



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

05/21/2009

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

FROM: Plan Amendment Program Specialist

SUBJECT: City of Grants Pass Plan Amendment
DLCD File Number 006-08

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

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Tuesday, June 02, 2009

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 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 THAT IT WAS MAILED TO DLCD. AS A RESULT, YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.

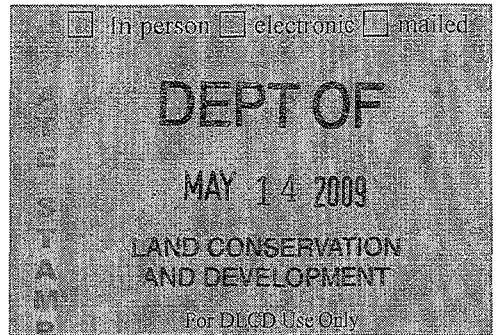
Cc: Jared Voice, City of Grants Pass
Gloria Gardiner, DLCD Urban Planning Specialist
John Renz, DLCD Regional Representative

<paa> Y

FORM 2

DLCD

Notice of Adoption



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

Jurisdiction: *City of Grants Pass*
 Date of Adoption: *5/6/2009*

Local file number: *08-40500005*
 Date Mailed: *5/12/2009*

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Select one** Date: *10/8/08 + 11/14/08*

- | | |
|-------------------------------------------------------------------|-----------------------------------------------------------|
| <input type="checkbox"/> Comprehensive Plan Text Amendment | <input type="checkbox"/> Comprehensive Plan Map Amendment |
| <input checked="" type="checkbox"/> Land Use Regulation Amendment | <input type="checkbox"/> Zoning Map Amendment |
| <input type="checkbox"/> New Land Use Regulation | <input type="checkbox"/> Other: |

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

The amendment addresses the equal terms provision of the Religious Land Use and Institutionalized Persons Act (RLUIPA) by adding "Religious Assembly" as a permitted use within the City's three industrial zones (Business Park-BP, Industrial Park-IP, and Industrial-I.) Other public assembly uses are permitted within each of these zones, making the amendment necessary to maintain consistency

Does the Adoption differ from proposal? Please select one *with RLUIPA. Amendment also adds "Public Parks" as permitted use within the "I" zone.*

Yes - the original proposal added "Religious Assembly" as a permitted use within the BP zone, but deleted other public assembly uses from the list of permitted uses within the "I" and "IP" zones. The intent of the original proposal was to maintain "I" and "IP" lands for industrial uses.

Plan Map Changed from: _____ to: _____

Zone Map Changed from: _____ to: _____

Location: _____ Acres Involved: _____

Specify Density: Previous: _____ New: _____

Applicable statewide planning goals:

- | | | | | | | | | | | | | | | | | | | |
|-------------------------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

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. 006-08 (17190)

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

Josephine County

Local Contact: Jared Voice

Phone: (541)474-6355 Extension: 6317

Address: 101 NW "A" Street

Fax Number: 541-476-9218

City: Grants Pass

Zip: 97526

E-mail Address: jvoice@grantspassoregon.gov

ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**

per ORS 197.610, OAR Chapter 660 - Division 18.

1. **Send this Form and TWO Complete Copies** (documents and maps) of the Adopted Amendment to:

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

2. **Electronic Submittals:** At least **one** hard copy must be sent by mail or in person, but you may also submit an electronic copy, by either email or FTP. You may connect to this address to FTP proposals and adoptions: **webserver.lcd.state.or.us**. To obtain our Username and password for FTP, call Mara Ulloa at 503-373-0050 extension 238, or by emailing **mara.ulloa@state.or.us**.
3. **Please Note:** Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can now access these forms online at **http://www.lcd.state.or.us/**. Please print on **8-1/2x11 green paper only**. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to **mara.ulloa@state.or.us** - **ATTENTION: PLAN AMENDMENT SPECIALIST**.

ORDINANCE NO. 5487

AN ORDINANCE AMENDING THE DEVELOPMENT CODE TO ADDRESS THE FEDERAL RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT (RLUIPA) AND ASSOCIATED CASE LAW.

WHEREAS:

1. The Comprehensive Plan of the City of Grants Pass was adopted December 15, 1982. The Development Code of the City of Grants Pass was adopted August 17, 1983; and
2. The United States Religious Land Use and Institutionalized Persons Act (RLUIPA) was signed into law September 25, 2000; and
3. The equal protection clause of RLUIPA requires that "no government shall impose or implement a land use regulation that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution"; and
4. Subsequent case law has provided clarification as to the definition of "assembly" for the purposes of RLUIPA; and
5. The ordinance amends Articles 12, 25 and 30 of the Development Code to ensure that the City's land use laws are consistent with the equal protection clause of RLUIPA; and
6. The proposed amendment is consistent with the goals and policies of the Comprehensive Plan; and
7. Findings addressing the applicable Development Code criteria are contained in a separate document entitled *RLUIPA Development Code Text Amendment City Council Findings of Fact* (Exhibit D).

NOW, THEREFORE, THE CITY OF GRANTS PASS HEREBY ORDAINS:

Section 1: The amendments to the Development Code as set forth in Exhibits 'A', 'B' and 'C', which are attached to and incorporated in this ordinance as follows, are hereby adopted:

- A. Article 12, Schedule 12-2
- B. Article 25, Section 25.042 (4)
- C. Article 30; amendments to specific definitions as listed

ADOPTED by the Council of the City of Grants Pass, Oregon, in regular session this 6th day of May 2009.

SUBMITTED to and Approved by the Mayor of the City of Grants Pass, Oregon, this 11th day of May 2009.

Michael Murphy
Michael Murphy, Mayor

ATTEST:

David Reeves
Finance Director

Date submitted to Mayor: 5-8-09

Approved as to Form, Douglas M. McGeary, Interim City Attorney DM

²⁴Schedule 12-2. Permitted Uses and Site Plan Review Procedures

Land Use Types	Zoning Districts											
	Residential						Commercial			Industrial		
	UR	R-1-12 R-1-10 R-1-8	R-1-6	R-2	R-3	R-4	NC	GC	CBD	BP	IP	I
General activities not covered below, exempt from Development Permit	P-I-EX. See Section 2.033											
General activities not covered below, requiring an administratively issued use permit	P-I-AU. See Section 2.034											
General activities not covered below, where Building Permit serves as Development Permit	P-I-A. See Section 2.035											
1) Agriculture												
a) Intensive	P-I-EX	-	-	-	-	-	-	-	-	P-I-EX	P-I-EX	P-I-EX
b) Non Intensive	P-I-EX	P-I-EX	P-I-EX	P-I-EX	P-I-EX	P-I-EX	P-I-EX	P-I-EX	P-I-EX	P-I-EX	P-I-EX	P-I-EX
c) Forestry	P-I-EX	-	-	-	-	-	-	-	-	-	-	-
2) Residential Dwelling Unit												
a) Existing	P-I-A (e)	P-I-A (e)	P-I-A (e)	P-I-A (e)	P-I-A (e)	P-I-A (e)	P-I-A (e)	P-I-A (e)	P-I-A (e)	P-I-A (e)	P-I-A (e)	P-I-A (e)
b) New												

EXHIBIT A

Land Use Types	UR	R-1-12 R-1-10 R-1-8	R-1-6	R-2	R-3	R-4	NC	GC	CBD	BP	IP	I
1. Detached (1)	P-I-A	P-I-A	P-I-A	P-I-A	P-I-A	P-I-A	-	P-I-A	P-I-A	-	-	-
2. Detached (2)	PUD	PUD	P-II	P-I-A	P-I-A	P-I-A	-	P-I-A	P-I-A	-	-	-
3. Duplex	PUD	PUD	P-II	P-IA	P-IA	P-IA	-	P-I-A	P-I-A	-	-	-
4. Multi-Dwelling	PUD	PUD	PUD	P-II	P-I-C	P-I-C	-	P-I-C	P-I-C	-	-	-
5. Manufactured Housing												
"A" Individual Lot	P-I-A	P-I-A	P-I-A	P-I-A	P-I-A	P-I-A	-	P-I-A	P-I-A	-	-	-
"B" Manufactured Dwelling Park	-	-	-	P-III (d)	P-III (d)	P-I-C	-	-	-	-	-	-
"C" Health Condition	P-II	P-II	P-II	P-II	P-II	P-II	-	P-II	P-II	-	-	-
c) Group Quarters	-	-	-	-	-	P-II	-	-	P-II	-	-	-
d) Home Occupation												
1. Occupational Use, per 14.211	P-I-EX	P-I-EX	P-I-EX	P-I-EX	P-I-EX	P-I-EX	P-I-EX (f)	P-I-EX	P-I-EX	P-I-EX (f)	P-I-EX (f)	P-I-EX (f)
2. Minor, per 14.220	P-I-AU	P-I-AU	P-I-AU	P-I-AU	P-I-AU	P-I-AU	P-I-AU (f)	P-I-AU	P-I-AU	P-I-AU (f)	P-I-AU (f)	P-I-AU (f)
3. Major, per 14.220	P-II	P-II	P-II	P-II	P-II	P-II	P-I-C (f)	P-I-C	P-I-C	P-I-C (f)	P-I-C (f)	P-I-C (f)
e) Residential Accessory -Building -Use	P-I-A P-I-EX	P-I-A P-I-EX	P-I-A P-I-EX	P-I-A P-I-EX	P-I-A P-I-EX	P-I-A P-I-EX	P-I-A P-I-EX (e)	P-I-A P-I-EX	P-I-A P-I-EX	P-I-A P-I-EX (e)	P-I-A P-I-EX (e)	P-I-A P-I-EX (e)
f) Transient Quarters	-	-	-	-	-	-	-	-	-	P-III	-	P-III
g h) Residential Home, per 14.510	P-I-A	P-I-A	P-I-A	P-I-A	P-I-A	P-I-A	P-I-A (f)	P-I-A	P-I-A	P-I-A (f)	P-I-A (f)	P-I-A (f)

Land Use Types	UR	R-1-12 R-1-10 R-1-8	R-1-6	R-2	R-3	R-4	NC	GC	CBD	BP	IP	I
h) Residential Facility, per 14.521	P-II	P-II	P-II	P-II	P-I-C	P-I-C	P-I-C	P-I-C	P-I-C	-	-	-
i) Dwelling, Accessory	-	-	-	-	-	-	P-I-C	P-I-C	P-I-C	-	-	-
3) Trade												
a) Retail Indoor	-	-	-	-	-	-	P-II	P-(a)	P-(a)	P-(b)	-	-
b) Retail Outdoor	-	-	-	-	-	-	-	P-(a)	-	P-(b)	-	-
c) Wholesale	-	-	-	-	-	-	-	P-(a)	-	P-(b)	-	-
d) Itinerant Use, per 14.120	-	-	-	-	-	-	-	P-I-AU	P-I-AU	-	-	-
4) Services												
a) Professional Office	-	-	-	-	-	P-II	-	P-(a)	P-(a)	P-(b)	P*-(b)	-
b) Business Office	-	-	-	-	-	-	-	P-(a)	P-(a)	P-(b)	-	-
c) Limited Office	P-II	P-II	P-II	P-II	P-II	P-II	-	-	-	-	-	-
d) Repair/Maintenance, Commercial	-	-	-	-	-	-	-	P-(a)	P-(a)	P-(b)	-	P-(b)
e) Auto Service Station	-	-	-	-	-	-	-	P-(a)	-	P-(b)	-	-
f) Eating/Drinking Establishment	-	-	-	-	-	-	-	P-(a)	P-(a)	P-(b)	-	P-(b)
g) Hotel/Motel	-	-	-	-	-	-	-	P-(a)	P-(a)	-	-	-
h) RV Parks	-	-	-	-	-	-	-	P-III	-	-	-	-
i) Day Care/Family, per 14.310	P-I-A	P-I-A	P-I-A	P-I-A	P-I-A	P-I-A	P-I-A (f)	P-I-A	P-I-A	P-I-A (f)	P-I-A (f)	P-I-A (f)
j) Day Care/Group, per 14.320	P-II	P-II	P-II	P-II	P-II	P-II	-	P-II	P-II	P-II	P-II	P-II

Land Use Types	UR	R-1-12 R-1-10 R-1-8	R-1-6	R-2	R-3	R-4	NC	GC	CBD	BP	IP	I
k) Group Care	-	-	-	-	P-III	P-III	-	P-(a)	P-(a)	-	-	-
l) Hospitals	-	-	-	-	-	P-III	-	P-III	-	-	-	-
m) Vet. Clinics	-	-	-	-	-	-	-	P-(a)	-	P-(b)	-	-
n) Commercial Accessory -Building -Use	-	-	-	-	-	-	P-(g) P-EX	P-(g) P-EX	P-(g) P-EX	P-(g) P-EX	-	-
o) Bed & Breakfast, per 14.420	P-II	P-III	P-III	P-III	P-III	P-II	-	P-(a)	P-(a)	-	-	-
p) Voluntary Parking -Local Impact -Area Impact	- -	- -	- -	P-II P-III	P-II P-III	P-II P-III	- -	- -	- -	- -	- -	- -
q) Personal Service	-	-	-	-	-	P-II	P-(a)	P-(a)	P-(a)	P-(b)	-	-
5) Recreation												
a) Residential -Local Impact -Area Impact	P-I-C P-II	P-I-C P-III	P-I-C P-III	P-I-C P-II	P-I-C P-II	P-I-C P-II	- -	- -	- -	- -	- -	- -
b) Commercial -Local Impact -Area Impact	- -	- -	- -	- -	- -	- -	P-(a) -	P-(a) P-(a)	P-(a) P-(a)	P-(b) P-(b)	- -	- -
c) Athletic Clubs	-	-	-	-	-	-	-	P-(a)	P-(a)	P-(b)	P-(b)	P-(b)
6) Public												
a) Minor Public	P-II (h)	P-III (h)	P-III (h)	P-II (h)	P-II (h)	P-II (h)	P-(a) (h)	P-(a) (h)	P-(a) (h)	P-(b) (h)	P-(b) (h)	P-(b) (h)
b) Major Public	-	-	-	-	-	-	-	-	-	P-(b)	P-(b)	P-(b)
c) Schools	P-II	P-III	P-III	P-III	P-II	P-II	-	P-(a)	P-(a)	P-(b)	-	-
d) Religious Assembly Churches	P-II	P-II	P-II	P-II	P-I-C	P-I-C	P-(a)	P-(a)	P-(a)	P-(b)	P-(b)	P-(b)

Land Use Types	UR	R-1-12 R-1-10 R-1-8	R-1-6	R-2	R-3	R-4	NC	GC	CBD	BP	IP	I
e) Cultural Exhibit and Libraries	P-II	P-III	P-III	P-III	P-II	P-II	P-(a)	P-(a)	P-(a)	P-(b)	P-(b)	P-(b)
f) Cemeteries	P-III	P-III	P-III	P-III	-	-	-	-	-	P-(b)	-	-
g) Mortuaries	-	-	-	-	-	P-III	-	P-(a)	-	P-(b)	-	-
h) Lodges	-	P-III	P-III	P-III	P-II	P-II	-	P-(a)	P-(a)	P-(b)	-	-
i) Commercial Parking	-	-	-	-	-	-	-	P-(a)	P-(a)	P-(b)	-	-
²⁰) Transportation Facilities outlined in the Master Transportation Plan, and local access streets	P-I-(c)	P-I-(c)	P-I-(c)	P-I-(c)	P-I-(c)	P-I-(c)	P-I-(c)	P-I-(c)	P-I-(c)	P-I-(c)	P-I-(c)	P-I-(c)
²¹) Transportation Facilities not outlined in the Master Transportation Plan, nor part of a subdivision or PUD, nor local access streets	P-II	P-II	P-II	P-II	P-II	P-II	P-II	P-II	P-II	P-II	P-II	P-II
Public Parks	P-III	P-III	P-III	P-II	P-II	P-II	-	P-II	P-II	P-II	-	P-II
7) Industrial												
a) Repair/Maintenance, Industrial	-	-	-	-	-	-	-	-	-	P-(b)	-	P-(b)
b) Indoor	-	-	-	-	-	-	-	-	-	P-(b)	P-(b)	P-(b)
c) Outdoor	-	-	-	-	-	-	-	-	-	-	-	P-(b)
d) Prohibited	-	-	-	-	-	-	-	-	-	X	X	X
e) Industrial Accessory -Building -Use	-	-	-	-	-	-	-	-	-	P-(g) P-I-EX	P-(g) P-I-EX	P-(g) P-I-EX
f) Outdoor Storage	-	-	-	-	-	-	-	-	-	P-II	-	P-II

Table Legend:

P	=Permitted Use
-	=Use Not Permitted
X	=Use Specifically Prohibited (Uses defined in Article 30 as "Industrial, Prohibited")
C	=Use Conditionally Permitted (See Article 16)
I-EX	=Type I Procedure, Exempt from Development Permit Review, Section 2.033
I-AU	=Type I Procedure, Administrative Use Permit Review Only, Section 2.034
I-A	=Type I Procedure, Building Permit Serves as Development Permit, Section 2.035
I-B	=Type I Procedure, Director's Decision without Comment Period, Section 2.036
I-C	=Type I Procedure, Director's Decision with Comment Period, Section 2.037
II	=Type II Procedure, Hearings Officer's Decision, Section 2.040
III	=Type III Procedure, Planning Commission's Decision, Section 2.050
IV-A	=Type IV Procedure, City Council Decision without Planning Commission Recommendation, Section 2.060
IV-B	=Type IV Procedure, City Council Decision with Planning Commission Recommendation, Section 2.060
V	=Type V Procedure, Joint Board of County Commissioners & City Council Decision with Planning Commission Recommendation, Section 2.070
*	=Professional Office use permitted in the Industrial Park District only when subject property is located within the Medical Overlay District.

Table Notes:

- (a) A Type II Procedure is required if the subject property adjoins a residential zone, otherwise a Type I-C Procedure is required.
- (b) A Type II Procedure is required if the subject property adjoins a residential or commercial zone, otherwise Type I-C Procedure is required.
- (c) Type I-A, except the following are exempt (Type I-EX): operation, maintenance, repair, and preservation of existing transportation facilities; dedication or public acquisition of rights-of-way and easements; authorization of construction and construction of facilities and improvements, where the improvements are within the existing right-of-way or easement area or are consistent with clear and objective dimensional standards; and emergency measures necessary for the safety and protection of property.
- (d) Manufactured Dwelling Parks are not permitted in commercial or industrial zones or commercial or industrial Comprehensive Plan land use districts. Siting of an individual home within an approved manufactured dwelling park requires a Type I-A procedure.
- (e) An existing residential dwelling unit is a permitted use in this zone. In zones where a new residential dwelling unit is not a permitted use, this provision allows the existing residential dwelling unit to continue or expand without being subject to the nonconforming use provisions of the Development Code. There may be nonconforming development provisions that are applicable. If an existing dwelling unit is removed in a zone where a new dwelling unit is not permitted, it shall not be replaced.

In zones where a new residential dwelling unit is not a permitted use, this provision does not allow for expansion that increases the number of dwelling units.

In zones where a new residential dwelling unit is not a permitted use, this provision allows for a new residential accessory structure or accessory use associated with the existing residential dwelling.

- (f) These uses are permitted within an existing dwelling unit only, since a new dwelling unit is not permitted in the zoning district.
- (g) A commercial or industrial accessory building of 400 square feet or less that comprises less

than 25 percent of the existing floor area of buildings and meets the definition of a minor modification in Section 19.058 of this Code is reviewed through a Type I-A procedure. All other commercial or industrial accessory buildings are subject to the applicable site plan review procedures.

- (h) A Type I-A Procedure is required for water and sewer pump stations. All other minor public facilities are reviewed through the procedure specified in the table.
- (i) A Type III Procedure is required if the tower height exceeds the zone height limit, otherwise a Type II Procedure is required.

EXHIBIT B

(4) Public Assembly Uses	
(a) Church; Religious Assembly:	One space for every three fixed seats or every seven foot of bench length, or every 28 sq.ft. where no permanent seats or benches are maintained in assembly areas main auditorium or cultural hall whichever is greater.
(b) Library; reading room; museum; art gallery:	One space per 500 square feet of floor area.
(c) Day Care Facility:	One space per attendant in addition to residential parking requirements. Resident attendants are not counted in parking requirements for attendant parking.
(d) Elementary or Junior High School:	Two spaces for each teaching station plus one for every eight fixed seats or every 100 sq. ft. of seating area where there are no fixed seats in the auditorium or assembly area.
(e) High School:	Two spaces for each teaching station plus one for every four fixed seats or for every 50 sq. ft. of seating area where there are no fixed seats in auditorium.
(f) College; commercial school for adults:	Two spaces for each teaching station plus one space for every two students of design capacity.
(g) Other auditorium; meeting rooms; or theater	One space per 3 seats or 7 ft of bench length, or every 28 sq. ft. where no permanent seats or benches are maintained in assembly areas .
(h) Limited school service facility:	One space per 400 sq. ft. of floor area.
(5) Commercial Recreation Uses	
(a) Stadium; sports arena:	One space per 5 seats, or 10 ft of bench length.
(b) Bowling Alley:	Six spaces per line.
(c) Dance Hall; Skating Rink:	One space per 100 sq. ft. of floor area.

