natural resources associated with a development.

The public need for healthful, safe, aesthetic surroundings and conditions.

The purpose of the proposed amendment is to revise the list of conditional uses in residential districts to emphasize residential uses and residentially supporting uses in the RL, RML, RMH, RH and RH/HR Planning Districts. The conditional uses allowed are compatible with residential development and ensure an aesthetic surrounding.

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

Proof of a change in a neighborhood or area.

The proposed amendment is focused on residential planning districts as a whole and not on a particular neighborhood or area.

A mistake in the plan map or text.

None is alleged.

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

Criterion “4” is met.

E. 5. The criteria in the Tigard-Tualatin School District Facility Plan were considered.

The criteria in the Facility Plan were considered and found to not be applicable to this amendment regarding conditional uses because it does change the conforming status of existing school sites and does not represent a constraint or conflict with land available for future school sites.

F. 6. Oregon Statewide Planning Goals

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

Goal 1 – Citizen Involvement – The general public, through Tualatin's local program of citizen involvement, including public TPAC committee meetings, has the opportunity to participate in the development and adoption of legislation needed to carry out the Tualatin Community Plan objectives. The proposed amendment will change the list of conditional uses in residential planning districts, allowing some, removing some from the current list and "grandfathering" an existing cemetery and power substation. Conditional Use Permits are considered in a quasi-judicial land use decision process that includes substantial opportunity for citizen involvement.

The proposed amendment is consistent with Statewide Planning Goal 1.

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

Goal 3 – Agricultural Lands – Not applicable.

Goal 4 – Forest Lands – Not applicable.

Goal 5 – Natural Resources, Scenic and Historic Areas, and Open Spaces – Not applicable.

Goal 6 – Air, Water and Land Resource Quality – Not applicable.

Goal 7 – Areas Subject to Natural Disasters and Hazards – Not applicable.

Goal 8 – Recreational Needs – The proposed amendment classifies public parks as a permitted use and continues to allow golf courses as a conditional use. The recreational needs of the City are not harmed by the proposal.

Goal 9 – Economic Development – Not applicable.

Goal 10 – Housing – The purpose of the proposed amendment is to promote and protect the general welfare of the City by ensuring that uses allowed in residential planning districts are compatible with residential development. The proposed amendment will not jeopardize the City maintaining its regional housing density and housing mix standards that are a principal element of Goal 10 implementation (in the Metropolitan Housing Rule, OAR-660-007). The amendment does not remove land from the inventory, does not change the density or designation of residential land and does not force a plan map amendment to change a property's designation from residential to another non-residential designation such as Institutional. Therefore, the proposed amendment complies with the Housing Rule. The Metropolitan Housing Rule is a State of Oregon Administrative Rule that applies to the cities and counties within the metropolitan Portland urban growth boundary. While applying to the Portland region, it is not imposed by Metro, the Regional Government

There is no evidence that the proposed amendment will create a barrier to development of new housing in residential districts. The proposed amendment, therefore, is in conformance with the intent of Goal 10, which is to provide for the housing needs of citizens of the state.

Goal 11 – Public Facilities and Services – The proposed amendment includes language allowing an existing power substation to expand or enlarge as a non-conforming use. New substations will not be allowed in residential planning districts, but will remain as allowed uses in commercial, industrial and institutional districts. The proposed amendment, therefore, is consistent with Statewide Planning Goal 11.

Goal 12 – Transportation – No change to transportation system demand or capacity is attributed to the conditional use in residential plan amendment. The proposed amendment is consistent with Statewide Planning Goal 12.

Goals 13 through 19 – Statewide Planning Goals 13 through 19 were considered and found not applicable to the proposed amendment.

The proposed amendment is consistent with the applicable Statewide Planning Goals and applicable Oregon Administrative Rules.

G. 7. Metro's Urban Growth Management Functional Plan (UGMFP).

Staff reviewed the PMA in terms of the Metropolitan Service District's Urban Growth Management Functional Plan as provided in Metro Code, Title III, Planning, Chapter 3.07 Urban Growth Management Functional Plan. The UGMFP and TDC Map 9-4 Design Type Boundaries, identify the Residential Planning District as "IN-Inner Neighborhood" and "ON-Outer Neighborhood". The proposed amendment revising the

list of non-residential conditional uses allowed in residential planning districts is consistent with the Functional Plan as follows:

Title 1 – Housing and Employment Accommodation – Table 1 in Title I states the City's housing capacity from 1994 and 2017 is 4,054 dwelling units. The housing capacity target is to be achieved by providing a potential for housing development within the City's Planning Area considering an amount of zoned and developable residential land (land designated in RL – RH/HR Residential Planning Districts) and an amount of land eligible for residential development (land in commercial or MC Planning Districts eligible for residential uses). The purpose of the proposed amendment is to sort out undesirable or incompatible non-residential conditional uses from residential planning districts. The opportunity achieve the target housing capacity is not reduced. The proposed amendment is consistent with Title 7

Title 2 – Regional Parking Policy – Not applicable.

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

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

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

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

Title 7 – Affordable Housing – The purpose of the proposed amendment is to sort out undesirable or incompatible non-residential conditional uses from residential planning districts. The opportunity for affordable housing is not affected. The proposed amendment is consistent with Title 7.

Title 8 – Compliance Procedures – Notice of the proposed amendment was mailed to the METRO Chief Operating Officer on October 15, 2010. The proposed amendment is consistent with Title 8.