EXHIBIT C

Definition Amendments Adopted by City Council Article 30, City of Grants Pass Development Code

~~Church: The building and premises used for the conduct of regular religious services; church shall not include schools, other than premises used for religious instruction during regular religious services. See also "Schools."~~

~~Cultural Exhibits and Libraries: Museum-like preservation and exhibition of objects in one or more of the arts and sciences, gallery exhibition of works of art, or library collection of books, manuscripts, etc., for study and reading. Specifically excluded from this category are exhibitions where items displayed are available for retail sale (see "Trade, Retail.")~~

⁸²Public, Minor: Government, public or semi-public facilities and utilities which have a local impact upon surrounding properties, including libraries, museums, fire stations, reservoirs and wholly-enclosed pumping stations or utility sub-stations. It also includes municipal water or sewage treatment plants when separated from any adjacent residential development by a minimum 50 foot wide Type B landscaped buffer.

Recreation, Commercial: Provision of sports, recreation and entertainment for both participants and spectators, provided both indoors and outdoors. Specifically excluded from this category are "Residential Recreation" and "Athletic Club" uses. Commercial Recreation uses are of two types:

- (1) Local Impact: ~~Uses catering primarily to participants, with only incidental spectator use,~~ Commercial recreation uses conducted within an enclosed building with a capacity of 300 persons or less. Typical uses include theaters and meeting or banquet halls.
- (2) Area Impact: ~~Uses catering primarily to spectators of an event;~~ Commercial recreation uses conducted outdoors, or conducted within an enclosed building

with a capacity of over 300 persons. Typical uses include theaters, meeting or banquet halls, cinemas, theme parks, stadiums, miniature golf facilities, and zoos.

Recreation, Residential: Provision of recreation facilities for participants, with only incidental spectator use, such that compatibility with residential uses can be maintained. ~~Provided primarily outdoors, with only incidental and accessory indoor uses.~~ Residential recreation uses are of two types:

- (1) Local Impact: Facilities for the private use of an individual family and non-paying guests, including members of a PUD. Typical uses include swimming pools, open space, club houses, or other recreational facilities located within a residential subdivision, PUD, or multi-family development.
- (2) Area Impact: Facilities for use of the general public or membership of a private organization (where not a part of a PUD) which consist primarily of vegetative landscaping, or similar natural-appearing areas, and focus on outdoor recreation. Lands tend to have few structures, but accessory uses such as club houses, maintenance facilities, concession stands, etc may be permitted by the Review Body. Typical uses include golf courses, privately-owned parks and plazas, botanical gardens, and nature preserves.

Religious Assembly: The building and premises used for the conduct of regular religious services, such as customarily occur in synagogues, temples, mosques and churches. Specifically excluded from this category are schools, other than premises used for religious instruction during regular religious services. See also "Schools."

CITY OF GRANTS PASS COMMUNITY DEVELOPMENT DEPARTMENT

RLUIPA DEVELOPMENT CODE TEXT AMENDMENT
CITY COUNCIL FINDINGS OF FACT-TYPE IV

Procedure Type:	Type IV: Planning Commission Recommendation and City Council Decision
Project Number:	08-40500005
Project Type:	Development Code Text Amendment
Applicant:	City of Grants Pass
Planner Assigned:	Jared Voice
Application Received:	September 24, 2008 <i>Re-submitted November 14, 2008</i>
Application Complete:	November 14, 2008
Date of Planning Commission Staff Report:	January 7, 2009
Date of Planning Commission Hearing:	January 14, 2009
Date of Planning Commission Findings of Fact:	January 28, 2009
Date of City Council Staff Report:	March 10, 2009
Date of City Council Hearing:	March 18, 2009 <i>Continued to April 15, 2009</i>
City Council Findings of Fact:	May 6, 2009

I. PROPOSAL:

The proposal consists of amendments to the Development Code to address issues related to the federal Religious Land Use and Institutionalized Persons Act (RLUIPA) and associated case law. The proposal would affect certain land uses within "BP" (Business Park), "I" (Industrial) and "IP" (Industrial Park) zones.

II. AUTHORITY AND CRITERIA:

Section 4.102 of the City of Grants Pass Development Code provides that the Director or City Council may initiate a text amendment. The amendment was initiated by the Director.

Sections 2.060, 7.040 and 7.050 authorize the Urban Area Planning Commission to make a recommendation to the City Council and authorize the City Council to make a final decision on a land use matter requiring a Type IV procedure, in accordance with procedures of Section 2.060.

The text of the Development Code may be recommended for amendment and amended provided the criteria in Section 4.103 of the Development Code are met.

III. APPEAL PROCEDURE:

The City Council's final decision may be appealed to the State Land Use Board of Appeals (LUBA) as provided in state statutes. A notice of intent to appeal must be filed with LUBA within 21 days of the Council's written decision.

IV. PROCEDURE:

- A. An application for a Development Code Text Amendment was submitted by the Director on September 24, 2008. The application was deemed complete on September 26, 2008, and processed in accordance with Section 2.060 of the Development Code, and Sections III and V of the 1998 Intergovernmental Agreement.
- B. Notice of the proposed amendment was mailed to the Oregon Department of Land Conservation and Development (DLCD) on October 8, 2008, in accordance with ORS 197.610 and OAR Chapter 660-Division 18.
- C. Notice of the proposed amendment was mailed to Josephine County on October 8, 2008, in accordance with the 1998 Intergovernmental Agreement.
- D. The application for Development Code Text Amendment was withdrawn and modified. The modified proposal was re-submitted by the Director on November 14, 2008. The application was deemed complete on November 14, 2008, and processed in accordance with Section 2.060 of the Development Code, and Sections III and V of the 1998 Intergovernmental Agreement.
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- I. A public open house regarding the proposal was held on January 6, 2009.
- J. A public hearing was held by the Planning Commission on January 14, 2009, to consider the proposal and make a recommendation to City Council. The Planning Commission recommended that the City Council adopt the proposed text amendment, with modifications.

- K. Notice of the March 18, 2009, City Council hearing was mailed to affected property owners on February 26, 2009, in accordance with Sections 2.053, 2.063 and 2.090 of the Development Code and ORS 227.186.
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- M. At their March 18, 2009, meeting, the City Council continued the public hearing to consider the proposal to a date certain, April 15, 2009.
- N. A public hearing was held on April 15, 2009, to consider the proposal. The City Council approved a motion to continue the hearing to a date certain, May 6, 2009, so that staff could prepare an ordinance for adoption.
- O. A public hearing was held on May 6, 2009, to consider the proposal.

V. SUMMARY OF EVIDENCE:

- A. The minutes of the public hearing held by the City Council on May 6, 2009, which are attached as Exhibit "A", summarize the oral testimony presented and are hereby adopted and incorporated herein.
- B. The minutes of the public hearing held by the City Council on April 15, 2009, which are attached as Exhibit "B", summarize the oral testimony presented and are hereby adopted and incorporated herein.
- C. The PowerPoint presentation given by staff at the April 15, 2009, City Council hearing is attached as Exhibit "C" and incorporated herein.
- D. The basic facts and criteria regarding this application are contained in the City Council staff report and its exhibits, which are attached as Exhibit "D" and incorporated herein.

VI. GENERAL FINDINGS- BACKGROUND AND DISCUSSION:

The City is amending the text of the Development Code to address issues related to the federal Religious Land Use and Institutionalized Persons Act (RLUIPA). The equal terms provision of RLUIPA requires that "no government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution." An "assembly", for the purposes of RLUIPA, has been defined as places where groups or individuals dedicated to similar purposes, whether social, educational, recreational or otherwise, meet together to pursue their interests (*Midrash Sephardi, Inc. v. Town of Surfside*, 11th Cir 2004.)

Specific land uses that have been interpreted as assembly include clubs, lodges, recreation buildings, meeting halls, golf courses, playgrounds, parks and museums. If the Development Code allows any of these assembly uses within a given zoning district, it must also allow churches in that district. Conversely, the Development Code may restrict churches from certain zoning districts, so long as other nonreligious assembly and institutional uses are also restricted from those districts.

The Development Code currently allows churches in all but its three industrial zoning districts: "BP" (Business Park), "IP" (Industrial Park) and "I" (Industrial). Within each of these zones, there are other uses permitted that could reasonably be interpreted as nonreligious assembly or institutional uses for the purpose of RLUIPA. Therefore, the Development Code must be amended to ensure consistency with RLUIPA requirements. There are multiple ways this can be accomplished, but City Council finds the most appropriate policy is to allow "Religious Assembly" as a permitted use within all zoning districts. In making its decision, City Council has considered the Development Code purpose statement for each zoning district (see responses to applicable criteria below.)

In addition, the City Council finds it appropriate to add "Public Parks" as a permitted use within the "I" (Industrial) zoning district. Since "Religious Assembly" is being added as a permitted use within the district, the addition of "Public Parks" does not conflict with the equal terms provisions of RLUIPA.

The following table summarizes which land uses would be affected within each of the three industrial zoning districts.

Adopted RLUIPA Text Amendment- Affected Land Uses

Zoning Designation	New Land Uses Permitted	Land Uses Not Permitted*
BP (Business Park)	Religious Assembly	
I (Industrial)	Religious Assembly, Public Parks	
IP (Industrial Park)	Religious Assembly	

*The adopted text amendment will not affect any land uses that were already permitted within any of the affected zoning districts. All previously-existing permitted land uses will continue to be permitted.

Industrial Land Within the UGB

The following table includes information regarding industrial lands within the Grants Pass Urban Growth Boundary that is cited within the draft *Urbanization Element* that was prepared as part of the Urban Growth Boundary Evaluation. The draft *Urbanization Element* has not been adopted by City Council, but has been recommended for approval by the UGB Steering Committee. The document includes maps that show buildable lands within the UGB by plan designation.

Industrial Land Within Grants Pass UGB

Plan Designation	Total Existing Acreage	Buildable Acreage	Unbuildable or Developed Acreage
BP	298 acres	72 acres (24%)	226 acres (76%)
I	298 acres	130 acres (44%)	167 acres (56%)
IP	54 acres	19 acres (35%)	35 acres (65%)

The draft *Urbanization Element* finds that there is a 421-acre deficit of industrial land within the Grants Pass UGB. The document does not determine the breakdown of the deficit amongst the BP, I and IP designations.

City Council Work Plan

The proposal carries out Outcome D, Work Task 2 of the City Council's work plan under the City Council Growth Management Goal:

Goal 1. Growth Management: While prospering and growing, we keep the sense of hometown, protect our natural resources and enhance our community improvements.

Outcome D. Other Activities to Manage Growth

- **Workplan Element:** Review and revise sections of the various codes.
- **Timing: Ongoing.** As code issues are identified issues arise through the Council, Urban Area Planning Commission and Staff, the Staff will continue to prepare revisions to the ordinances. These may be individual amendments, or a group of amendments as part of a larger housekeeping amendment.

VII. FINDINGS OF FACT- CONFORMANCE WITH APPLICABLE CRITERIA:

The text of the Development Code may be recommended for amendment and amended provided that all of the following criteria of Section 4.103 of the Development Code are met.

CRITERION 1: The proposed amendment is consistent with the purpose of the subject section and article.

City Council Response: The proposal is consistent with the purpose of the subject sections and articles within the Development Code, including Articles 12, 25 and 30. See discussion regarding Article 12 amendments below.

12.011 Purpose. *The purpose of this Article is as follows:*

- (1) *To implement the policies and Land Use Map of the Comprehensive Plan;*
- (2) *To protect the right to use and enjoy real property;*
- (3) *To protect the health, safety and welfare of the community;*
- (4) *To serve as a basis for resolving land use conflict.*

City Council Response: Satisfied. The proposal primarily amends Schedule 12-2, (*Permitted Uses and Site Plan Review Procedures*) of Article 12 ("Zoning Districts"): The proposal is consistent with the "Purpose" statement for Article 12 as stated above.

The purpose statement for each affected zoning district is listed below.

12.321- Business Park District (BP). The purpose of the Business Park District is to provide a mixed-use zone for light industrial and commercial uses. Retail trade is permitted as an accessory use or when determined to be compatible with, or can be made compatible with, light industrial or wholesale trade uses via a discretionary review process. Performance Development Standards are designed to ensure the compatibility of the light industrial uses with the commercial uses, and the compatibility with adjacent Commercial and Residential Zoning Districts.

City Council Response: Satisfied. The addition of "Religious Assembly" as a permitted use is consistent with the purpose of the BP zoning district. The BP zone is intended to provide a mixed-use commercial and light industrial district that is compatible with assembly uses. This is evident in that multiple assembly uses are already permitted within the district, including commercial recreation, athletic clubs, libraries, museums, schools, lodges and public parks. To date there have been no known conflicts between the existing permitted assembly uses and other commercial and light industrial uses permitted within the district.

12.322- Industrial Park District (IP). The purpose of the Industrial Park District is to provide for light industrial uses in a campus-like setting. High Performance Development Standards assure compatibility among Industrial Park users and the compatibility with adjacent commercial and residential uses.

City Council Response: Satisfied. The addition of "Religious Assembly" as a permitted use is consistent with the purpose of the IP zoning districts. The "IP" district is intended to "provide for light industrial uses in a campus-like setting. High Performance Development Standards assure compatibility with adjacent commercial and residential uses." The City Council finds the purpose of the "IP" zone to be compatible with "Religious Assembly." Other similar assembly uses are already permitted within the district, including athletic clubs, libraries and museums. To date there have been no known conflicts between the existing permitted assembly uses and other light industrial uses permitted within the district.

12.323- Industrial District (I). The purpose of the Industrial District is to provide for those industrial uses with heavier impacts upon their surroundings and the need for outdoor functions. Performance standards are less than required for other industrial districts and graduated buffering standards ensure compatibility with neighboring zones of lesser intensity of use. It is the express intent of the Industrial District to maintain lands for industrial use, with commercial and residential uses limited to those uses accessory to industrial development.

City Council Response: Satisfied. The addition of "Religious Assembly" and "Public Parks" as permitted uses within the "I" zoning district is consistent with the purpose statement for the district. There is nothing in the purpose statement that forbids or limits assembly or institutional uses from locating within the district. Some assembly uses are already permitted within the district, including athletic clubs, libraries and museums. To date there have been no known conflicts between any existing permitted assembly uses and the industrial uses permitted within the district.

Although the intent of the "I" Industrial district is to maintain lands for industrial uses, and churches and parks are not generally considered industrial uses, the characteristics of some churches and parks make them compatible with outdoor industrial uses and therefore appropriate for the district. For example, large churches that generate high traffic volumes, require large unsightly parking lots, and which may have an industrial architectural appearance, would be appropriately sited within

the "I" Industrial zone. In addition, some potential functions of a public park may also be appropriate for the "I" zone. Allowing these uses within the "I" district is appropriate given the potential impacts to surrounding properties.

CRITERION 2: The proposed amendment is consistent with other provisions of this code.

City Council Response: Satisfied. The proposed amendment is internally consistent with other provisions of the Code. Housekeeping amendments to Articles 25 and 30 are intended to preserve and enhance consistency within the Code.

CRITERION 3: The proposed amendment is consistent with the goals and policies of the Comprehensive Plan, and most effectively carries out those goals and policies of all alternatives considered.

City Council Response: Satisfied. See below

Comprehensive Plan Consistency

The proposed amendment is consistent with the goals and policies of the Comprehensive Plan. Applicable goals and policies are:

Element 2. Citizen Involvement.

Policy 2.2. Where a land use issue or action may have an impact upon a particular neighborhood, ward or special interest group, or may affect large numbers of Urban Growth Boundary residents and property owners, special workshop sessions shall be held to assure access by affected citizens to all phases of the land use decision making process.

City Council Response: Satisfied. The proposed amendment, as submitted by the Director, would have potentially impacted GC, CBD, BP, I and IP property owners within the City and Urban Growth Boundary. Written notice of the amendment and Planning Commission and City Council hearings was mailed to each property owner over 20 days in advance of the hearings. An additional public open house was held on January 6, 2009, to allow for public input. The open house was advertised in the newspaper and on the City's website.

Element 8. Economy

GOAL: To improve, expand, diversify and stabilize the economic base of the community.

Policy 8.1. The City and County shall endeavor to improve, expand, diversify and stabilize the economic base of the community:

- (e) by protecting existing and planned commercial and industrial areas from the intrusion of incompatible land uses through land use regulation.

City Council Response: Satisfied. The proposed text amendment is consistent with these policies. As established in the response to Criterion 1 above, the addition of "Religious Assembly" as a permitted use is consistent with the purpose statements of the "BP", "IP" and "I" zoning districts, and "Religious Assembly" is compatible with the range of uses permitted within each zone.

Most Effective Alternative

The City Council finds that, of all the alternatives considered, allowing "Religious Assembly" as a permitted use within all zoning districts most effectively carries out the goals and policies of the Comprehensive Plan of all the alternatives considered.

Alternatives to approving the proposal are:

- 1) Retain the existing standards within the Development Code.
 - The proposed amendment more effectively carries out the goals and policies stated above than the existing standards, and is consistent with equal protection requirements of RLUIPA. The existing standards are not consistent with the equal protection requirements of RLUIPA.

- 2) Alternatives proposed by the Director and Urban Area Planning Commission.
 - The proposed amendment more effectively carries out the goals and policies stated above than the alternative proposals by the Director and Planning Commission because it is more permissive rather than more restrictive with the allowance of assembly uses in the industrial zoning districts. The City Council finds that assembly uses are compatible with light and heavy industrial land uses that are permitted within the industrial zoning districts and should therefore also be permitted within the districts.

CRITERION 4: The proposed amendment is consistent with the functions, capacities, and performance standards of transportation facilities identified in the Master Transportation Plan.

City Council Response: Not applicable. The amendment does not directly affect the functions, capacities or performance standards of the Master Transportation Plan.

VIII. DECISION AND SUMMARY:

The City Council found the applicable criteria were satisfied and **APPROVED** the Development Code text amendment, with the modifications listed below. The vote was 8-0-0, with Councilors Berger, Cummings, Kangas, Michelon, Pell, Renfro, Townes and Warren in favor, and none opposed.

The City Council made the following modifications to the Director's Proposal:

- Retain athletic clubs, museums and libraries as a permitted use within the "IP" and "I" zoning districts.
- Add "Religious Assembly" as a permitted use within the "IP" and "I" districts.
- Add "Public Park" as a permitted use within the "I" district.
- No size limitation on "Eating / Drinking Establishments" in the "I" district.

IX. ADOPTED BY THE GRANTS PASS CITY COUNCIL this 6th day of May 2009.

Michael Murphy, Mayor

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CITY OF GRANTS PASS COMMUNITY DEVELOPMENT DEPARTMENT

**RLUIPA DEVELOPMENT CODE TEXT AMENDMENT
CITY COUNCIL FINDINGS OF FACT-TYPE IV**

Procedure Type:	Type IV: Planning Commission Recommendation and City Council Decision
Project Number:	08-40500005
Project Type:	Development Code Text Amendment
Applicant:	City of Grants Pass
Planner Assigned:	Jared Voice
Application Received:	September 24, 2008 <i>Re-submitted November 14, 2008</i>
Application Complete:	November 14, 2008
Date of Planning Commission Staff Report:	January 7, 2009
Date of Planning Commission Hearing:	January 14, 2009
Date of Planning Commission Findings of Fact:	January 28, 2009
Date of City Council Staff Report:	March 10, 2009
Date of City Council Hearing:	March 18, 2009 <i>Continued to April 15, 2009</i>
City Council Findings of Fact:	May 6, 2009

I. PROPOSAL:

The proposal consists of amendments to the Development Code to address issues related to the federal Religious Land Use and Institutionalized Persons Act (RLUIPA) and associated case law. The proposal would affect certain land uses within "BP" (Business Park), "I" (Industrial) and "IP" (Industrial Park) zones.

II. AUTHORITY AND CRITERIA:

Section 4.102 of the City of Grants Pass Development Code provides that the Director or City Council may initiate a text amendment. The amendment was initiated by the Director.

Sections 2.060, 7.040 and 7.050 authorize the Urban Area Planning Commission to make a recommendation to the City Council and authorize the City Council to make a final decision on a land use matter requiring a Type IV procedure, in accordance with procedures of Section 2.060.

The text of the Development Code may be recommended for amendment and amended provided the criteria in Section 4.103 of the Development Code are met.

III. APPEAL PROCEDURE:

The City Council's final decision may be appealed to the State Land Use Board of Appeals (LUBA) as provided in state statutes. A notice of intent to appeal must be filed with LUBA within 21 days of the Council's written decision.

IV. PROCEDURE:

- A.** An application for a Development Code Text Amendment was submitted by the Director on September 24, 2008. The application was deemed complete on September 26, 2008, and processed in accordance with Section 2.060 of the Development Code, and Sections III and V of the 1998 Intergovernmental Agreement.
- B.** Notice of the proposed amendment was mailed to the Oregon Department of Land Conservation and Development (DLCD) on October 8, 2008, in accordance with ORS 197.610 and OAR Chapter 660-Division 18.
- C.** Notice of the proposed amendment was mailed to Josephine County on October 8, 2008, in accordance with the 1998 Intergovernmental Agreement.
- D.** The application for Development Code Text Amendment was withdrawn and modified. The modified proposal was re-submitted by the Director on November 14, 2008. The application was deemed complete on November 14, 2008, and processed in accordance with Section 2.060 of the Development Code, and Sections III and V of the 1998 Intergovernmental Agreement.
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- O. A public hearing was held on May 6, 2009, to consider the proposal.

V. SUMMARY OF EVIDENCE:

- A. The minutes of the public hearing held by the City Council on May 6, 2009, which are attached as Exhibit "A", summarize the oral testimony presented and are hereby adopted and incorporated herein.
- B. The minutes of the public hearing held by the City Council on April 15, 2009, which are attached as Exhibit "B", summarize the oral testimony presented and are hereby adopted and incorporated herein.
- C. The PowerPoint presentation given by staff at the April 15, 2009, City Council hearing is attached as Exhibit "C" and incorporated herein.
- D. The basic facts and criteria regarding this application are contained in the City Council staff report and its exhibits, which are attached as Exhibit "D" and incorporated herein.

VI. GENERAL FINDINGS- BACKGROUND AND DISCUSSION:

The City is amending the text of the Development Code to address issues related to the federal Religious Land Use and Institutionalized Persons Act (RLUIPA). The equal terms provision of RLUIPA requires that "no government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution." An "assembly", for the purposes of RLUIPA, has been defined as places where groups or individuals dedicated to similar purposes, whether social, educational, recreational or otherwise, meet together to pursue their interests (*Midrash Sephardi, Inc. v. Town of Surfside*, 11th Cir 2004.)

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The Development Code currently allows churches in all but its three industrial zoning districts: "BP" (Business Park), "IP" (Industrial Park) and "I" (Industrial). Within each of these zones, there are other uses permitted that could reasonably be interpreted as nonreligious assembly or institutional uses for the purpose of RLUIPA. Therefore, the Development Code must be amended to ensure consistency with RLUIPA requirements. There are multiple ways this can be accomplished, but City Council finds the most appropriate policy is to allow "Religious Assembly" as a permitted use within all zoning districts. In making its decision, City Council has considered the Development Code purpose statement for each zoning district (see responses to applicable criteria below.)

In addition, the City Council finds it appropriate to add "Public Parks" as a permitted use within the "I" (Industrial) zoning district. Since "Religious Assembly" is being added as a permitted use within the district, the addition of "Public Parks" does not conflict with the equal terms provisions of RLUIPA.

The following table summarizes which land uses would be affected within each of the three industrial zoning districts.

Adopted RLUIPA Text Amendment- Affected Land Uses

Zoning Designation	New Land Uses Permitted	Land Uses Not Permitted*
BP (Business Park)	Religious Assembly	
I (Industrial)	Religious Assembly, Public Parks	
IP (Industrial Park)	Religious Assembly	

*The adopted text amendment will not affect any land uses that were already permitted within any of the affected zoning districts. All previously-existing permitted land uses will continue to be permitted.

Industrial Land Within the UGB

The following table includes information regarding industrial lands within the Grants Pass Urban Growth Boundary that is cited within the draft *Urbanization Element* that was prepared as part of the Urban Growth Boundary Evaluation. The draft *Urbanization Element* has not been adopted by City Council, but has been recommended for approval by the UGB Steering Committee. The document includes maps that show buildable lands within the UGB by plan designation.

Industrial Land Within Grants Pass UGB

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City Council Work Plan

The proposal carries out Outcome D, Work Task 2 of the City Council's work plan under the City Council Growth Management Goal:

Goal 1. Growth Management: While prospering and growing, we keep the sense of hometown, protect our natural resources and enhance our community improvements.

Outcome D. Other Activities to Manage Growth

- **Workplan Element:** Review and revise sections of the various codes.
- **Timing: Ongoing.** As code issues are identified issues arise through the Council, Urban Area Planning Commission and Staff, the Staff will continue to prepare revisions to the ordinances. These may be individual amendments, or a group of amendments as part of a larger housekeeping amendment.

VII. FINDINGS OF FACT- CONFORMANCE WITH APPLICABLE CRITERIA:

The text of the Development Code may be recommended for amendment and amended provided that all of the following criteria of Section 4.103 of the Development Code are met.

CRITERION 1: The proposed amendment is consistent with the purpose of the subject section and article.

City Council Response: The proposal is consistent with the purpose of the subject sections and articles within the Development Code, including Articles 12, 25 and 30. See discussion regarding Article 12 amendments below.

12.011 Purpose. The purpose of this Article is as follows:

- (1) To implement the policies and Land Use Map of the Comprehensive Plan;*
- (2) To protect the right to use and enjoy real property;*
- (3) To protect the health, safety and welfare of the community;*
- (4) To serve as a basis for resolving land use conflict.*

City Council Response: Satisfied. The proposal primarily amends Schedule 12-2, (*Permitted Uses and Site Plan Review Procedures*) of Article 12 ("Zoning Districts"). The proposal is consistent with the "Purpose" statement for Article 12 as stated above.

The purpose statement for each affected zoning district is listed below.

12.321- Business Park District (BP). The purpose of the Business Park District is to provide a mixed-use zone for light industrial and commercial uses. Retail trade is permitted as an accessory use or when determined to be compatible with, or can be made compatible with, light industrial or wholesale trade uses via a discretionary review process. Performance Development Standards are designed to ensure the compatibility of the light industrial uses with the commercial uses, and the compatibility with adjacent Commercial and Residential Zoning Districts.

City Council Response: Satisfied. The addition of "Religious Assembly" as a permitted use is consistent with the purpose of the BP zoning district. The BP zone is intended to provide a mixed-use commercial and light industrial district that is compatible with assembly uses. This is evident in that multiple assembly uses are already permitted within the district, including commercial recreation, athletic clubs, libraries, museums, schools, lodges and public parks. To date there have been no known conflicts between the existing permitted assembly uses and other commercial and light industrial uses permitted within the district.

12.322- Industrial Park District (IP). The purpose of the Industrial Park District is to provide for light industrial uses in a campus-like setting. High Performance Development Standards assure compatibility among Industrial Park users and the compatibility with adjacent commercial and residential uses.

City Council Response: Satisfied. The addition of "Religious Assembly" as a permitted use is consistent with the purpose of the IP zoning districts. The "IP" district is intended to "provide for light industrial uses in a campus-like setting. High Performance Development Standards assure compatibility with adjacent commercial and residential uses." The City Council finds the purpose of the "IP" zone to be compatible with "Religious Assembly." Other similar assembly uses are already permitted within the district, including athletic clubs, libraries and museums. To date there have been no known conflicts between the existing permitted assembly uses and other light industrial uses permitted within the district.

12.323- Industrial District (I). The purpose of the Industrial District is to provide for those industrial uses with heavier impacts upon their surroundings and the need for outdoor functions. Performance standards are less than required for other industrial districts and graduated buffering standards ensure compatibility with neighboring zones of lesser intensity of use. It is the express intent of the Industrial District to maintain lands for industrial use, with commercial and residential uses limited to those uses accessory to industrial development.

City Council Response: Satisfied. The addition of "Religious Assembly" and "Public Parks" as permitted uses within the "I" zoning district is consistent with the purpose statement for the district. There is nothing in the purpose statement that forbids or limits assembly or institutional uses from locating within the district. Some assembly uses are already permitted within the district, including athletic clubs, libraries and museums. To date there have been no known conflicts between any existing permitted assembly uses and the industrial uses permitted within the district.

Although the intent of the "I" Industrial district is to maintain lands for industrial uses, and churches and parks are not generally considered industrial uses, the characteristics of some churches and parks make them compatible with outdoor industrial uses and therefore appropriate for the district. For example, large churches that generate high traffic volumes, require large unsightly parking lots, and which may have an industrial architectural appearance, would be appropriately sited within

the "I" Industrial zone. In addition, some potential functions of a public park may also be appropriate for the "I" zone. Allowing these uses within the "I" district is appropriate given the potential impacts to surrounding properties.

CRITERION 2: The proposed amendment is consistent with other provisions of this code.

City Council Response: Satisfied. The proposed amendment is internally consistent with other provisions of the Code. Housekeeping amendments to Articles 25 and 30 are intended to preserve and enhance consistency within the Code.

CRITERION 3: The proposed amendment is consistent with the goals and policies of the Comprehensive Plan, and most effectively carries out those goals and policies of all alternatives considered.

City Council Response: Satisfied. See below

Comprehensive Plan Consistency

The proposed amendment is consistent with the goals and policies of the Comprehensive Plan. Applicable goals and policies are:

Element 2. Citizen Involvement.

Policy 2.2. Where a land use issue or action may have an impact upon a particular neighborhood, ward or special interest group, or may affect large numbers of Urban Growth Boundary residents and property owners, special workshop sessions shall be held to assure access by affected citizens to all phases of the land use decision making process.

City Council Response: Satisfied. The proposed amendment, as submitted by the Director, would have potentially impacted GC, CBD, BP, I and IP property owners within the City and Urban Growth Boundary. Written notice of the amendment and Planning Commission and City Council hearings was mailed to each property owner over 20 days in advance of the hearings. An additional public open house was held on January 6, 2009, to allow for public input. The open house was advertised in the newspaper and on the City's website.

Element 8. Economy

GOAL: To improve, expand, diversify and stabilize the economic base of the community.

Policy 8.1. The City and County shall endeavor to improve, expand, diversify and stabilize the economic base of the community:

- (e) by protecting existing and planned commercial and industrial areas from the intrusion of incompatible land uses through land use regulation.

City Council Response: Satisfied. The proposed text amendment is consistent with these policies. As established in the response to Criterion 1 above, the addition of "Religious Assembly" as a permitted use is consistent with the purpose statements of the "BP", "IP" and "I" zoning districts, and "Religious Assembly" is compatible with the range of uses permitted within each zone.

Most Effective Alternative

The City Council finds that, of all the alternatives considered, allowing "Religious Assembly" as a permitted use within all zoning districts most effectively carries out the goals and policies of the Comprehensive Plan of all the alternatives considered.

Alternatives to approving the proposal are:

- 1) Retain the existing standards within the Development Code.
 - The proposed amendment more effectively carries out the goals and policies stated above than the existing standards, and is consistent with equal protection requirements of RLUIPA. The existing standards are not consistent with the equal protection requirements of RLUIPA.
- 2) Alternatives proposed by the Director and Urban Area Planning Commission.
 - The proposed amendment more effectively carries out the goals and policies stated above than the alternative proposals by the Director and Planning Commission because it is more permissive rather than more restrictive with the allowance of assembly uses in the industrial zoning districts. The City Council finds that assembly uses are compatible with light and heavy industrial land uses that are permitted within the industrial zoning districts and should therefore also be permitted within the districts.

CRITERION 4: The proposed amendment is consistent with the functions, capacities, and performance standards of transportation facilities identified in the Master Transportation Plan.

City Council Response: Not applicable. The amendment does not directly affect the functions, capacities or performance standards of the Master Transportation Plan.

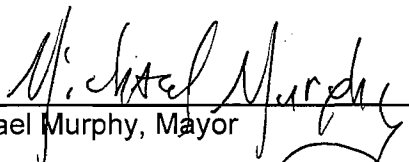
VIII. DECISION AND SUMMARY:

The City Council found the applicable criteria were satisfied and **APPROVED** the Development Code text amendment, with the modifications listed below. The vote was 8-0-0, with Councilors Berger, Cummings, Kangas, Michelon, Pell, Renfro, Townes and Warren in favor, and none opposed.

The City Council made the following modifications to the Director's Proposal:

- Retain athletic clubs, museums and libraries as a permitted use within the "IP" and "I" zoning districts.
- Add "Religious Assembly" as a permitted use within the "IP" and "I" districts.
- Add "Public Park" as a permitted use within the "I" district.
- No size limitation on "Eating / Drinking Establishments" in the "I" district.

IX. ADOPTED BY THE GRANTS PASS CITY COUNCIL this 6th day of May 2009.



Michael Murphy, Mayor

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Exhibit A to City Council Findings of Fact
Minutes of May 6, 2009 City Council Hearing
To be attached when approved by City Council

City Council Meeting
April 15, 2009
6:00 p.m.
City Council Chambers

The Council of the City of Grants Pass met in regular session on the above date with Mayor Murphy presiding. The following Councilors were present: Cummings, Kangas, Renfro, Pell, Warren, Berger, Townes and Michelin. Absent: None. Councilor Berger left the meeting early, at 10 pm. Also present and representing the City were City Manager Frasher, Interim City Attorney Nolte, Assistant City Manager Samson, Finance Director Reeves, Public Safety Director Henner, Community Development Director Huber, Parks and Community Services Director Seybold, Public Works Director Haugen, and Human Resource Coordinator Lange.

Mayor Murphy opened the meeting. The invocation was given by Parks and Community Services Director Seybold, followed by the flag salute.

PROCLAMATIONS:

Mayor Murphy stated, we will begin this evening with three proclamations. City Manager Frasher please begin.

Josephine County Libraries Day

City Manager Frasher stated, the first proclamation is Josephine County Libraries Day 2009 and I will read the proclamation:

"Whereas our Public Library makes a difference in the lives of Josephine County residents today more than ever, and whereas libraries play a quality role in supporting the quality of life in their communities, whereas in 2007, citizens banded together to form Josephine Community Libraries in order to open and operate the libraries in Josephine County for generations to come. Whereas Josephine County Libraries opened the Grants Pass Branch in December 2008 after an 18 month closure and hopes to open the branches in the Illinois Valley, Williams, and Wolf Creek in 2009, therefore, Michael Murphy, Mayor of the City of Grants Pass, Oregon, on behalf of the City Council proclaims April 16, 2009, Josephine County Libraries Day. We encourage all residents to visit the library this week to take advantage of the wonderful resources available and to thank the librarians, the library workers and numerous volunteers for making information accessible to all who walk through the library doors."

Mayor Murphy stated, I believe the Library Director, Russell Long, is present to receive this. The

behalf of the efforts of the volunteers, because without them our community would not be the blessing that it is to so many individuals and it's unfortunate that all 1113 can't be in the room. Thank you to all of them for what they do and thank you for your support.

Presentation: Distinguished Budget Award

Mayor Murphy stated, we have a presentation on the Distinguished Budget Award first here. I think I've sat through a few of these before, this is good.

Finance Director Reeves stated, this is one of the highlights of my job is the opportunity to see recognition for the quality work that the City of Grants Pass does; and this is from the Council level right down to the Staff person. Everybody is involved in putting together the Budget, the document, the process that we then submit to the Government Finance Officer's Association of America and Canada. They evaluate this and as has been a longstanding tradition for the City of Grants Pass, we receive this international recognition each year for putting together a budget that is easily readable, that identifies our goals, our programs, and what we are doing and then outlines the policies and procedures of the City in such a way that it communicates well with our citizens what we do. This is a national recognition of which we should be very proud. It's my pleasure to present it to you, the citizen's and everybody, one more year, for the budget we are currently operating under, fiscal year 2008 – 2009, has received the Government Finance Officer Association Recognition Distinguished Budget Presentation Award, Mr. Mayor.

Mayor Murphy stated, this is just a small token of the huge amount of work that goes into the budget preparation and Budget document and the Budget presentation on the part of the whole staff. So thank you all.

1. PUBLIC HEARING:

a. Proposal ordinance amending the Development Code to address the Federal Religious Land Use and Institutionalized Persons Act (RLUIPA) and associated case law.

Mayor Murphy stated, we have a Public Hearing, a land use legislative hearing, so we'll need to read the appropriate disclaimers here and we'll open the hearing,

City Manager Frasher thanked the Mayor and stated, at this time we will open the hearing to consider the public matter posted on the Agenda. We'll begin the hearing with the Staff Report

followed by Public Comment and then the matter will be discussed and acted upon by the Council. Is there anyone present who wishes to challenge the authority of the Council to hear this matter? Seeing none, do any Council members wish to abstain from participating in this hearing or proclaim a potential conflict of interest? Seeing none, in this hearing the decision of the Council will be based upon specific criteria. All testimony and evidence must be directed toward those criteria. The criteria which apply in this case are noted in the Staff Report. It is important to remember that if you fail to raise an issue with enough detail to afford the Council and the parties an opportunity to respond to the issue, you will not be able to appeal the Land Use Board of Appeals (LUBA) based on that issue. We may now begin the hearing with the Staff report.

Community Development Director Huber stated, good evening Mayor and members of Council. What's before you this evening is a proposed amendment to the Development Code and it relates to a Federal Law called, RLUIPA, which is the Religious Land Usage and Institutionalized Person's Act. Why we are initiating this, we actually discussed this with you previously at a Workshop back in March. (I'll skip a few of these slides). So, what is the goal or the purpose of doing this text amendment? First of all, to align City law, these would be our land use laws and our Development Code, with Federal law. And then also, importantly, to avoid any potential for costly litigation in terms of how we process applications for churches. Just as a bit of a summary, again, this is to ensure that the Development Code, the land use portion of the Municipal Code, is basically consistent with RLUIPA. What this would do, depending on the action you would take, it would affect certain land uses in our industrial zones and we have 3 zones – the business park (BP), industrial (I), and then industrial park (IP) zone. Currently, churches are allowed in all the zones, and by zones I'm speaking in broad terms. We have residential, commercial and industrial, so they're allowed in all the zones except in the industrial zones. So in commercial and residential, they are permitted. They are not allowed in BP, IP and I. However, in those zones there are some other uses that, per RLUIPA, and then some Court cases that have come since then, some other uses that could be construed to be Public Assembly uses and you cannot treat Religious Assembly differently that you treat Public Assembly uses. There are different ways you can do this, this is a policy choice for the City Council so there is more than one way to address this. I had made one recommendation, the Planning Commission actually made another one, and then there is a third option on the table – and we will get to those in just a moment.

Again, this is a policy decision and is up to you. Really there are two aspects of it, where do you really want churches to be permitted and then, the second one, in terms of industrial zones, if at all. Then the other question is, how do you want to treat your industrial lands? The notion there is, should they be used purely for industrial kinds of uses, employment lands, new businesses coming to town so we really do have industrial lands that we can offer them. Or should those zones be opened up to a broader array of uses. That's really what the choice

before you is this evening. There are some criteria that you have to address in amending your Code. These are in 4.103 of the Code. They are in your packet. The Planning Commission made Findings of Fact and you will see the criteria. But I do need to mention them. Basically you are supposed to consider the subject section in the article, that the proposed amendment is consistent with other provisions of the Code and then it best carries out, most effectively carries out goals and policies of the Comprehensive Plan, and that it's also consistent with functions, capacities and standards of the Master Transportation Plan. So those are the 4 criteria.

Then we are going to look at the zones so you have the sense of what each one is about. The first one is the BP - Business Park zone, and admittedly this is a mixed use zone. We have many commercial uses already in the BP zone, which is consistent with its purpose statement, which is "To provide a mixed use zone for light industrial and commercial uses." I think I gave the example last time that on Allen Creek Road and Redwood Highway is an Albertson's, a large Albertson's which is actually zoned BP. The Planning Commission and I agree that BP would be an area where you should allow churches and it would be consistent with some of the other Public Assembly uses that are already there. The industrial zone, this one is the most intensive, if you will, of the 3 Industrial Districts. Then if you look at its purpose statement, "It is the expressed intent of the Industrial District to maintain lands for industrial use, with commercial and residential use limited to those that are accessory to the development." And then the Planning Commission and I recommended that you do not add religious uses to the industrial zone, in fact you'd have to pull a couple of Public Assembly uses away from that to make it consistent. Right now we allow athletic clubs in the I zone and that would fall under the general definition of, or classification of a Public Assembly use.

A little more about this -- the proposal that comes to you from the Planning Commission would delete athletic clubs as permitted uses in the I zone. It would delete libraries and museums from the list of permitted uses. Right now we have one athletic club in an I zone and we have no libraries or museums currently in the I zones. The other thing that we're proposing is that the size of eating and drinking establishments be limited to 4000 sq. ft.

Then the Industrial Park zone is a little different than the previous two. It says, the purpose says, "To provide for light Industrial uses." Generally that means that they are indoor, they are uses that can be maintained inside a building. They don't need outdoor activities other than loading and unloading -- those kinds of things - storage, "...provide for light industrial uses in a campus like setting. High performance development centers ensure compatibility among industrial park users and compatibility with adjacent commercial and residential uses." So we concluded that Religious Assembly should not be put in that zone and that's where we differ from the Urban Area Planning Commission. They felt that it could be put in that IP zone as well. A little more about this, depending on which recommendation that you take when you finally decide; the Director's recommendation then would require then that you delete athletic clubs, libraries

and museums from the list of permitted uses within the IP zone. Already, libraries and museums fall under a different definition. They are permitted vis-à-vis a use called minor public uses. But again, the Planning Commission would allow those uses to remain and then it would add religious assembly.