Title 9 – Performance Measures – Not applicable.

Title 10 – Functional Plan Definitions – Not applicable.

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

Title 12 – Protection of Residential Neighborhoods – Not applicable.

Title 13 – Nature in Neighborhoods – Not applicable.

Granting the amendment is consistent with the METRO's Urban Growth Management Functional Plan.

Criterion 7 is met.

- H. 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.**

The proposed amendment does not result in any development, does not change any land use designations, and does not alter the carrying capacity or number of vehicle trips for transportation facilities. Therefore, the proposed amendment has no impact on transportation facility capacity



Century Farm Christmas Trees

Rochelle Martinazzi
10050 SW Hazelbrook Road
Tualatin, OR 97062

December 6, 2010

Mayor Lou Ogden
Will Harper
Members of the Tualatin City Council

My great grandparents William and Rosa Jurgens purchased 140 acres of farm land in 1869. I now own and operate five acres of that farm, which has been recognized as a Century Farm by the Oregon Department of Agriculture as well as the Oregon Historical Society. The William Jurgens farm is the only Century Farm in Tualatin.

For 141 years this land has been a productive farm. As a child I milked cows on my parents' dairy. We grew strawberries, black raspberries, hay, and row crops. We raised pigs, chickens and horses as well as cows. When Apache Bluff was developed into housing, many residents said they enjoyed seeing my dad's horses and cows.

I have tried to follow my ancestors' lead in being a good a steward of the land. I am now in the midst of harvesting holiday trees. My land is outside the city limits, and I have my own well and septic tank.

The property north of Hazelbrook Road from Jurgens Road and the wetland clear to the golf course was once part of the Jurgens farm. Those property owners wish to be included in the exclusion to the proposed amendment that would not allow animals other than household pets. I would also like to be included in the exclusion, but understand I have been left out. Why has part of the old Jurgens farm been chosen to be excluded but not my property?

When my kids were growing up, they raised steers as 4-H projects. I do not currently own any animals, but my grandsons, who live on Shasta Trail, would like to have a pony on their nana's farm when they get a little older.

It does seem like if any property is "grandfathered in" mine should be.

Thank you for considering my request to be included in the exclusion.

Rochelle M. Martinazzi



ITEMS REFERRED TO AS EXHIBITS IN THE FOREGOING ORDINANCE ARE ATTACHED TO THE ORIGINAL. THEY HAVE BEEN OMITTED FROM THE COUNCIL PACKET AS A CONSERVATION MEASURE. IF THESE EXHIBITS NEED TO BE EXAMINED, PLEASE CONTACT THE CITY RECORDER.



6606 SE Lake Road, Portland, OR 97222 • PO Box 22108 Portland OR 97289-2108
 Phone: 503-884-0380 Fax: 503-820-3493
 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 09-09
 TT11499**

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

1
 week in the following issue:
November 04, 2010

Charlotte Allsop

Charlotte Allsop (Accounting Manager)

Subscribed and sworn to before me this
 November 4, 2010.

Robi A. Burgess

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
 Amount Due \$144.80 *
 *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, November 22, 2010, at the Council Building, Tualatin City Center, at 18880 SW Martinazzi Avenue, to consider:

PLAN TEXT AMENDMENT (PTA) 09-09—AN ORDINANCE RELATING TO CONDITIONAL AND PERMITTED USES IN RESIDENTIAL PLANNING DISTRICTS; AND AMENDING TDC 31.060, 35.020, 40.020, 40.030, 41.015 & 41.020 (PTA-09-09)

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 William Harper, Associate Planner at (503) 691-3027 or wharper@ci.tualatin.or.us. This meeting and any materials being considered can be made accessible upon request.

CITY OF TUALATIN, OREGON

By: Sherilyn Lombos
 City Recorder

Publish 11/04/2010.

TT11499

EXHIBIT A

AFFIDAVIT OF POSTING

STATE OF OREGON)
) SS
COUNTY OF WASHINGTON)

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

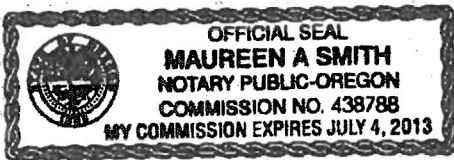
That at the request of Sherilyn Lombos, City Recorder for the City of Tualatin, Oregon; that I posted four copies of the Notice of Hearing on the 1st day of November 2010, a copy of which Notice is attached hereto; and that I posted said copies in four public and conspicuous places within the City, to 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 1st day of November, 2010

Stacy Crawford
Stacy Crawford

Subscribed and sworn to before me this 1st day of November, 2010.



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

RE: PLAN TEXT AMENDMENT—AN ORDINANCE RELATING TO
CONDITIONAL AND PERMITTED USES IN RESIDENTIAL PLANNING
DISTRICTS; AND AMENDING TDC 31.060, 35.020, 40.020, 40.030,
41.015 & 41.020 (PTA-09-09)

EXHIBIT B



City of Tualatin

www.ci.tualatin.or.us

NOTICE OF HEARING CITY OF TUALATIN, OREGON

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CITY OF TUALATIN, OREGON

By: Sherilyn Lombos
City Recorder

NOTICE TO THE TUALATIN TIMES: Please publish in the TUALATIN TIMES on
November 4, 2010



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City of Tualatin

18880 SW Martinazzi Avenue
Tualatin, Oregon 97062-7092

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