We do have a third option, this was actually conveyed to you back in February, through Council Memo #30, and it was a request from the Parks Advisory Board to initiate an amendment that would allow a dog park in the I zone property that is owned by the Oregon Youth Authority. We don't pass laws for individual, specific pieces of property, so this would be... If you want to amend it, it would pertain to all industrial zone property. The way it is defined right now, something like a dog park would fit under the public park or commercial recreation area, which are specific land uses. Those uses are not permitted in the I zone right now. For purposes of RLUIPA, public park and commercial recreation would be considered Public Assembly, again. So if you are going to allow those uses then you would have to conversely allow Religious Assembly as well. And neither the Director, I, nor the Urban Area Planning Commission recommend that option.

I wanted to just put it in a little table form that will hopefully clarify it for you. So this is basically the proposal that we are recommending and what it shows you along the left hand column are the three zones, the BP, IP and I, and what we propose to do is add Religious Assembly to only the BP zone and then we would remove athletic clubs, museums and libraries, from the Industrial zone and also the IP zone. What the Planning Commission did, a slight variation to that, they agreed with adding the BP, or adding Religious Assembly to BP, but they also wanted to add Religious Assembly to the IP and then they would take away the athletic clubs, libraries and museums from the Industrial zone.

Then the third option, essentially you would allow Religious Assembly to all 3 of the zones BP, I, and IP, and you would not be deleting any currently permitted uses from any of those 3 zones. Last time at the Workshop, I think Councilor Cummings asked about how much land are we really talking about? So that you can see, we have just a table of the available acreage and total acreage. So in BP we have 298 acres zoned BP and of that about 72 or 24% remain buildable. With the I zone, 298 acres about 44%, or 130 acres are buildable. Then in the IP zone about 54 total acres and 19 acres or about 35% buildable. The remaining then are either unbuildable due to site constraints or it's already been developed. If you remember going through this Urban Growth Boundary expansion process, we have concluded that we need about 421 acres of industrial land within our UGB over the next 20 year planning horizon.

This is a map, and I apologize if it's a little hard to read, if you can see the little purple spots just show, purple is the color that is designated – there are actually 3 shades, but the purple is designated for the Industrial zones and you can see it's pretty much in the southeastern part of town but there is a little bit in the southwest as well and a little bit, some along the tracks

primarily. So again, just in terms of our recommendations, we would recommend that you allow churches in the BP zone and you strike those other Public Assembly uses from the other 2 Zones, the IP and the I. One thing we are asking you to do is make a decision tonight. But we did not put 3 separate ordinances in the packet for you -- maybe there is a hybrid, maybe there is a fourth version, so that you would make a decision this evening and then continue it for 2 weeks and then we would come back with the appropriate ordinance to reflect what your decision is. With that, I'll be happy to answer any questions.

Councilor Kangas asked Director Huber, I'm one of the liaisons to the Planning Commission and I was at this hearing at the Planning Commission and I don't... The dog park thing, the third option wasn't discussed there. They discussed in depth the other two, which is all in the minutes so I didn't hear anything different. But why is this third option -- well, my question is, why wasn't the Planning Commission discussing this option to incorporate, you know, maybe they would have... They are the ones that know the most about this so why didn't they get to discuss it is what my question is.

Director Huber stated, the option was raised vis-à-vis this Council Memo #30 which was a cover memo on a request from the Parks Advisory Board to initiate the text amendment. That came after the Planning Commission hearing.

Councilor Kangas asked, would it be possible to have them weigh in on this again with this dog park and the other Religious Assembly and Parks Commercial for Industrial?

Community Development Director Huber stated, to an extent I would say they already have. Because they looked at the purpose statement of the I zone and they felt that it wasn't appropriate to open up the Industrial zones anymore than they already recommended; which was to add churches to BP, and to the IP zone. You do have the authority to send things back for further consideration if you like. It's still ultimately your choice, you are going to have to decide how you want to do that, what zones you want to allow churches in, or not at all, is still up to you.

Councilor Townes asked, so what if we adopt it, whichever way we adopt it, and there comes a variance -- how does that work into the mix?

Director Huber stated, we don't have use variances. Variances are for standards, height, setbacks, distances...

Councilor Townes asked, is there a big hurry on this? You said you'd like to get this done tonight.

Do you have some big... Is there some reason that RLUIPA is on our... I know it's been put off for months, if not years, I was just wondering if there is a big hurry?

Director Huber stated, well it is one of these things that we're conscious of and we are vulnerable because we think our Code is out of compliance with that law. A year or two ago, we met with some property owners who were thinking of applying for a church in an industrial zone. They actually brought it up and said, "You know, you're not in compliance with this Federal Law." So that's when we thought, "You know, it's probably time to amend our Code." There is nothing pending right now. I wouldn't put it off too long. It's been... We initiated this last year in August, I believe.

Councilor Warren stated, I'd have to agree with Councilor Kangas. I'd like to see it go back to the Planning Commission and I'd like to see what their take is. I feel like we're really being put in an uncomfortable position here. I'm the Council liaison to the Parks Board, so I've sat in and listened to their discussions and I'm very supportive of the dog park. However, I find it ironic that we have a staff member that's on the Park Board, that also supports the idea of the dog park, and they've put a lot of time into this, and yet the Staff in general is recommending that we don't approve the dog park, because we don't include that into industrial land. And personally, I think that it is kind of important to preserve our industrial land. So I would agree with the Staff on that, but it puts us in the position of, if we want to preserve industrial land, we're voting against the dog park. And I don't like being put in that position because, how does the media play that? The headline is not, "Council tries to preserve industrial land," it's "Council votes against dogs and churches." I find that an uncomfortable position to put the Council in, so I would like to see it... I agree with Councilor Kangas, I think it should go back before the Planning Commission and then I'd like to see their take on the dog park, because I would like to support the dog park.

Mayor Murphy asked, do you have questions of Staff or do you want to... Your comments are appropriate for the discussion phase of this presentation, are there questions?

Councilor Warren asked, if we wanted to approve the dog park then Director Huber, we can't do it for just this one property, we would have to say dog parks are now allowed on industrial lands?

Director Huber stated, yes sir.

Councilor Warren stated, I don't know that there would be a rush for that. I don't see a huge demand to put dog parks on industrial property but we would have to include that particular use then on all industrial land.

Director Huber stated, we don't currently have a definition of dog park, we have public parks and commercial recreation, is what it's called. So if you want to narrow it down that specifically to a dog park, we'd have to do some additional work to define that.

Councilor Berger stated, so when you change the permitted uses what about the existing facilities?

Director Huber stated, there's only one, there is an athletic club in the I zone and that would be rendered what's called non-conforming. It's perfectly legal, it's non-conforming. Actually it's within an industrial park, it's within sort of like a shopping center in an industrial zone. What it means though is if they ever want to expand, they can only expand up to 50%. But again, their space is contained because I think they've got uses on both sides of them.

Councilor Townes stated, that was my question, by the way, but I do have another one. Where does the Bear Motel fit into all of this?

Councilor Huber stated, they're zoned I.

Councilor Townes asked, and that's still a permitted use?

Director Huber stated, what they have done... They actually were permitted under warehousing and they have part of their building, I can't remember the square footage, is for assembly uses. They recently filed an application to be reclassified as a museum and that preceded this, well, it's preceding your decision.

Councilor Townes asked, so my second question is you have given us a little wiggle room in the fact that if we approve the dog park first, and then approve this second, it would be existing, is that correct?

Councilor Huber stated, we don't have an application pending yet for a dog park.

Councilor Townes asked, so we would have to wait until that application was submitted and completed and then we could go through and...

Director Huber asked, oh, you mean you want to grandfather them in?

Councilor Townes stated, yes, bingo!

Director Huber stated, yes, it's possible.

Councilor Warren stated, so I think a good option might be for the Park Board to submit the application for the dog park right away and that we would send this back to the Planning Commission to... No I guess that doesn't work. But we can't approve that until we have the permit, is that what you're saying on the dog park?

Director Huber stated, they haven't applied for it yet.

Councilor Warren stated, well until we have an application from the Park Board?

Director Huber stated, and I don't think you would see it anyway unless on appeal. I believe it's a type II Hearings Officer decision.

Mayor Murphy asked if there were any more questions for Director Huber.

Director Huber stated, oh I'm sorry, wait a minute -- one mistake, thankfully you just reminded me that, commercial recreation and public parks are not permitted in the I zone, that's right, so part of this, if you want to add the religious assembly, you also have to add those uses back in. Those two uses are not permitted currently. So you have to do a little text amendment to add commercial recreation or dog park, or whatever you want to call it, into the I zone as well.

Councilor Berger stated, I'm just curious, could you clarify on the Bear Motel, how a Warehouse Assembly Hall got into the I zone under our current Code?

Director Huber stated, warehousing is perfectly legal, they do, do assembling, they do sculpting and welding and painting, and all kinds of building. They do additional things, if you've ever been there, I think it's on the east side of the building, they have like office space, I think they have meetings there, board meetings and things like that. Typically they offer tours through the rest of the building. It was approved as a warehouse use.

Mayor Murphy asked if there were any additional questions before opening it to the public for comment and then come back for discussion with Council. Okay, we have a couple of people who care to speak to this issue

Chris Hart, 805 NE Oregon Avenue, Grants Pass. I'm a small business owner in Grants Pass. I have been for about 15 years. I currently serve on the Parks Advisory Board, you've probably seen me jogging with my dog occasionally in the morning. It's probably you that honked at me this morning at 5:30. I'm also a volunteer with Delta Society, which is a pet partner program where we certify and register animals and handlers to go to nursing homes and hospice and to schools as well for educational purposes, and for pet-assisted therapy. And I have to tell you that it wouldn't be, it's only because of the dog park experience of me driving to Medford to use their dog park that I discovered that my dog had the personality and the traits to be a pet therapy dog. I live in the northeast section of Grants Pass, as well. During the day you can hear the dogs barking in the back yards because they're bored, and many of the people in my neighborhood can't walk their dogs because they are older or they have health issues, or they have small children and are not able to do that. And having a dog park, somewhere you could take your dog for 15 minutes, or 20 minutes or 30 minutes of quick exercise would probably give the dog a choice of going to sleep rather than barking all day. The past 10 years, my business has been located in the Hellgate Jetboat parking lot and one of the questions I hear almost daily, I'd say at least 2 or 3 times a day on a busy weekend, is, "Where is the dog park?" Because so many people travel with their dogs and having the dog park is just a norm. They are in disbelief when I tell them we don't have a dog park. I've been involved in public service and volunteerism long enough to know that when you have a complaint you need to have a solution. About two years ago, a group of people, myself included, began looking for property in the City limits that could be used for a dog park and that's when we discovered the property next to the Oregon Youth Authority. We have had several conversations and meetings with them, and they are very supportive of partnering with the City of Grants Pass for a dog park. They are even willing to provide the surplus parking area in their parking lot to solve the parking requirements for the dog park. We've also talked with Walmart and they are supportive of the idea as well, but for a reason that I had never thought of, that was that so many truck drivers drive with their pets and drive with their dogs. And now I've noticed when I drive by there, people are out walking their dogs right by their trucks. So as far as the people in the area, there is enough parking. Walmart would consider the parking as an option if we had approval and support of the City to be involved with it. I think that most of you are familiar with the Public Information Survey that we did for the Master Plan and what it showed was that the top 5 requested facilities were dog parks or off-leash dog areas. In the top 10 activities chosen, the top 10 activities, that's a lot, for people in Grants Pass, dog parks ranked in the top 5. So there is a need, there is a vacant piece of property. The property is paid for by the taxpayers and I think the need could be filled at a minimum cost. I know that there is a concern for the idea of permitting Public Assembly in an industrial zone

Mayor Murphy indicates that Ms. Hart's needs make closing comments. He apologized for not warning her that she had 3 minutes to speak.

Ms. Hart continued, the possibility of the Public Assembly concern could be narrowed possibly using this property for an off leash dog area would not allow a building or utilities, which are normally required for Public Assembly. When it comes to Public Assembly, dogs don't need a building, they don't need utilities, all they need is a fence, some grass, and a tree. Thank you.

Mr. John Reinhart, 118 Osprey Glen Lane, Grants Pass. We have been through the dog park thing for sometime as far as the Advisory Board is concerned. We feel it's one of the greater needs within the community. And the neat part about this is that this is public property today that is not being used, and I repeat that, not being used at all. All it does is grow a weed patch. The only thing that the City needs to do is to put in a gate so that you have access and get some water so the dogs can have water, and mow it a few times a year. The beautiful part of it is that I happened to have the opportunity to speak to the leader of one of the service clubs today and they would like to make that a community project. So, consequently, I believe that the expense to the City of Grants Pass would be minimal. It's something that would be used, as Chris indicated, a great deal. It's really neat to see those dogs out there playing and getting their legs stretched when they're usually tied up in a home. It works out very well to go ahead and have something of this type. Medford and Ashland both have been very successful in their dog parks and, as I understand it, there are very, very little problems and cost of maintenance. I think that's all I have to say other than, if you have to come up a different name other than a park, call it an off-leash dog area. That way we can go. Thank you.

Holger Sommer, 2000 Hugo Road, Merlin. First let me state here that I'm not against any one of those assembly laws or the motion or indication which was given that the dog park should go in. I support dogs, I have 5 myself, and I would like to see a dog park being in. Having said this, my question is, when did dog parks or leading dogs and assembly dogs become a public assembly? That's the first question. I don't think it falls under the definition of commercial recreational public assembly, it's a different issue. By the way, it is not commercial. I think, I haven't heard that anybody is going to pay for something like this. It's a public park so it's going to be under the ownership of the City. It's not going to be anything which looks to me like anything that would be a recreational commercial situation here. Having said this, I'm going to come now to RLUIPA. This law was primarily put in place by the Federal government after actually law suits were filed, that a religious assembly cannot be within 3 miles of a City boundary. That was the reason. This has nothing to do with a zoning issue. You are in charge of what can be done within your industrial lands, or your industrial park lands. I wonder why, well it has probably to do with the

definitions that are in your Code. You know, assembly and religious assembly there shouldn't be a difference. Commercial assemblies or political assemblies or religious assemblies are assemblies of people. If an assembly is prejudiced against another type of assembly, that should not happen and that's what the Supreme Court actually said with that decision, with this law now from the Federal government. As long as you are keeping the issues, what the issues are, you shouldn't have any problems. I agree that religious assemblies should not be prejudiced against and that happened for religious assemblies when they tried to be within 3 miles of a City boundary. But that's a County issue, that has nothing to do with you. And the County has to actually update this, they haven't done it yet. That's it. Thank you very much.

John Dunkin, 805 NE Oregon Avenue, Grants Pass. I was the one I guess that started this with the State. I started calling the State Youth Authority a couple of years ago. It took about 6 months to get kind of squared away with the folks there and my thought was -- I know the history of the land that we're talking about and I thought, why not, what a great spot. You've got the bus depot there, you've got a lot of traffic coming around and I think it would be a great spot for a dog park, which we really don't have a significant dog park. So I started it a couple of years ago and got a hold of, I can't remember the fellow's last name -- but Rex. They wanted a lease and, of course, at that time, I wasn't an organization and probably would have to file for a not-for-profit organization. But although I'm in favor of it, I think there's another option here that you folks need to look at. This would be a lease with the State. It's not City property, it's not going to be sold for industrial property for a long time. Part of your lease is probably going to state that you are going to be thrown off it in case there is development or there is going to be an opportunity for the State to sell it for any reason. So I think you've got a unique situation here that you can even get by your zoning situation. And if you term it that, then I think that you can deal with it a little differently. Whether that takes legal counsel or whatever it does, but that would my approach to it, rather than going through all the zoning and everything else. It's a unique situation, it's a community event. There are no buildings, there is no significant construction, there are not a lot of utilities except water that is going to be needed for the property. I think there is going to be a considerable amount of community support and less cost to the City. I will support it financially, to some extent. So I think you need to look at it from that standpoint. Thank you.

Cliff Kuhlman, 709 NW Savage, Grants Pass. I serve on the Park Advisory Board, I served on the Redwood Park Board when the City obtained a grant for a half a million dollars, which I was totally excited about, and still am, but we ran out of money. When we went out to the public in the Redwood area to see what was needed, what their preference was for facilities in the Redwood Park once it was built, dogs was #1. I don't own dogs, I don't really care for them that much, but I would love to have a dog park because I think the people want it and they deserve it. We didn't

even have Schroeder Park in the picture with the County at that time. So anyway, the Redwood neighborhood wanted the dog park and they may never get it because we don't have any money for that yet. So what I'm thinking is if you can actually see a lease arranged for with the State on this property, State owned property, it is a temporary use, it would be painless, it would be realistic, reasonable, and the public would love it because we do need the facility. We don't want to be second class to neighboring communities that have wonderful dog park facilities. Thank you.

Mayor Murphy stated, Ed Bowers, I note that your slip is just blank all the way down here so should I just hold this and use it for everything? (Laughter.)

Ed Bowers, 1104 Luzon, Grants Pass. I made a mistake today at my home while I was raking, I raked so much for so long that my hands won't work. They are cramping up and so if I look like I have claws, I apologize. I had a rough time even putting my name down. I totally support the dog park. It's a win-win situation. First of all, it's next to I believe the correctional... Frankly, the jail so if we could get that for even 10 years, or whatever, there is hardly any money being spent compared to most things. The neat thing about dogs, we can let dogs of all religions use the park and their owners too. It's one of the few things people can do that doesn't require a lot of money. So in tight times, it's really an excellent program. I totally agree with some of the comments that maybe we can call it something else, so we don't have to go into such an elaborate program to send it back to the Planning Commission. It seems like there are a lot of good things we do, but by the time we get them done, the people that want them are either gone or the projects are over budget. So if we could find a way to do this particular project, especially when it belongs to State, the property. It has got great big high fences around it, apparently to keep people in at the jail. It's an ideal situation and it has the total support of everybody that I've talked to on the Park Board. So if we could do this and do it fast, that'd be great.

Mayor Murphy stated, I think I've used up my supply of pre-filled-out forms on this. Does anybody else care to speak to this issue?

Jan Battersby, 1104 Luzon, Grants Pass. I'm also on the Park Board and I think Chris made a really good presentation representing the dog park people that are wanting to do this project. I think this is probably one of the most economical projects that the City Council could ever vote on. They have volunteers that are going to work on this project; the property is fenced on three sides. I think it's a win-win situation and I think that they should really take consideration into voting for this. Thank you.

Mayor Murphy asks if there was anyone else who wished to speak to the issue. Seeing none, we will close the public comment portion and return it to the Council.

Councilor Warren stated, I'd like to ask Staff if there is a way that we can act on, or make a recommendation tonight that follows Mr. Dunkin's suggestion there and see about leasing that property from the State so that we don't compromise the industrial lands and have to make an amendment there. Or do we need to postpone consideration of the whole item until we can find out about leasing the property from the State?

Interim City Attorney Nolte stated, even if the City leases the property it's still subject to the underlying zoning, so I'm not sure how a lease solves any of your problems?

Councilor Warren stated, well then, if that the case, then I would like to make a motion that we adopt the Director's recommendation to preserve our industrial land's and institute a text amendment to permit a dog park, or whatever we need to call that, on industrial land.

Councilor Berger asked, I don't know if that would work? But I was going to ask, couldn't we be a little more creative. This is a kind of a unique situation, it's definitely a use on an empty piece of property, people want it. I'm getting kind of tired of getting bogged down into zones and Code. Can't we be a little creative here? Maybe Councilor Warren just thought of a way to do it, to be real specific – dog park.

Mayor Murphy stated, I didn't hear a second so that motion... Now I hear a second so we have a motion.

Councilor Kangas stated, I'm 100% behind dog parks then if that's a way we can do it, is that possible that we can do that?

City Attorney Nolte stated, I missed the last part of the Councilor's motion.

Councilor Warren stated, what I think my motion was, is that we adopt the Director's recommendation, but initiate a text amendment to allow a dog park on industrial property.

City Attorney Nolte stated, obviously you can do that but that means then you would also have to allow churches and other assembly uses on the property. Because a dog park is...

Councilor Warren stated, that's not the way I understood it. I thought because there was no

building, for a dog park there would be no building and some of the other things that go along with what are included on industrial land. It was my understanding from the presentation that Director Huber made that we could have a text amendment to allow a dog park without allowing the other uses. But are you indicating that we can't?

City Attorney Nolte stated, I think that's an open question and I think you would have to at least allow an outdoor assembly of persons, so if the church is conducted outdoors, you would at least have to do that. I've not been able to find any cases that say one way or the other if you would also have to allow a building for the assembly.

Councilor Cummings stated, I guess my opinion is that I don't have a problem with dog parks in all 3 zones nor religious assembly in all 3, which is somewhat different than what's here, because that way you don't limit yourself in regards to what you're doing. I know that in all three, because in 25 years there have been 2 churches built and both of those are in general commercial use. So I don't think we're going to lose our industrial land based on churches in those 3 zones. So it seems to me, it seems like the flexibility in the event that we didn't have a lease with the State -- it gives the flexibility to do what you want in other areas. Because, again, we have parks and other areas for the City, for the residents, and we could do the same thing as we expand to have other opportunities.

Councilor Berger asked, what do you recommend?

Councilor Cummings stated, my recommendation would be that we allow the religious assembly and the dogs in all 3 zones. I don't think we're going to lose all of our industrial lands to...

Councilor Berger stated, so you recommending this.

Councilor Townes stated, I'm going to go along with Councilor Cummings. That's the way I'd like to go along with this. Let's adopt the third option which would allow the dog park. Put some pressure on everybody to get the dog park in. Then if we want to revisit the situation, we can always revert back and the dog park would be grandfathered in and we can go back to choice #2, or choice #1. But that would alleviate all the problems for tonight, and we'll go forward, RLUIPA will be solved for the interim, and again, put the pressure... Let's get this dog thing in because everybody is in favor of it and then we can revisit this and change it back if we feel it's necessary.

Councilor Warren stated I'll go ahead and withdraw my motion and allow Councilor Townes to restate the motion.

Councilor Townes stated, so I'd like to put that in the form of a motion to adopt option #3. The motion is seconded by Councilor Renfro.

Mayor Murphy asked if there is any further discussion. Seeing none, I'm just making sure what this is you were asking for...

Director Huber stated, if I could clarify... It would look, that's the slide that's the most similar except that with the motion under I-Industrial, you would have a new use permitted which is religious assembly and then where athletic clubs and museums and libraries are not permitted we'd remove that, which means they are permitted.

Mayor Murphy stated, I'm making sure it says ordinance, that this is asking tonight to bring back an ordinance.

Councilor Townes asked, do you want us to put that in the form of a motion to retable that or bring it back...

Mayor Murphy stated we are going to have an ordinance but right now it's a motion. Okay, any further discussion here? Seeing none, he calls for the vote.

MOTION

It was moved by Councilor Townes and seconded by Councilor Renfro to propose an ordinance for a Development Code text amendment. The vote resulted as follows: "AYES": Berger, Kangas, Renfro, Cummings, Townes, Pell, Michelon, and Warren. "NAYS": None. Absent: None.

Having received a favorable vote, Mayor Murphy declared the motion to have duly passed.

Mayor Murphy asked Director Huber that would be coming back in a couple of weeks, or longer approximately?

Director Huber stated, you can continue to a date certain. We could get it fairly quickly, we just need a time certain. We can do it on May 6, if you'd like.

Mayor Murphy stated, so we would need to continue this hearing to a date certain.

Councilor Kangas stated, I'll motion to continue until May 6, 2009. Councilor Townes seconded the motion. Motion is carried by a unanimous raise of hands.

MOTION

It was moved by Councilor Kangas and seconded by Councilor Townes to continue the item until May 6, 2009. The vote resulted as follows: "AYES": Berger, Kangas, Renfro, Cummings, Townes, Pell, Michelin, and Warren. "NAYS": None. Absent: None.

Having received a favorable vote, Mayor Murphy declared the motion to have duly passed.

Councilor Townes stated, since everybody is here, the dog park, park, and Staff, let's don't forget the other half of this and let's go forward with this. My plate is pretty full so hopefully yours isn't and let's get this dog park going. I'm assuming... Are there any problems from Staff on pursuing this? Do we need to make a motion to pursue this or is just a thumbs up good enough?

Director Seybold stated, obviously we'll have to contact the Oregon Youth Authority to be sure that the use will be allowable. It's kind of the chicken and the egg, they did not want to take any action unless it was permissible by the City of Grants Pass. So based on the discussion tonight, I will talk to the City Manager and I'm presume that we will draft a letter to the Oregon Youth Authority specifically requesting permission to develop the site. And I presume that that would end up in some kind of contractual agreement so both parties knew what was involved and what each party had responsibility for.

b. An Ordinance adopting a text amendment to the Development Code fencing standards.

Mayor Murphy stated, now we have another land use hearing. Do we need to restate the disclaimers? Okay, we have a Staff report.

Principal Planner Angeli-Paladino stated, the text amendment before you is for a revision to our fencing standards. It's kind of a clean-up of our Code currently. For a little bit of background, I know this issue did come before the Council during a workshop in March. Really, what we're trying to do is to try and make our existing fencing regulations a little more customer friendly, easier to explain, easier for customers to understand and implement. We do get frequent questions from customers about constructing 6 foot fences along alleys. Currently a 6 foot fence constructed on the property line in an alley is not permitted. We have heard complaints that existing standards are difficult to understand and there is ambiguity in existing vision clearance and zone buffer requirements. Again, this is just to kind of make this more user friendly and help clean-up some of those things and make it more affective. Again, the proposal is to amend Section 23.037 of the Development Code. Currently those standards basically look at fencing

MOTION

It was moved by Councilor Renfro and seconded by Councilor Cummings that the minutes be approved as written and the vote resulted as follows: "AYES": Kangas, Renfro, Cummings, Townes, Pell, Michelon, and Warren. "NAYS": None. Absent: Berger.

Having received a favorable vote, Mayor Murphy declared the motion to have duly passed.

5h. Motion to approve Liquor Licenses.

MOTION

It was moved by Councilor Renfro and seconded by Councilor Cummings that the minutes be approved as written and the vote resulted as follows: "AYES": Kangas, Renfro, Cummings, Townes, Pell, Michelon, and Warren. "NAYS": None. Absent: Berger.

Having received a favorable vote, Mayor Murphy declared the motion to have duly passed.

5i. Resolution regarding intergovernmental agreement with ODOT for stimulus.

RESOLUTION NO. 5499

It was moved by Councilor Renfro and seconded by Councilor Cummings that Resolution No. 5499 be adopted and the vote resulted as follows: "AYES": Renfro, Kangas, Pell, Cummings, Townes, Warren, and Michelon. "NAYS": None. Absent: Berger.

Having received a favorable vote, Mayor Murphy declared Resolution 5499 is adopted.

6. EXECUTIVE SESSION 192.660 (2): None

7. ADJOURN -

There being no further business to come before the Council, Mayor Murphy adjourned the meeting at 10:40 p.m.

The ordinances, resolutions and motions contained herein and the accompanying votes have been verified by:


Finance Director

These minutes were prepared by contracted minute taker Wendy Hain.

RLUIPA Development Code Text Amendment

April 15, 2009 City Council Hearing
Presented By: James E. Huber

Why Initiate RLUIPA Amendment?

- Within the past two years, the City has received several inquiries into use of industrial zones for churches
 - Including one approved zone change on NW F Street (old Grants Co-Op property)
- Customer interested in developing industrial property with a church asserted that City's Code is not compliant with RLUIPA
- Recent case law has clarified how RLUIPA applies at the local government land use level

Goals of RLUIPA Amendment

- Align City law with federal law
- Avoid potential for costly litigation.

RLUIPA Text Amendment Summary:

- Intended to ensure Development Code consistency with federal RLUIPA and associated case law.
 - Per RLUIPA, if any public assembly use (i.e. lodge, meeting hall, etc.) is permitted in a given zone, then religious assembly uses must also be permitted.
- Certain land uses would be affected within the BP, I and IP zoning districts

Grants Pass Development Code

- Churches allowed everywhere, except for three industrial zoning districts: "BP", "IP" and "I"
 - Each of these districts permits uses that could reasonably be interpreted as nonreligious assembly or institutional.
- There are multiple ways that Development Code could be amended to address RLUIPA.
- Community Development Director and Urban Area Planning Commission have different recommended proposals that would address RLUIPA in the industrial zones.
 - Third option, related to the requested dog park in the "I" industrial zone, will also be presented.

City Council Policy Decision

- City Council must make a policy decision in regards to how public assembly and institutional uses should be regulated within each of the three industrial zoning districts.
- In doing so, Council must consider:
 - Development Code purpose statement for each industrial zoning district, and
 - Potential for policy decision to affect availability of employment lands within UGB.
 - Criteria for Development Code Text Amendment

EXHIBIT C¹
to CC FOF

4.103 Criteria for Amendment

The text of this Code may be recommended for amendment and amended provided that all the following criteria are met:

- (1) The proposed amendment is consistent with the purpose of the subject section and article.
- (2) The proposed amendment is consistent with other provisions of this Code.
- (3) The proposed amendment is consistent with the goals and policies of the Comprehensive Plan, and most effectively carries out those goals and policies of all alternatives considered.
- (4) The proposed amendment is consistent with the functions, capacities and performance standards of transportation facilities identified in the Master Transportation Plan.

"BP" Business Park Zone Purpose & Intent

- *The purpose of the Business Park District is to provide a **mixed-use zone for light industrial and commercial uses.***
 - Development Code Section 12.321
- Director and Urban Area Planning Commission agree that BP zone is compatible with, and appropriate for, public assembly uses.
- Both proposals add "Religious Assembly" as a permitted use, and retain other assembly and institutional uses already permitted within the district.

"I" Industrial Zone Purpose & Intent

- *It is the express intent of the Industrial District to **maintain lands for industrial use, with commercial and residential uses limited to those accessory to industrial development.***
 - Development Code Section 12.323
- Director and Urban Area Planning Commission agree that the "I" Industrial zone should be preserved for industrial employment uses.
- Allowing public assembly uses such as churches and athletic clubs would be inconsistent with purpose and intent of the "I" Industrial zone.

"I" Industrial Zone Purpose & Intent (continued)

- Director and Planning Commission proposals both delete "Athletic Clubs", libraries and museums from the list of permitted uses within the "I" district.
 - Libraries and museums currently permitted as Minor Public uses.
- Allowing "Eating/Drinking Establishments" within the "I" zone is consistent with the purpose statement's intent of allowing commercial uses that are accessory to industrial development.
 - Establishments provide a service to nearby industrial workers

"IP" Industrial Park Zone Purpose & Intent

- *The purpose of the Industrial Park District is to **provide for light industrial uses in a campus-like setting. High Performance Development Standards assure compatibility among Industrial Park users and the compatibility with adjacent commercial and residential uses.***
 - Development Code Section 12.322
- Director found that "IP" zone should be preserved for light industrial employment uses.
 - Allowing public assembly uses such as churches and athletic clubs would be inconsistent with purpose and intent of the "I" Industrial zone.
- Planning Commission found the "IP" zone to be compatible with public assembly uses like churches and athletic clubs.

"IP" Industrial Park Zone Purpose & Intent (continued)

- Director's proposal deletes "Athletic Clubs", libraries and museums from the list of permitted uses within the "IP" district.
 - Libraries and museums currently permitted as Minor Public uses.
- Planning Commission's proposal adds "Religious Assembly" as a permitted use, and retains other assembly and institutional uses already permitted within the district.

Third Option

- Council Memo No. 030 (dated 2/2/09) included request from Parks Advisory Board to initiate amendment to allow dog park on "I"-zoned property owned by State of Oregon Youth Authority
- Dog park would fit under "Public Park" or "Commercial Recreation, Area Impact"
 - Neither use permitted within the "I" zone

Third Option (continued)

- "Public Park" and "Commercial Recreation" are considered assembly uses for the purposes of RLUIPA
- If "Public Park" or "Commercial Recreation" are added to the list of permitted uses within the "I" zone, then "Religious Assembly" must also be added.
- The Director and Planning Commission both recommend that assembly and institutional uses be kept out of the "I" Industrial zone so that it can be preserved for industrial uses and employment.

Amended Land Uses (Director's Recommendation)

Zoning Designation	New Uses Permitted	Uses Not Permitted
BP (Business Park)	Religious Assembly	
I (Industrial)		Athletic Clubs, Museums, Libraries
IP (Industrial Park)		Athletic Clubs, Museums, Libraries

Additionally, "Eating/Drinking Establishments" within the "I" (Industrial) zone would be limited to a maximum size of 4,000 square feet, with no accessory meeting / banquet space permitted

Amended Land Uses (Planning Commission's Recommendation)

Zoning Designation	New Uses Permitted	Uses Not Permitted
BP (Business Park)	Religious Assembly	
I (Industrial)		Athletic Clubs, Museums, Libraries
IP (Industrial Park)	Religious Assembly	

Additionally, "Eating/Drinking Establishments" within the "I" (Industrial) zone would be limited to a maximum size of 4,000 square feet, with no accessory meeting / banquet space permitted

Amended Land Uses (Third Option- Not Recommended)

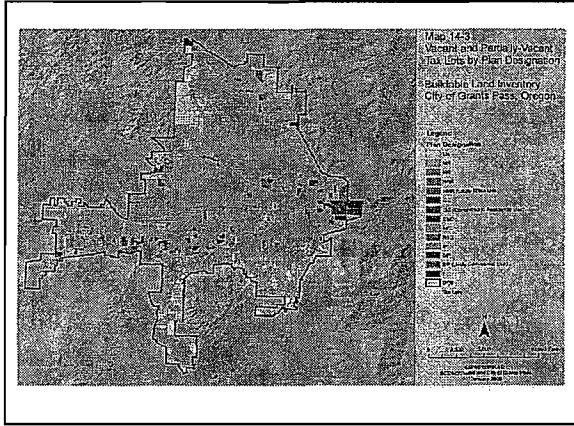
Zoning Designation	New Uses Permitted	Uses Not Permitted
BP (Business Park)	Religious Assembly	
I (Industrial)	Religious Assembly, Public Parks / Commercial Recreation	
IP (Industrial Park)	Religious Assembly	

No restriction on the size of "Eating / Drinking Establishments" within the I zone

Industrial Land

Plan Designation	Total Existing Acreage	Buildable Acreage	Unbuildable / Developed Acreage
BP	298 acres	72 acres (24%)	226 acres (76%)
I	298 acres	130 acres (44%)	167 acres (56%)
IP	54 acres	19 acres (35%)	35 acres (65%)

- Draft Urbanization Element finds there to be a 421-acre deficit of industrial land within UGB



Conclusion & Recommendation

- Staff recommends approval of the Director's proposed text amendment.
- Planning Commission recommends approval of the Planning Commission's proposed text amendment.
- It is requested by staff that City Council make a motion on which proposal it wishes to adopt and then continue the hearing to a date certain so the appropriate ordinance can be prepared.

Questions?

CITY OF GRANTS PASS COMMUNITY DEVELOPMENT DEPARTMENT

**RLUIPA DEVELOPMENT CODE TEXT AMENDMENT
CITY COUNCIL STAFF REPORT-TYPE IV**

Procedure Type:	Type IV: Planning Commission Recommendation and City Council Decision
Project Number:	08-40500005
Project Type:	Development Code Text Amendment
Applicant:	City of Grants Pass
Planner Assigned:	Jared Voice
Application Received:	September 24, 2008 <i>Re-submitted November 14, 2008</i>
Application Complete:	November 14, 2008
Date of Planning Commission Staff Report:	January 7, 2009
Date of Planning Commission Hearing:	January 14, 2009
Date of Planning Commission Findings of Fact:	January 28, 2009
Date of City Council Staff Report:	March 10, 2009
Date of City Council Hearing:	March 18, 2009 <i>Continued to April 15, 2009</i>

I. PROPOSAL:

The proposal consists of amendments to the Development Code to address issues related to the federal Religious Land Use and Institutionalized Persons Act (RLUIPA) and associated case law. The proposal would affect certain land uses within "BP" (Business Park), "I" (Industrial) and "IP" (Industrial Park) zones.
See Exhibit 7 to Planning Commission staff report for text of RLUIPA.

II. AUTHORITY AND CRITERIA:

Section 4.102 of the City of Grants Pass Development Code provides that the Director or City Council may initiate a text amendment. The amendment was initiated by the Director.

Sections 2.060, 7.040 and 7.050 authorize the Urban Area Planning Commission to make a recommendation to the City Council and authorize the City Council to make a final decision on a land use matter requiring a Type IV procedure, in accordance with procedures of Section 2.060.

The text of the Development Code may be recommended for amendment and amended provided the criteria in Section 4.103 of the Development Code are met.

III. APPEAL PROCEDURE:

The City Council's final decision may be appealed to the State Land Use Board of Appeals (LUBA) as provided in state statutes. A notice of intent to appeal must be filed with LUBA within 21 days of the Council's written decision.

IV. BACKGROUND AND DISCUSSION:

The equal terms provision of RLUIPA requires that "no government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution." An "assembly", for the purposes of RLUIPA, has been defined as places where groups or individuals dedicated to similar purposes, whether social, educational, recreational or otherwise, meet together to pursue their interests (*Midrash Sephardi, Inc. v. Town of Surfside*, 11th Cir 2004.) Specific land uses that have been interpreted as assembly include clubs, lodges, recreation buildings, meeting halls, golf courses, playgrounds, parks and museums. If the Development Code allows any of these assembly uses within a given zoning district, it must also allow churches in that district. Conversely, the Development Code may restrict churches from certain zoning districts, so long as other nonreligious assembly and institutional uses are also restricted from those districts.

The Development Code currently allows churches in all but its three industrial zoning districts: "BP" (Business Park), "IP" (Industrial Park) and "I" (Industrial). Within each of these zones, there are other uses permitted that could reasonably be interpreted as nonreligious assembly or institutional uses for the purpose of RLUIPA. Therefore, the Development Code must be amended to ensure consistency with RLUIPA requirements. There are multiple ways this can be accomplished, so it is up to the City Council to make a policy decision in regards to how public assembly and institutional uses should be regulated within each of the industrial zoning districts. In making its decision, the Council must carefully consider the Development Code purpose statement for each zoning district, and the potential for its decision to affect the availability of employment lands within the Urban Growth Boundary.

The Community Development Director and the Urban Area Planning Commission have different recommended proposals that would address RLUIPA in the industrial zones. In addition, there is a third option that would address the Parks Board request for a text amendment to allow a dog park in the "I" (Industrial) zone. The third option is not recommended by the Director or the Urban Area Planning Commission.

Each of the three options is summarized below. Detailed findings of conformance with applicable criteria are provided in the Planning Commission Staff Report (for the Director's proposal), attached as **Exhibit D** to the Planning Commission Findings of Fact, and the Planning Commission's Findings of Fact (for the Planning Commission proposal), attached as **Exhibit 8** to this staff report.

First Option: Director's Proposal

The Director's proposal (*Exhibits 1-4* to City Council Staff Report) would add "Religious Assembly" as a permitted use within the "BP" (Business Park) zone, and delete "Athletic Clubs", libraries and museums as permitted uses from the "IP" (Industrial Park) and "I" (Industrial) zones. The Director's proposal is based on the finding that the "IP" and "I" districts are intended to be preserved for light industrial and heavy industrial uses, respectively, while the "BP" district is intended to provide a mixed-use zone.

It is recommended by staff that City Council adopted the Director's proposal, because it most accurately conforms to the Development Code purpose statement for the "IP" (Industrial Park) zoning district, and preserves the "light" and "heavy" industrial zones for their intended uses. The purpose of the "IP" district is "to provide for light industrial uses in a campus-like setting." Although the Planning Commission recommended that churches be allowed in the "IP" district, staff finds that the district is intended to be preserved for light industrial employment uses, and that allowing churches and other assembly uses within the district would be contrary to this purpose.

Note that the original Director's proposal included the deletion of "Temporary Uses" from the Development Code. The Planning Commission recommended, and staff agrees, that "Temporary Uses" should be considered separately from this proposal.

First Option: Director's Proposal- Affected Land Uses

Zoning Designation	New Land Uses Permitted	Land Uses Not Permitted*
BP (Business Park)	Religious Assembly	
I (Industrial)		Athletic Clubs, Cultural Exhibits and Libraries
IP (Industrial Park)		Athletic Clubs, Cultural Exhibits and Libraries

*Column depicts land uses that are currently permitted within each zoning district but would not be permitted upon approval of the Director's proposal. If said uses exist upon approval of the amendment, they would be allowed to remain as non-conforming uses, but would be subject to the provisions of Development Code Article 15.

NOTE: In addition to the above uses, "Eating / Drinking Establishments" within the "I" (Industrial) zone would be limited to a maximum size of 4,000 square feet.

The public library and historical museum are not located in either the "I" or "IP" district and would not be affected by the proposal. Staff is aware of one athletic club located within the "I" zoning district, in Spaulding Industrial Park. Any existing uses made non-conforming by the proposal would be allowed to remain, as long as they continue to operate. If the non-conforming use were to cease for a period of twelve months or more, its resumption would have to occur in a zoning district where the use is permitted. A one-time expansion of a non-conforming use of up to fifty (50) percent is allowed.

Section Option: Planning Commission's Proposal

The proposal recommended by the Urban Area Planning Commission differs from the Director's proposal in how it addresses the "IP" (Industrial Park) zoning district. The Planning Commission found that public assembly uses such as churches are compatible with light industrial uses and therefore should be allowed within the "IP" district.

Second Option: Planning Commission's Proposal- Affected Land Uses

Zoning Designation	New Land Uses Permitted	Land Uses Not Permitted*
BP (Business Park)	Religious Assembly	
I (Industrial)		Athletic Clubs, Cultural Exhibits and Libraries
IP (Industrial Park)	Religious Assembly	

*Column depicts land uses that are currently permitted within the "I" zoning district but would not be permitted upon approval of the proposal recommended by the Planning Commission. If said uses exist upon approval of the amendment, they would be allowed to remain as non-conforming uses, but would be subject to the provisions of Development Code Article 15.

NOTE: In addition to the above uses, "Eating / Drinking Establishments" within the "I" (Industrial) zone would be limited to a maximum size of 4,000 square feet.

Third Option: Dog Park Request

Council Memo No. 030 (dated 2/2/09) included a request from the Parks Advisory Board to initiate a text amendment to allow a dog park on "I" (Industrial) zoned property owned by the Oregon Youth Authority. A public dog park could be considered a "Public Park" or "Commercial Recreation Area Impact" under the list of permitted uses in Development Code Schedule 12-2. Public parks and commercial recreation are currently not permitted uses within the "I" Industrial zone.

The third option could address the Parks Board request to allow dog parks within the "I" Industrial zone. However, public parks and commercial recreation are considered "public assembly uses" for the purposes of RLUIPA. Therefore, if "Public Parks" or "Commercial Recreation" are added to the list of permitted uses within the "I" Industrial zone, then "Religious Assembly" must also be added. The third option is not recommended by the Director or the Urban Area Planning Commission, who both found that assembly and institutional uses should be kept out of the "I" Industrial zone so that it can be preserved for industrial and employment uses.

Third Option: Dog Park Request- Affected Land Uses

Zoning Designation	New Land Uses Permitted	Land Uses Not Permitted
BP (Business Park)	Religious Assembly	
I (Industrial)	Religious Assembly, Public Parks / Commercial Recreation	
IP (Industrial Park)	Religious Assembly	

Industrial Land Within the UGB

The following table includes information regarding industrial lands within the Grants Pass Urban Growth Boundary that is cited within the draft *Urbanization Element* that was prepared as part of the Urban Growth Boundary Evaluation. The draft *Urbanization Element* has not been adopted by City Council but was recommended for approval by the UGB Steering Committee. The document includes maps that show buildable lands within the UGB by plan designation.

Industrial Land Within Grants Pass UGB

Plan Designation	Total Existing Acreage	Buildable Acreage	Unbuildable or Developed Acreage
BP	298 acres	72 acres (24%)	226 acres (76%)
I	298 acres	130 acres (44%)	167 acres (56%)
IP	54 acres	19 acres (35%)	35 acres (65%)

The draft *Urbanization Element* finds that there is a 421-acre deficit of industrial land within the Grants Pass UGB. The document does not determine the breakdown of the deficit amongst the BP, I and IP designations. Additional information can be found within the draft *Urbanization Element*, which was distributed at the March 2, 2009 City Council workshop, and is available on the City's website at www.grantspassoregon.gov > Your Government > Community Development > Planning Division > Urban Growth Boundary Evaluation.

Additional detailed background and discussion is contained in the Planning Commission's Findings of Fact.

V. CONFORMANCE WITH APPLICABLE CRITERIA:

The text of the Development Code may be amended provided that all of the criteria of Section 4.103 of the Development Code are met. Detailed findings of conformance with applicable criteria are provided in the Planning Commission Staff Report (for the Director's proposal), attached as **Exhibit D** to the Planning Commission Findings of Fact, and the Planning Commission's Findings of Fact (for the Planning Commission proposal), attached as **Exhibit 8** to this staff report,

VI. RECOMMENDATION:

Staff finds the applicable criteria are satisfied and **RECOMMENDS APPROVAL** of the Director's proposed text amendment to City Council, as presented in **Exhibits 1, 2, 3 and 4** to this staff report.

The Urban Area Planning Commission finds the applicable criteria are satisfied and **RECOMMENDS APPROVAL** of the Planning Commission's proposed text amendment to City Council, as presented in **Exhibits A, B and C** to the Planning Commission Findings of Fact.

The key difference between the two is that the Director's proposal preserves the "IP" district for light industrial employment uses by disallowing assembly uses, including athletic clubs, museums and libraries, while the Planning Commission's proposal continues to allow assembly uses and also allows churches.

An ordinance adopting the proposal has not been included in the packet. It is requested by staff that City Council make a motion on which proposal it wishes to adopt and then continue the hearing to a date certain so the appropriate ordinance can be prepared.

VII. CITY COUNCIL ACTION:

A. Positive Action:

1. approve the proposal recommended by the Planning Commission.
2. approve the proposal recommended by the Planning Commission with modifications (list):

B. Negative Action: Deny the request and make no amendment for the following reasons (list):

C. Postponement: Continue item

1. indefinitely.
2. to a time certain.

NOTE: *This is a legislative decision. State law does not require that a decision be made on the application within 120 days.*

VIII. INDEX TO EXHIBITS:

1. Director's Proposed Amendments to Schedule 12-2
2. Director's Proposed Amendment to Section 20.220
3. Director's Proposed Amendment to Section 25.042 (4)
4. Director's Proposed Amendments to Article 30
5. City Council Motion for Continuance to April 15, 2009
6. March 9, 2009 RLUIPA City Council Workshop Minutes
7. March 9, 2009 RLUIPA Staff Power Point Presentation
8. Planning Commission Findings of Fact and Attached Record
 - A. Planning Commission's Proposed Amendments to Schedule 12-2
 - B. Planning Commission's Proposed Amendments to Section 25.042 (4)
 - C. Planning Commission's Proposed Amendments to Article 30
 - D. Planning Commission Staff Report & Exhibits
 1. Proposed Amendments to Schedule 12-2
 2. Proposed Amendment to Section 20.220
 3. Proposed Amendment to Section 25.042 (4)
 4. Proposed Amendments to Article 30
 5. Informational Handout, 12/22/08
 6. Letter in Support of Proposal from City Economic Development Coordinator
 7. Religious Land Use and Institutionalized Persons Act (RLUIPA)
 - E. Minutes of 1/14/09 Planning Commission Hearing
 - F. Staff PowerPoint Presentation from 1/14/09 UAPC Hearing
9. March 3, 2009 Informational Letter to Concerned Citizens
10. LUBA No. 2008-076 (Young v. Jackson County) Final Opinion and Order
11. Council Memo No. 030 & Attachments Regarding Dog Park
12. Blue Collar, Green Collar (article from February 2009 *Planning Magazine*)

²⁴Schedule 12-2. Permitted Uses and Site Plan Review Procedures

Land Use Types	Zoning Districts											
	Residential						Commercial			Industrial		
	UR	R-1-12 R-1-10 R-1-8	R-1-6	R-2	R-3	R-4	NC	GC	CBD	BP	IP	I
General activities not covered below, exempt from Development Permit	P-I-EX. See Section 2.033											
General activities not covered below, requiring an administratively issued use permit	P-I-AU. See Section 2.034											
General activities not covered below, where Building Permit serves as Development Permit	P-I-A. See Section 2.035											
1) Agriculture												
a) Intensive	P-I-EX	-	-	-	-	-	-	-	-	P-I-EX	P-I-EX	P-I-EX
b) Non Intensive	P-I-EX	P-I-EX	P-I-EX	P-I-EX	P-I-EX	P-I-EX	P-I-EX	P-I-EX	P-I-EX	P-I-EX	P-I-EX	P-I-EX
c) Forestry	P-I-EX	-	-	-	-	-	-	-	-	-	-	-
2) Residential Dwelling Unit												
a) Existing	P-I-A (e)	P-I-A (e)	P-I-A (e)	P-I-A (e)	P-I-A (e)	P-I-A (e)	P-I-A (e)	P-I-A (e)	P-I-A (e)	P-I-A (e)	P-I-A (e)	P-I-A (e)
b) New												

to CC Staff Report
EXHIBIT 1

Land Use Types	UR	R-1-12 R-1-10 R-1-8	R-1-6	R-2	R-3	R-4	NC	GC	CBD	BP	IP	I
1. Detached (1)	P-I-A	P-I-A	P-I-A	P-I-A	P-I-A	P-I-A	-	P-I-A	P-I-A	-	-	-
2. Detached (2)	PUD	PUD	P-II	P-I-A	P-I-A	P-I-A	-	P-I-A	P-I-A	-	-	-
3. Duplex	PUD	PUD	P-II	P-IA	P-IA	P-IA	-	P-I-A	P-I-A	-	-	-
4. Multi-Dwelling	PUD	PUD	PUD	P-II	P-I-C	P-I-C	-	P-I-C	P-I-C	-	-	-
5. Manufactured Housing												
"A" Individual Lot	P-I-A	P-I-A	P-I-A	P-I-A	P-I-A	P-I-A	-	P-I-A	P-I-A	-	-	-
"B" Manufactured Dwelling Park	-	-	-	P-III (d)	P-III (d)	P-I-C	-	-	-	-	-	-
"C" Health Condition	P-II	P-II	P-II	P-II	P-II	P-II	-	P-II	P-II	-	-	-
c) Group Quarters	-	-	-	-	-	P-II	-	-	P-II	-	-	-
d) Home Occupation												
1. Occupational Use, per 14.211	P-I-EX	P-I-EX	P-I-EX	P-I-EX	P-I-EX	P-I-EX	P-I-EX (f)	P-I-EX	P-I-EX	P-I-EX (f)	P-I-EX (f)	P-I-EX (f)
2. Minor, per 14.220	P-I-AU	P-I-AU	P-I-AU	P-I-AU	P-I-AU	P-I-AU	P-I-AU (f)	P-I-AU	P-I-AU	P-I-AU (f)	P-I-AU (f)	P-I-AU (f)
3. Major, per 14.220	P-II	P-II	P-II	P-II	P-II	P-II	P-I-C (f)	P-I-C	P-I-C	P-I-C (f)	P-I-C (f)	P-I-C (f)
e) Residential Accessory -Building -Use	P-I-A P-I-EX	P-I-A P-I-EX	P-I-A P-I-EX	P-I-A P-I-EX	P-I-A P-I-EX	P-I-A P-I-EX	P-I-A P-I-EX (e)	P-I-A P-I-EX	P-I-A P-I-EX	P-I-A P-I-EX (e)	P-I-A P-I-EX (e)	P-I-A P-I-EX (e)
f) Transient Quarters	-	-	-	-	-	-	-	-	-	P-III	-	P-III
g) Residential Home, per 14.510	P-I-A	P-I-A	P-I-A	P-I-A	P-I-A	P-I-A	P-I-A (f)	P-I-A	P-I-A	P-I-A (f)	P-I-A (f)	P-I-A (f)

to CC Staff Report
EXHIBIT 1b

Land Use Types	UR	R-1-12 R-1-10 R-1-8	R-1-6	R-2	R-3	R-4	NC	GC	CBD	BP	IP	I
h) Residential Facility, per 14.521	P-II	P-II	P-II	P-II	P-I-C	P-I-C	P-I-C	P-I-C	P-I-C	-	-	-
i) Dwelling, Accessory	-	-	-	-	-	-	P-I-C	P-I-C	P-I-C	-	-	-
3) Trade												
a) Retail Indoor	-	-	-	-	-	-	P-II	P-(a)	P-(a)	P-(b)	-	-
b) Retail Outdoor	-	-	-	-	-	-	-	P-(a)	-	P-(b)	-	-
c) Wholesale	-	-	-	-	-	-	-	P-(a)	-	P-(b)	-	-
d) Itinerant Use, per 14.120	-	-	-	-	-	-	-	P-I-AU	P-I-AU	-	-	-
4) Services												
a) Professional Office	-	-	-	-	-	P-II	-	P-(a)	P-(a)	P-(b)	P*-(b)	-
b) Business Office	-	-	-	-	-	-	-	P-(a)	P-(a)	P-(b)	-	-
c) Limited Office	P-II	P-II	P-II	P-II	P-II	P-II	-	-	-	-	-	-
d) Repair/Maintenance, Commercial	-	-	-	-	-	-	-	P-(a)	P-(a)	P-(b)	-	P-(b)
e) Auto Service Station	-	-	-	-	-	-	-	P-(a)	-	P-(b)	-	-
f) Eating/Drinking Establishment	-	-	-	-	-	-	-	P-(a)	P-(a)	P-(b)	-	P-(b)
g) Hotel/Motel	-	-	-	-	-	-	-	P-(a)	P-(a)	-	-	-
h) RV Parks	-	-	-	-	-	-	-	P-III	-	-	-	-
i) Day Care/Family, per 14.310	P-I-A	P-I-A	P-I-A	P-I-A	P-I-A	P-I-A	P-I-A (f)	P-I-A	P-I-A	P-I-A (f)	P-I-A (f)	P-I-A (f)
j) Day Care/Group, per 14.320	P-II	P-II	P-II	P-II	P-II	P-II	-	P-II	P-II	P-II	P-II	P-II

EXHIBIT 1c
to CC Staff Report

Land Use Types	UR	R-1-12 R-1-10 R-1-8	R-1-6	R-2	R-3	R-4	NC	GC	CBD	BP	IP	I
k) Group Care	-	-	-	-	P-III	P-III	-	P-(a)	P-(a)	-	-	-
l) Hospitals	-	-	-	-	-	P-III	-	P-III	-	-	-	-
m) Vet. Clinics	-	-	-	-	-	-	-	P-(a)	-	P-(b)	-	-
n) Commercial Accessory -Building -Use		- -	- -	- -	- -	- -	P-(g) P-EX	P-(g) P-EX	P-(g) P-EX	P-(g) P-EX	-	-
o) Bed & Breakfast, per 14.420	P-II	P-III	P-III	P-III	P-III	P-II	-	P-(a)	P-(a)	-	-	-
p) Voluntary Parking -Local Impact -Area Impact	- -	- -	- -	P-II P-III	P-II P-III	P-II P-III	- -	- -	- -	- -	- -	- -
q) Personal Service	-	-	-	-	-	P-II	P-(a)	P-(a)	P-(a)	P-(b)	-	-
5) Recreation												
a) Residential -Local Impact -Area Impact	P-I-C P-II	P-I-C P-III	P-I-C P-III	P-I-C P-II	P-I-C P-II	P-I-C P-II	- -	- -	- -	- -	- -	- -
b) Commercial -Local Impact -Area Impact	- -	- -	- -	- -	- -	- -	P-(a) -	P-(a) P-(a)	P-(a) P-(a)	P-(b) P-(b)	- -	- -
c) Athletic Clubs	-	-	-	-	-	-	-	P-(a)	P-(a)	P-(b)	P-(b)	P-(b)
6) Public												
a) Minor Public	P-II (h)	P-III (h)	P-III (h)	P-II (h)	P-II (h)	P-II (h)	P-(a) (h)	P-(a) (h)	P-(a) (h)	P-(b) (h)	P-(b) (h)	P-(b) (h)
b) Major Public	-	-	-	-	-	-	-	-	-	P-(b)	P-(b)	P-(b)
c) Schools	P-II	P-III	P-III	P-III	P-II	P-II	-	P-(a)	P-(a)	P-(b)	-	-
d) Religious Assembly Churches	P-II	P-II	P-II	P-II	P-I-C	P-I-C	P-(a)	P-(a)	P-(a)	P-(b)	-	-

to CC Staff Report
EXHIBIT 11

Land Use Types	UR	R-1-12 R-1-10 R-1-8	R-1-6	R-2	R-3	R-4	NC	GC	CBD	BP	IP	I
e) Cultural Exhibit and Libraries	P-II	P-III	P-III	P-III	P-II	P-II	P-(a)	P-(a)	P-(a)	P-(b)	I	I
f) Cemeteries	P-III	P-III	P-III	P-III	-	-	-	-	-	P-(b)	-	-
g) Mortuaries	-	-	-	-	-	P-III	-	P-(a)	-	P-(b)	-	-
h) Lodges	-	P-III	P-III	P-III	P-II	P-II	-	P-(a)	P-(a)	P-(b)	-	-
i) Commercial Parking	-	-	-	-	-	-	-	P-(a)	P-(a)	P-(b)	-	-
²⁰ j) Transportation Facilities outlined in the Master Transportation Plan, and local access streets	P-I-(c)	P-I-(c)	P-I-(c)	P-I-(c)	P-I-(c)	P-I-(c)	P-I-(c)	P-I-(c)	P-I-(c)	P-I-(c)	P-I-(c)	P-I-(c)
²¹ k) Transportation Facilities not outlined in the Master Transportation Plan, nor part of a subdivision or PUD, nor local access streets	P-II	P-II	P-II	P-II	P-II	P-II	P-II	P-II	P-II	P-II	P-II	P-II
l) Public Parks	P-III	P-III	P-III	P-II	P-II	P-II	-	P-II	P-II	P-II	-	-
7) Industrial												
a) Repair/Maintenance, Industrial	-	-	-	-	-	-	-	-	-	P-(b)	-	P-(b)
b) Indoor	-	-	-	-	-	-	-	-	-	P-(b)	P-(b)	P-(b)
c) Outdoor	-	-	-	-	-	-	-	-	-	-	-	P-(b)
d) Prohibited	-	-	-	-	-	-	-	-	-	X	X	X
e) Industrial Accessory -Building -Use	- -	- -	- -	- -	- -	- -	- -	- -	- -	P-(g) P-I-EX	P-(g) P-I-EX	P-(g) P-I-EX
f) Outdoor Storage	-	-	-	-	-	-	-	-	-	P-II	-	P-II

To CC Staff Report
 EXHIBIT 1e

Land Use Types	UR	R-1-12 R-1-10 R-1-8	R-1-6	R-2	R-3	R-4	NC	GC	CBD	BP	IP	I
8) Temporary Uses	-	-	-	-	-	-	-	P-(a)	P-(a)	P-(b)	P-(b)	P-(b)
²⁶ 9) Telecommunication Facility												
a) New Transmission Tower	-	-	-	-	-	-	-	C-(i)	-	C-(i)	C-(i)	C-(i)
b) Rooftop Mounted Antenna	C-II	C-II	C-II	C-II	C-II	C-II	C-II	C-I-C	C-I-C	C-I-C	C-I-C	C-I-C
c) Façade-Mounted Antenna	C-II	C-II	C-II	C-II	C-II	C-II	C-II	C-I-C	C-II	C-I-C	C-I-C	C-I-C
d) Collocated Antenna on Existing Transmission Tower or Other Structure Other Than Building Rooftop or Façade	C-II	C-II	C-II	C-II	C-II	C-II	C-II	C-II	C-II	C-I-C	C-I-C	C-I-C
e) Ancillary Facilities Located Within an Existing Permanent Permitted Structure	P-I-A	P-I-A	P-I-A	P-I-A	P-I-A	P-I-A	P-I-A	P-I-A	P-I-A	P-I-A	P-I-A	P-I-A

EXHIBIT 1f
to CC Staff Report

Table Legend:

P	=Permitted Use
-	=Use Not Permitted
X	=Use Specifically Prohibited (Uses defined in Article 30 as "Industrial, Prohibited")
C	=Use Conditionally Permitted (See Article 16)
I-EX	=Type I Procedure, Exempt from Development Permit Review, Section 2.033
I-AU	=Type I Procedure, Administrative Use Permit Review Only, Section 2.034
I-A	=Type I Procedure, Building Permit Serves as Development Permit, Section 2.035
I-B	=Type I Procedure, Director's Decision without Comment Period, Section 2.036
I-C	=Type I Procedure, Director's Decision with Comment Period, Section 2.037
II	=Type II Procedure, Hearings Officer's Decision, Section 2.040
III	=Type III Procedure, Planning Commission's Decision, Section 2.050
IV-A	=Type IV Procedure, City Council Decision without Planning Commission Recommendation, Section 2.060
IV-B	=Type IV Procedure, City Council Decision with Planning Commission Recommendation, Section 2.060
V	=Type V Procedure, Joint Board of County Commissioners & City Council Decision with Planning Commission Recommendation, Section 2.070
*	=Professional Office use permitted in the Industrial Park District only when subject property is located within the Medical Overlay District.

Table Notes:

- (a) A Type II Procedure is required if the subject property adjoins a residential zone, otherwise a Type I-C Procedure is required.
- (b) A Type II Procedure is required if the subject property adjoins a residential or commercial zone, otherwise Type I-C Procedure is required.
- (c) Type I-A, except the following are exempt (Type I-EX): operation, maintenance, repair, and preservation of existing transportation facilities; dedication or public acquisition of rights-of-way and easements; authorization of construction and construction of facilities and improvements, where the improvements are within the existing right-of-way or easement area or are consistent with clear and objective dimensional standards; and emergency measures necessary for the safety and protection of property.
- (d) Manufactured Dwelling Parks are not permitted in commercial or industrial zones or commercial or industrial Comprehensive Plan land use districts. Siting of an individual home within an approved manufactured dwelling park requires a Type I-A procedure.
- (e) An existing residential dwelling unit is a permitted use in this zone. In zones where a new residential dwelling unit is not a permitted use, this provision allows the existing residential dwelling unit to continue or expand without being subject to the nonconforming use provisions of the Development Code. There may be nonconforming development provisions that are applicable. If an existing dwelling unit is removed in a zone where a new dwelling unit is not permitted, it shall not be replaced.

In zones where a new residential dwelling unit is not a permitted use, this provision does not allow for expansion that increases the number of dwelling units.

In zones where a new residential dwelling unit is not a permitted use, this provision allows for a new residential accessory structure or accessory use associated with the existing residential dwelling.
- (f) These uses are permitted within an existing dwelling unit only, since a new dwelling unit is not permitted in the zoning district.
- (g) A commercial or industrial accessory building of 400 square feet or less that comprises less

EXHIBIT 1g
to CC Staff Report

than 25 percent of the existing floor area of buildings and meets the definition of a minor modification in Section 19.058 of this Code is reviewed through a Type I-A procedure. All other commercial or industrial accessory buildings are subject to the applicable site plan review procedures.

- (h) A Type I-A Procedure is required for water and sewer pump stations. All other minor public facilities are reviewed through the procedure specified in the table.
- (i) A Type III Procedure is required if the tower height exceeds the zone height limit, otherwise a Type II Procedure is required.

(j) An Eating / Drinking Establishment located within the I (Industrial) zoning district shall have a maximum gross square footage allotment of 4,000 square feet or less, including any covered outdoor covered seating areas. Square footage shall be limited to that necessary to accommodate food preparation, storage, restroom facilities, and customer service and seating areas. General meeting space, including any space used for the hosting of parties, banquets, receptions, meetings, or similar social events, shall not be permitted on any portion of the premises, except as authorized through a Special Occurrence Permit issued by the City of Grants Pass.

EXHIBIT 1e
to CC Staff Report

20.220. Applicability

1. These standards shall apply to new construction, to the full building for reconstruction that removes more than 50% of the original structure, and to the new portion of a building for a major site plan reviews for expansion of more than 25% of the original structure. Percentage of expansion shall be determined cumulatively. In addition, for a remodel that adds architectural elements described in this article, such as a cornice or taller roof feature, those elements shall be designed to meet the standards of this Article.
2. **“I” and “IP” Zones.** The standards do not apply to industrial uses in the “I” Outdoor Industrial and “IP” Indoor Industrial zone, but do apply to “trade”, “service”, and “recreation” uses which may be allowed in either the “I” and “IP” zones, such as restaurants, athletic clubs, and professional office buildings.

(4) <u>Public Assembly Uses</u>	
(a) Church: Religious Assembly:	One space for every three fixed seats or every seven foot of bench length, or every 28 sq.ft. where no permanent seats or benches are maintained in assembly areas main auditorium or cultural hall whichever is greater.
(b) Library; reading room; museum; art gallery:	One space per 500 square feet of floor area.
(c) Day Care Facility:	One space per attendant in addition to residential parking requirements. Resident attendants are not counted in parking requirements for attendant parking.
(d) Elementary or Junior High School:	Two spaces for each teaching station plus one for every eight fixed seats or every 100 sq. ft. of seating area where there are no fixed seats in the auditorium or assembly area.
(e) High School:	Two spaces for each teaching station plus one for every four fixed seats or for every 50 sq. ft. of seating area where there are no fixed seats in auditorium.
(f) College: commercial school for adults:	Two spaces for each teaching station plus one space for every two students of design capacity.
(g) Other auditorium; meeting rooms; or theater	One space per 3 seats or 7 ft of bench length, or every 28 sq. ft. where no permanent seats or benches are maintained in assembly areas.
(h) Limited school service facility:	One space per 400 sq. ft. of floor area.
(5) <u>Commercial Recreation Uses</u>	
(a) Stadium; sports arena:	One space per 5 seats, or 10 ft of bench length.
(b) Bowling Alley:	Six spaces per line.
(c) Dance Hall; Skating Rink:	One space per 100 sq. ft. of floor area.

EXHIBIT 3
to CC Staff Report

Proposed Definition Amendments
Article 30, City of Grants Pass Development Code

~~Church: The building and premises used for the conduct of regular religious services; church shall not include schools, other than premises used for religious instruction during regular religious services. See also "Schools."~~

Cultural Exhibits and Libraries: Museum-like preservation and exhibition of objects in one or more of the arts and sciences, gallery exhibition of works of art, or library collection of books, manuscripts, etc., for study and reading. Specifically excluded from this category are exhibitions where items displayed are available for retail sale (see "Trade, Retail.")

⁸²**Public, Minor:** Government, public or semi-public facilities and utilities which have a local impact upon surrounding properties, including libraries, museums, fire stations, reservoirs and wholly-enclosed pumping stations or utility sub-stations. It also includes municipal water or sewage treatment plants when separated from any adjacent residential development by a minimum 50 foot wide Type B landscaped buffer.

Recreation, Commercial: Provision of sports, recreation and entertainment for both participants and spectators, provided both indoors and outdoors. Specifically excluded from this category are "Residential Recreation" and "Athletic Club" uses. Commercial Recreation uses are of two types:

- (1) **Local Impact:** ~~Uses catering primarily to participants, with only incidental spectator use,~~ **Commercial recreation uses** conducted within an enclosed building with a capacity of 300 persons or less. **Typical uses include theaters and meeting or banquet halls.**
- (2) **Area Impact:** ~~Uses catering primarily to spectators of an event;~~ **Commercial recreation uses** conducted outdoors, or conducted within an enclosed building with a capacity of over 300 persons. **Typical uses**

EXHIBIT 4
to CC Staff Report

include theaters, meeting or banquet halls, cinemas, theme parks, stadiums, miniature golf facilities, and zoos.

Recreation, Residential: Provision of recreation facilities for participants, with only incidental spectator use, such that compatibility with residential uses can be maintained. ~~Provided primarily outdoors, with only incidental and accessory indoor uses.~~ Residential recreation uses are of two types:

- (1) Local Impact: Facilities for the private use of an individual family and non-paying guests, including members of a PUD. Typical uses include swimming pools, open space, club houses, or other recreational facilities located within a residential subdivision, PUD, or multi-family development.
- (2) Area Impact: Facilities for use of the general public or membership of a private organization (where not a part of a PUD) which consist primarily of vegetative landscaping, or similar natural-appearing areas, and focus on outdoor recreation. Lands tend to have few structures, but accessory uses such as club houses, maintenance facilities, concession stands, etc. may be permitted by the Review Body. Typical uses include golf courses, privately-owned parks and plazas, botanical gardens, and nature preserves.

Religious Assembly: The building and premises used for the conduct of regular religious services, such as customarily occur in synagogues, temples, mosques and churches. Specifically excluded from this category are schools, other than premises used for religious instruction during regular religious services. See also "Schools."

RLWIPA Amendment Continuance

City Council Meeting
March 18, 2009
7:00 p.m.
City Council Chambers

The Council of the City of Grants Pass met in regular session on the above date with Mayor Murphy presiding. The following Councilors were present: Cummings, Kangas, Renfro, Pell, Warren, and Michelon. Absent: Berger and Townes. Also present and representing the City were City Manager Frasher, City Attorney Sniffen, Assistant City Manager Samson, Finance Director Reeves, Public Safety Director Henner, Community Development Director Huber, Parks and Community Services Director Seybold, Public Works Director Haugen, and Human Resource Coordinator Lange.

Mayor Murphy opened the meeting. The invocation was given by Parks and Community Services Director Seybold followed by the flag salute.

PRESENTATION: Certificate of appreciation for assistance at a fire:

Mayor Murphy stated, we will begin this evening's meeting with a certificate of appreciation I guess.

Director Henner stated, I will call Lang Johnson our Fire Rescue Deputy Chief forward to do that presentation.

Deputy Chief Johnson stated, good evening Councilors and Mayor. I would like to take a few minutes to acknowledge the heroic actions of one of our citizens, Calvin Wilhelm. (He calls Mr. Wilhelm to the podium.) During the early morning hours of January 17, Mr. Wilhelm was alerted to a fire in his neighbor's apartment by the sound of the smoke alarm. He quickly went to his neighbor's apartment. He found heavy smoke coming from the door and heard the pleas and cries for help from his neighbor. With little due regard to his personal safety and at great personal risk, Mr. Wilhelm entered the apartment and pulled his semi-conscious neighbor out, effectively saving his life. But he did not stop there. He then re-entered the apartment and attempted to put the fire out with the fire extinguisher before fire crews arrived. I believe this action not only saved the apartment complex but also saved the lives of his many fellow neighbors. Mr. Wilhelm's actions go above and beyond, and I thank him for his courage to take the action when many in his place would not have. I'd like to give him a certificate at this time.

Mr. Wilhelm showed his appreciation for the award.

City Council Meeting
March 18, 2009

EXHIBIT 5
to CC Staff Report

Mayor Murphy stated, next we have an ordinance adopting a text amendment to the Development Code fencing standards. We have a request that this be continued also to April 1.

Councilor Kangas asked, before I make a motion, that is not time sensitive so could we make that for the next meeting Director Huber? Ok, then I'll make a motion we continue to April 15.

Councilor Michelin seconded the motion.

Councilor Warren stated, I think we were supposed to get more information on that and I don't know that I have seen any. Councilor Cummings brought up some issues about different elevations and so forth.

Councilor Cummings stated, I was going to add to his comment. Basically what was stated is that there is some more work that needs to be done. There is some issues to fix so we are going to go in and fix it and they are going to look at a more comprehensive look at it later. So let's fix the part that is broken right now until they are ready, so they do not have any other problems.

MOTION

It was moved by Councilor Kangas and seconded by Councilor Michelin to continue until April 15, 2009. The vote resulted as follows: "AYES": Kangas, Renfro, Pell, Warren, Townes, Michelin and Cummings. "NAYS": None. Absent: Berger.

Having received a favorable vote, Mayor Murphy declared the motion to have duly passed.

c. Proposal amending the Development Code to address the federal Religious Land Use and Institutionalized Persons Act (RLUIPA) and associated case law.

Mayor Murphy stated, this is the Development Code amendment, I do not even know how to say this, I do not know how to say this acronym. We have been asked to continue it until April 15 also.

Councilor Kangas stated, I will make the motion to continue it until April 15.

Councilor Warren second.

Mayor Murphy stated we have a first and a second, seeing no further discussion he calls for the vote.

MOTION

It was moved by Councilor Kangas and seconded by Councilor Warren to continue until April 15, 2009. The vote resulted as follows: "AYES": Kangas, Renfro, Pell, Warren, Townes, Michelson and Cummings. "NAYS": None. Absent: Berger.

Having received a favorable vote, Mayor Murphy declared the motion to have duly passed.

d. Ordinance vacating the property lines of tax lots 10500 & 10700 map 36-05-17-33.

Mayor Murphy stated, this is an ordinance vacating the property line on these tax lots. We have a Staff report.

City Manager Frasher stated, I have a proceeding to read here first.

City Manager Frasher stated, at this time we will open the public hearing to consider the application filed in this matter. We will begin the hearing with a Staff report, followed by presentation by the applicant, statements of persons in favor of the application, statements by persons in opposition to the application, and an opportunity for additional comments by the applicant and Staff. Once that has occurred the public comment portion of the hearing will be closed and the matter will be discussed and acted upon by the Council. City Manager Frasher asked if there is anyone present who wishes to challenge the authority of the Council to hear this matter. Seeing none, City Manager Frasher asks if there are any additional Council members who wish to abstain from participating in the hearing or declare a conflict or a potential conflict of interest. Seeing none, are any Council members who wish to disclose discussions, contacts, or other ex parte information they have received prior to this meeting regarding the application. Seeing none, City Manager Frasher states that in this hearing the decision of the Council will be based upon specific criteria which are set forth in the Development Code, all testimony given which apply in this case are noted in the Staff Report. If anyone would like a copy of the Staff Report, please write that in a note to me and one will be provided to you. It is important to remember that if you fail to raise an issue with enough detail to afford the Council and the parties an opportunity to respond to the issue, you will not be able to appeal to the Land Use Board of Appeals (LUBA) based on that issue. City Manager Frasher states the hearing will now proceed with a report from staff.

Associate Planner Glover stated, again, this evening we are discussing the property line vacation of two parcels, tax lot 10500 and 10700. The reason for the property line vacation is to allow for an expansion of the Northwestern Design Manufacturing Complex. This is off of SE J St. The complex crosses over two parcels and we have, I think, three buildings on the properties right now. But they want to connect those two; two of the buildings, which would require the vacation of the property line. The properties are owned by Calvin and Judy Schmidt and it is located in the

~~It was moved by Councilor Cummings and seconded by Councilor Kangas to approve the Liquor Licenses. The vote resulted as follows: "AYES": Kangas, Renfro, Pell, Warren, Townes, Michelon and Cummings. "NAYS": None. Absent: Berger.~~

~~Having received a favorable vote, Mayor Murphy declared the motion to have duly passed.~~

~~8. EXECUTIVE SESSION 192.660 (2): None~~

9. ADJOURN -

There being no further business to come before the Council, Mayor Murphy adjourned the meeting at 9:47 p.m.

The ordinances, resolutions and motions contained herein and the accompanying votes have been verified by:


Finance Director

These minutes were prepared by contracted minute taker Wendy Hain and Michael Hain.

RLUIPA Workshop

City Council Workshop
March 9, 2009
11:30 a.m.
Council Chambers

The Council of the City of Grants Pass met in regular workshop session with Mayor Murphy presiding. The following Councilors were present: Cummings, Berger, Kangas, Renfro, Pell, Warren, and Townes. Absent: Michelin. Councilor Berger left the meeting early, at approximately 1:00 pm. Also present and representing the City were City Manager Frasher, City Attorney Sniffen, Assistant City Manager Samson, Finance Director Reeves, Community Development Director Huber, Public Safety Director Henner, Public Superintendant Canady, Parks and Community Services Director Seybold, Human Resource Director Lange, Fire Chief Landis, Tourism Coordinator Walters, Land Acquisition Specialist Corsi, Administrative Coordinator Buckley, Administrative Coordinator Van Deroef, Associate Planner Voice, Grant Writer Barnes, Administration Department Support Technician Anderson and Economic Development Coordinator Dahl. Citizens Stacey Kellenbeck, Trever Yarrish, Len Holzinger, Ed Bowers, Karen Zimmer, Harold Haugen, Charles Wolfmeuller, Penny Mueller, Arden McConnell, John Hoskinson, and Jim Moore of the *Daily Courier* were also present.

Mayor Murphy opened the meeting. Good Morning, welcome to the workshop for March 9th. Before I read a statement that we all believe represents a very positive step forward for the City, I acknowledge that I may have misinterpreted the intentions of Councilor Warren, who desired to use caution in moving forward with the hiring of an investigator. Now for the Statement of Understanding, March 9th, 2009: Councilor Ward Warren has withdrawn his allegations that City Manager David Frasher may have violated the City Charter. The City Manager has withdrawn his contention that Councilor Ward Warren and Councilor Rob Pell have created a hostile work environment. Mayor Mike Murphy acknowledges these matters presented a valid concern and that a failure to resolve them properly would expose the City to liability. Mayor Murphy and all City Council members along with the City Manager worked collaboratively to resolve all of these issues following a 2 day Goals Setting workshop held on March 6-7, 2009. All parties are glad to have a final resolution of these matters for the best interest of the City. At this point, I'm signing this statement and so will the members of the Council, and as we're doing that we can get on with the schedule.

1. INTERVIEWS FOR THE BIKEWAYS/WALKWAYS COMMITTEE:

Mayor Murphy stated, we have interviews for Bikeways/Walkways interviews which Lynn will bring forward here.

included in this or not at this point. I didn't think there was, but the way we were talking it was almost as if the Urban Area Planning Commission recommended a fee but didn't put it in as part of it.

Director Huber stated, no as part of the public hearing, remember in these legislative hearings they are an advisory body, they initiated a text amendment. So we're going to keep this one moving and we're going to go back and do that one.

Councilor Townes stated, okay, very good, thank you.

Mayor Murphy asked if there were any further questions. Seeing none, he recognizes Director Huber will be doing the presentation for the next item on the agenda.

3. RLUIPA TEXT AMENDMENT:

Director Huber stated this is the Religious Land Use and Institutional Persons Act (RLUIPA). This is a good one. There is a lot of meat in this one, lots to talk about. One thing I want you to know, you've talked about over the weekend, for example, about your desire to do policy, to implement policy, this is filled with policy implications and it's clearly your choice. Basically it comes down to a broad question of preserving industrial lands for industrial uses or allowing more uses, widening the range of uses that can go into the industrial zones. There is a good article that we put in your packet, it came out of last month's issue, this is called *Planning Magazine*, it's put out by the American Planning Association, and it's called Blue Collar, Green Collar. If you get a chance, I know you have a lot to read but it's worth reading. It just talks about, first of all, you're not an unusual community, every community is facing this issue of keeping their industrial lands pure versus allowing other uses. But it does talk about some of the implications of when you water down your industrial uses, how hard it is to recruit industrial companies and then once they get there, the fear that they're going to be subject to nuisance complaints and those kinds of things. So it's a good article to read. Also before getting started, our Comprehensive Plan, the economic element did say that we are short about 409 acres for industrial uses and, typically, industrial uses are the hardest -- industrial zones are the hardest places to site. We don't always have great access to the highway or railroad or whatever. Also, we like them, but we like them kind of out of sight and away from things; away from residential zones, and so they're hard to site. So we are going to talk about all those kinds of things. What is this thing, and why initiate it? In the last couple of years we have gotten some inquiries about using industrial lands for churches. We've actually had people come in and ask for that. In fact, Council approved a zone change of the old Grange Coop based on that. It wasn't turned into a church but it was one of their arguments. Then we've also, a customer came in and raised this issue about RLUIPA problems and saying

we may not be in compliance with it and it may be an issue for us. Finally, there has been some case law that has come out in the last couple of years and so we think it's time to act.

The goal of the RLUIPA text amendment, first of all, is to align the City law with Federal law and then, secondly, in doing so, to avoid any potential for costly litigation. Again, how you get there is your choice and we're going to give you at least three options. This is your choice though. I think though that we can all agree on the goals of this. So what is it? Again, it is the Religious Land Use and Institutional Persons Act and it was actually signed into law by President Clinton in 2000. This was sponsored by Republican and Democrat Senators, so it is an across-the-aisle kind of amendment, or law. It's a brief law but it's very broad in it's implications and when it first came out, it was hard to figure out how does this really affect us? What does this thing really mean? In terms of just a summary of it, again, what we're trying to do is make our Development Code consistent or aligned with the Federal law and what that gets down to is two things really -- public assembly uses and religious assembly. According to RLUIPA, it says that if any assembly use is permitted in a given zone, then religious assembly also has to be permitted in that zone. So the trick is what is assembly or public assembly? Things like lodges, meeting halls, and parks have all been construed to be public assembly. So again, the concept is that if you treat public assembly one way, you've got to treat religious assembly the same way. Then this would affect certain of our uses in the three industrial zones that we have, and we'll be talking about those three; which are BP for business park, I for industrial, and then IP for industrial park.

There are three cases I want to walk through real fast, it's an acronym, C.L.U.B. versus City of Chicago. It was a Federal case that dealt with the equal protection clause of RLUIPA, and basically they found that Chicago's ordinance violated RLUIPA and the 14th Amendment -- I forgot to mention, we did give you handouts so you can either read along or jot down notes or read it later, but these slides are all in there -- so the violation was because uses such as clubs, lodges, meeting halls, recreation buildings and community centers were permitted by right in certain districts while churches were not. I think churches we allowed at least in some of the zones, but by special use permit or conditional use permit, so they were allowed but they were allowed in a different manner than these other things were. Chicago actually amended their ordinance and then they were found later that their amendment had brought them into compliance with the 14th Amendment and RLUIPA. There is another one, Midrash Sephardi, Inc. versus Town of Surfside, in Florida. This was a case that defined assembly. It found "assembly" as places where groups or individuals dedicated to similar purposes, whether social, educational, recreational, or otherwise, meet to pursue their interests. Again, the concept is public assembly and religious assembly have to be treated the same. Finally, this is one recently, this is just last year and this is a State case in Oregon, but it's out of LUBA (Land Use Board of Appeals), Young versus Jackson County. And LUBA found that one our State OARs, administrative rules, violated the Equal Protection Clause of RLUIPA and what the rule is, it prohibits churches from locating on EFU lands that are within 3 miles of an urban growth boundary but it allowed all these other things

like parks, community centers, golf courses, and museums. So it said that the petitioner cited statements in the RLUIPA legislative record as evidence that Congress intended non-religious assemblies and institutions to encompass a broad scope, including health clubs, gyms, recreation centers, libraries and museums. So those are three cases that we have seen in the last several years. In terms of our Development Code, we allow churches across the board in all the residential and commercial zones except we don't allow them in the BP, IP and I zones. Although we do allow other uses in those zones that could easily, easily, be could be construed to be these public assembly, assembly, non-religious assembly, or institutional uses. One example is in all three of our zones we allow athletic clubs but we don't allow churches. Again, there are lots of ways that you can fix this – well, we'll tell you three ways you can fix this. I've made a recommendation, the Planning Commission considered the recommendation and they recommend part of it and they amended it as well -- and we'll be discussing that -- and then there is also a third option that we want to talk about today.

So what your job then, not to tell you your job, I mean your responsibility, let's put it that way, is to make a policy decision about how you want to handle public assembly and institutional uses and how they need to be regulated in these three zoning districts; again, the I, BP and IP. When we do text amendments, one thing that we have to do per the criteria for amending the Code, is to look at the purpose statement of each zone, it gives you a lot of insight or direction what the intention of that zone is. The other thing we would ask you to think about is the availability for employment lands down the road, in other words, how you want to use your industrial zones. This could be really important in terms of our ability to recruit businesses for the future. So without getting into all this, the first thing here is the purpose statement from the BP zone. Let me just read you the first sentence. "The purpose of the Business Park District is to provide a mixed-use zone for light industrial and commercial uses." So we know the BP is already this quasi-commercial, quasi-industrial zone. If you think of the Albertson's down on Allen Creek Road and Redwood Highway, that's actually zoned BP. It doesn't look like industrial zone but it gives you a sense of what's permitted there. So the director, myself, and the Planning Commission agree that BP is compatible with and appropriate for public assembly uses. You already allow commercial, you already allow things like athletic clubs. So the solution for this one, we think, is simply to add religious assembly as permitted uses in the BP zone. Then you would allow the other uses that can be construed to be assembly uses, let them stay as they are.

The I zone, this is where it gets a little... But I think we agreed with this on as well. Again, if you look at the middle down at the bottom it says, "It is the express intent of the Industrial District to maintain lands for industrial use." That's pretty clear, so the Planning Commission recommended that -- they approved that. So the problem with the I zone is that we already have athletic clubs and then we have minor public uses, and if you read the definition of minor public uses it includes libraries and museums. Those are clearly these non-religious assembly kinds of uses. So the solution here is that we propose to amend the definition of minor public -- pull out

libraries and museums and don't allow them in the I zone, nor would we put churches in the I zone, we'll just use it as it is. Then we'd also allow eating and drinking establishments in the I zone. We think that's consistent, that's one of these kind of accessory uses, well not accessory, per se, but people need to eat somewhere and you'll see later on we're recommending the size of the eating and drinking establishment be limited.

Now IP is where the Planning Commission and the Staff differ. It says in the purpose, "The Industrial Park District is to provide for light industrial uses in a campus like setting. High Performance Development Standards assure compatibility among the IP users and the compatibility with adjacent commercial and industrial uses." So we found that we -- the Staff's position, was not to add churches into the IP zone and to pull out those other three; museums, libraries and then the athletic clubs. The Planning Commission felt that churches would be compatible, so that they should be allowed to go there and that those other uses would remain. This is just a little, kind of a quick overview. So you can see the zoning and then the new uses permitted, what we propose to add, and then ones that would be taken out. So in BP we would add religious assembly and nothing will change over on this side. With I zone, industrial, we would delete or remove from the permitted uses athletic clubs, museums, and libraries. Then do the same thing with Industrial Parks with athletic clubs, museums, libraries. Now just you're your information, Club Northwest, the largest one we have, is located in a BP zone so it wouldn't be affected. The current museum we have is downtown, in CBD, and our library is right across the street and that's also, I don't remember it exactly, R-4 or GC or CBD, but it's permitted. There is one in industrial... There is one athletic club in the Spaulding Industrial Park. If you were to approve something like that, for your information, it would become what is considered non-conforming. So non-conforming is allowed a one time 50% expansion, just for information. Also, in terms of the eating and drinking establishments, we are recommending they be limited to maximum size of 4000 square feet. If you start getting bigger than that, you walk again into that question of is it construed to be a public assembly use or not, and actually the City of Chicago did do this very same thing, limit those to 4000 square feet.

Now what the Planning Commission did is -- again, we concur, we both agree with the same thing with BP, we agreed with I zone, that's the same, what they wanted to do. The difference is, they wanted to add religious assembly to the IP zone and then leave athletic clubs, museums, and libraries, leave them in there. To not take them out but leave them as they are. So their recommendation would add a use here and don't change anything here. Another thing, so those are two options, the Staff recommendation and Planning Commission recommendation. Again, they only differ on that one zone. A third option is what we received from the Parks Advisory Committee. They would like you to initiate a dog park, well a text amendment to allow a dog park on some I zone property which is owned by the Oregon Youth Authority (OYA) for the State of Oregon, where the youth prison is, and the concept is that a dog park would fit under public park or a commercial recreational area impact use. Currently, neither of those are allowed

in the I zone. So the third option would be to add all those things into the I zone, to really open it up. Let's see, again public park and commercial recreational are considered assembly uses vis-à-vis, or by way of RLUIPA. So if you want to take this option, then again you would allow that the... If you're going to leave it there, then religious assembly has to be added. I think the concept is to add dog parks as a permitted use or one of the uses under minor public. That is the third option, really making it a lot broader.

There was also... The original text amendment had something to do with temporary uses, I think everyone concurred we need to deal with temporary use, but we'll deal with those separately so there was concurrence on just deleting that part from this proposed text amendment. Then, I want to tell you one other thing since you'll be hearing about it anyway. The Bear Hotel, as you all know, the thing owned by Evergreen, it's located in an I (industrial) zone, in the Spaulding Industrial Park, and if you've ever been down there the bulk of the building is what they consider art production. There is, I think it's on the east side, I'm not sure, but on one of the sides there is some office space, but primarily it's a meeting place. And they use it for many different things. One of the things they use it for is just, essentially, public assembly uses, and people can, non-profits can gather there and that really has nothing to do with the art production facility. They can just have regular meetings, get-togethers, social events, things like that. I just received a request from their attorney to interpret that use as a museum, so you'll probably be hearing from Evergreen that they would like to be considered a museum. So that's back to the third option of making it as broad as possible because you'd be allowing lots of uses in the I zone. Those are pretty much the issues. I'll be happy to answer any questions.

Councilor Townes stated, I attended the Urban Area Planning on that as an advisory and they put a lot of good thought into this. I thought they hit it right on the mark. There was good audience participation, or citizen participation. So, at this point, I wouldn't want to see something completely sideways. I totally support the recommendation by the Urban Area Planning Commission.

Councilor Cummings stated, I've been aware of this issue and I would probably be coming from the point of thinking that all three would be permitted you know for uses. Only from the standpoint, as my recollection, is the issue that kept coming up was churches trying to locate in industrial zones. So normally they locate in general commercial, which is almost unaffordable, so I would be more supportive of locating it in BP, I, or IP.

Councilor Pell asked, what, if any, what kind of, essentially, rights do people sign away when they go into an industrial zone. I'm meaning that, you know, could a church complain that there was a lot of noise on a Sunday morning, or if they're in an industrial zone they have to basically say, "Well gee, we understood what we were getting into." So are there different noise levels allowed in the industrial zone? In other words, people, if they enter if the voluntarily, move into an industrial

zone are they acknowledging that they are going to have different standards around them?

Director Huber stated, I don't think so. Because what's emerging, what I've read some articles about, is you're seeing more nuisance complaints in things like this. So when these different kinds of uses locate next to each other, like maybe a residential next to, or even in, an established, well not in, but probably next to an established industrial zone -- there are still complaints about noise, maybe odor, not volumes of traffic, per se, but more the kind of vehicles; you know large trucks going in and out. We actually had a gentleman speak at the Planning Commission hearing who owns, I think he owns BP and I zone, and he thought it was appropriate for the BP but he said "I don't want those kinds of vehicles mixing anymore." He thought it was dangerous. You know with people going to church, remember churches now are not just two services on a Sunday morning, many churches are seven days a week with a lot of activity in a church. Frankly, I mean, your Goals Setting was in a church over the weekend. There are cars coming and going. How appropriate is it to mix it with industrial traffic? That's just a consideration.

Councilor Pell stated, churches sometimes also have playgrounds outside now and everything else -- so talk about noise, odor, etc. Is there a possibility that we'll end up with a mixed-use zone like that, and the churches are then going to go to the business that is next door and say, "You know what, I know you've been here for 50 years but I don't like how you smell... Or you're too loud." So now is this going to be a problem for the businesses that are in there?

Director Huber stated, that article that I mentioned, that was one of the things that they talked about. When they were trying to lure, when cities were trying to lure new businesses in and showing them their industrial zones, one of the questions was, "Well what other kinds of uses can be located here, because we don't want to get into these nuisance fights with our neighbors." So that is something to consider. So again, the policy choice is how pure do you want to keep your industrial zones for industrial uses? It's particularly important when you are trying to recruit business here, versus do you just want to make it a broader type of a zone. You can go either route.

Councilor Pell stated, I guess, in the example that I gave, which might be extreme or maybe it turns out to be right on the money, you know, a church moves in with a playground etc, they're complaining that the trucks are going by on Sunday morning or whatever. So is it possible to have, and I'm not singling out a church, it could be an athletic club or anything else, if they move into an industrial zone, I mean are they acknowledging that they are essentially expecting a different environment than if they were in a general commercial or whatever, or are they going to potentially come back some day, you know, say "I want it to be clean and pristine," you know, with nice views and everything else.

City Attorney Sniffen stated, there is a doctrine called *coming to the nuisance* which actually you see more often where urban areas expand into rural areas and that sort of thing, but it is pretty much as you described it. You have an industrial area with industrial uses and a church moves into that area. The doctrine, like a lot of legal doctrine, has a lot of exceptions but it tends to say that if you come to this area, you've come to the nuisance and, therefore, you have to accept it insofar as how it exists. What happens, what changes that dynamic, and where you see lawsuits -- and I don't have a good feel to tell you which ones are successful and which ones are not -- but where you see lawsuits is, for example, you have a church that moves in and there's an industrial use next door. The industrial use decided to expand so that it's now working three shifts a day or is working seven days a week or six days a week instead of five days a week. The church potentially, or any other user, the club, the athletic club, whatever the user, that's where they tend to come forward and say, "Yes we admit we moved to the nuisance, but the nature and extent of that use has changed to the point where it is now a nuisance." And there's not a lot of clear guidance, but the potential is certainly there.

Councilor Pell stated, yes, or if the church is there for 10-20 years first and then a business wants to move in. So yeah my concern is that, not only are we potentially using up our inventory of our industrial land but we could also be diluting the effectiveness of those areas at all, you know, and doesn't seem like there's a black and white legal history to look at.

City Attorney Sniffen stated, I think that's exactly the choice that the Council faces in the policy decision.

Councilor Renfro stated, I think what Director Huber is saying, in order to conform to the Federal law we're going to have to adopt something similar to this. My question was, is that Federal law just pertaining to industrial and doesn't get into the business park or industrial park?

Director Huber stated, actually, the cases involved industrial but the law basically says that you have to treat assembly use, public assembly, non-religious assembly, the same as religious assembly so that could probably occur in a commercial zone as well. As long as you don't discriminate against them, then you're okay.

Councilor Renfro stated, what I was getting at is, if we eliminate churches in business park and industrial park are we going to be contrary to the law?

Director Huber stated, actually our solution was to put, because you've already got all these other things like athletic clubs and commercial uses in the BP zone, our solution for that one was to put

-- and the Planning Commission concurred -- to allow churches, we think you should allow them. The solution for the IP and the I zone, again, that's where we split, was either to take uses out or leave them there and put the church back in.

Councilor Cummings stated, I have a couple of questions. First of all, for me to make a decision on what seems to be adequate land, I'd almost have to see a map of zoning available vacant land. The other question is where would schools be located? Can schools be located in industrial or... I have no clue.

Director Huber stated, they are BP zone, not I nor IP but BP.

Councilor Cummings stated, okay. I would probably keep it consistent with the schools.

Mayor Murphy asked if there were any other questions at this time. Seeing none, he asked Director Huber if he had anything else to say.

Director Huber stated, just be consistent. You can do it in a couple ways but, I think, the byword of caution is to be consistent how you treat these uses.

City Manager Frasher stated, Director Huber could you explain one more time why your recommendation is just slightly different than the Planning Commission, and which of those two directions you are recommending.

Director Huber stated, well one of the things that you need to look at when you amend the Development Code is the purpose statement for that district. Our read is that in the IP zone, even though it is in a campus like setting, it's meant for industrial uses. Now they are more indoor industrial, the less heavy industrial, but it's not a mixed-use zone. If you looked, just by contrast, BP specifically states it is a mixed-use zone for light industrial and commercial uses. It's pretty clear. The I zone says "Express intent of the Industrial District is to maintain lands for industrial use." Then IP says, "To provide for light industrial uses." I think what the Planning Commission said was, that's true, but they think it's a campus like setting and if you can assure compatibility among those different users, then why shouldn't churches go in there.

City Manager Frasher asked, but your recommendation is, because you think that it is more consistent with those statements in the Code?

Director Huber stated, it just says "to provide for light industrial uses," we don't see any reference to commercial or mixed use.

Councilor Warren stated, I would have to agree with City Staff on this point because I don't really want to see us either dilute or deplete industrial land, because I think that is inconsistent with the goal of, well several goals, but including the goal of, hopefully, in the future we will be able to attract some more industry to the area. So I would have to concur with City Staff on this presentation.

Councilor Pell stated, I guess I'd just like to get back and compare the words on the board to what City Attorney Sniffen said with regards to "assure compatibility among industrial park users." You know, I think what I heard him say is that we can't assure compatibility. That it's not possible, well I wouldn't say it's impossible, but it's not clear legally where we stand on that.

Councilor Cummings stated, I know I mentioned a map so we saw what it looks like in regards to zones. Is that a possibility, to see that before we make a decision, because that would be helpful, I think.

Mayor Murphy asked if there were any further questions or comments. Seeing none, he thanked Director Huber for his presentation.

4. INFORMATION SHARING:

Mayor Murphy stated, now for Information Sharing. I would like to suggest to the Council, not necessarily for today, but just as a future reference, that we at times try to use this time to bring the rest of the Council up to speed with your liaison assignments, what's going on, highlight activities, or heads up, or accomplishments, or something short and sweet. And if not here, maybe just write out three or four sentences once a month or something like that, not big reports, just little highlights about what's going on in your liaison appointments.

Councilor Kangas stated, I just want to ask Assistant City Manager Samson a quick question, on the 18th resolution affirming or establishing, do you have the resolution in front of you? Affirming or establishing population parameters they use with the periodic review...blah, blah, blah..., which one is that now?

Assistant City Manager Samson stated, I just had to kind of come up with a title because I wanted to hear what you guys have to say on the 16th but this is the issue that Councilor Michelin had brought up and asked, and what you....

4. ADJOURN:

There being no further business to come before the Council, Mayor Murphy adjourned the workshop at 1:30 p.m.

These minutes were prepared by contract minute taker, Wendy Hain with Alice Gershowitz.

Industrial Zoning Issues & RLUIPA Text Amendment

March 9, 2009 City Council Workshop
Presented By: James E. Huber

Why Initiate RLUIPA Amendment?

- Within the past two years, the City has received several inquiries into use of industrial zones for churches
 - Including one approved zone change on NW F Street (old Grants Co-Op property)
- Customer interested in developing industrial property with a church asserted that City's Code is not compliant with RLUIPA
- Recent case law has clarified how RLUIPA applies at the local government land use level.

Goals of RLUIPA Amendment

- Align City law with federal law
- Avoid potential for costly litigation.

What is RLUIPA?

- Signed into law by President Clinton on September 25, 2000.
- Sponsored by Republican Orrin Hatch and Democrat Ted Kennedy.
- Brief but potentially very broad in application.
- When initially signed into law, was difficult to foresee how it would impact local government land use regulations.

RLUIPA Text Amendment Summary:

- Intended to ensure Development Code consistency with federal RLUIPA and associated case law.
 - Per RLUIPA, if any public assembly use (i.e. lodge, meeting hall, etc.) is permitted in a given zone, then religious assembly uses must also be permitted.
- Certain land uses would be affected within the BP, I and IP zoning districts

C.L.U.B. v. City of Chicago

- Important federal court case that provided interpretation of equal protection clause of RLUIPA.
- Federal court initially found that Chicago's zoning ordinance violated RLUIPA and the 14th Amendment because uses such as clubs, lodges, meeting halls, recreation buildings and community centers were permitted by right in certain districts while churches were not.
- Chicago subsequently amended its ordinance and the District Court found that the amendments brought the ordinance into compliance with the 14th Amendment and RLUIPA.

EXHIBIT 7
to CC Staff Report

Midrash Sephardi, Inc. v. Town of Surfside

- Federal case in which court defined "assembly" for the purposes of RLUIPA:
 - **Places where groups or individuals dedicated to similar purposes, whether social, educational, recreational or otherwise, meet to pursue their interests.**

Young v. Jackson County

- Oregon Land Use Board of Appeals found that a state administrative rule violates the equal protection clause of RLUIPA (Final Opinion published 12/23/08)
- The state rule:
 - Prohibits churches from locating on EFU land that is located within three miles of an Urban Growth Boundary.
 - Allows a number of public assembly uses on said land, including parks, community centers, golf courses, and museums.
- Petitioners cited statements in the RLUIPA legislative record as evidence that Congress intended non-religious assemblies and institutions to encompass a broad scope, including "health clubs", "gyms", "recreation centers", "libraries" and "museums."

Grants Pass Development Code

- Churches allowed everywhere, except for three industrial zoning districts: "BP", "IP" and "I"
 - Each of these districts permits uses that could reasonably be interpreted as nonreligious assembly or institutional.
- There are multiple ways that Development Code could be amended to address RLUIPA.
- Community Development Director and Urban Area Planning Commission have different recommended proposals that would address RLUIPA in the industrial zones.
 - Third option, related to the requested dog park in the "I" Industrial zone, will also be presented.

City Council Policy Decision

- City Council must make a policy decision in regards to how public assembly and institutional uses should be regulated within each of the three industrial zoning districts.
- In doing so, Council must consider:
 - Development Code purpose statement for each industrial zoning district, and
 - Potential for policy decision to affect availability of employment lands within UGB.

"BP" Business Park Zone Purpose & Intent

- *The purpose of the Business Park District is to provide a **mixed-use zone for light industrial and commercial uses**. Retail trade is permitted as an accessory use or when determined to be compatible with, or can be made compatible with, light industrial or wholesale trade uses via a discretionary review process. Performance Development Standards are designed to ensure the compatibility of the light industrial uses with the commercial uses, and the compatibility with adjacent Commercial and Residential Zoning Districts.*
 - Development Code Section 12.321
- Director and Urban Area Planning Commission agree that BP zone is compatible with, and appropriate for, public assembly uses.
- Both proposals add "Religious Assembly" as a permitted use, and retain other assembly and institutional uses already permitted within the district.

"I" Industrial Zone Purpose & Intent

- *The purpose of the Industrial District is to provide for those industrial uses with heavier impacts upon their surroundings and the need for outdoor functions. Performance standards are less than required for other industrial districts and graduated buffering standards ensure compatibility with neighboring zones of lesser intensity of use. **It is the express intent of the Industrial District to maintain lands for industrial use**, with commercial and residential uses limited to those accessory to industrial development.*
 - Development Code Section 12.323
- Director and Urban Area Planning Commission agree that the "I" Industrial zone should be preserved for industrial employment uses.
- Allowing public assembly uses such as churches and athletic clubs would be inconsistent with purpose and intent of the "I" Industrial zone.

**"I" Industrial Zone Purpose & Intent
(continued)**

- Director and Planning Commission proposals both delete "Athletic Clubs", libraries and museums from the list of permitted uses within the "I" district.
 - Libraries and museums currently permitted as Minor Public uses.
- Allowing "Eating/Drinking Establishments" within the "I" zone is consistent with the purpose statement's intent of allowing commercial uses that are accessory to industrial development.
 - Establishments provide a service to nearby industrial workers

**"IP" Industrial Park Zone
Purpose & Intent**

- *The purpose of the Industrial Park District is to provide for light industrial uses in a campus-like setting. High Performance Development Standards assure compatibility among Industrial Park users and the compatibility with adjacent commercial and residential uses.*
 - Development Code Section 12.322
- Director found that "IP" zone should be preserved for light industrial employment uses.
 - Allowing public assembly uses such as churches and athletic clubs would be inconsistent with purpose and intent of the "I" Industrial zone.
- Planning Commission found the "IP" zone to be compatible with public assembly uses like churches and athletic clubs.

**"IP" Industrial Park Zone
Purpose & Intent (continued)**

- Director's proposal deletes "Athletic Clubs", libraries and museums from the list of permitted uses within the "IP" district.
 - Libraries and museums currently permitted as Minor Public uses.
- Planning Commission's proposal adds "Religious Assembly" as a permitted use, and retains other assembly and institutional uses already permitted within the district.

**Amended Land Uses
(Director's Recommendation)**

Zoning Designation	New Uses Permitted	Uses Not Permitted
BP (Business Park)	Religious Assembly	
I (Industrial)		Athletic Clubs, Museums, Libraries
IP (Industrial Park)		Athletic Clubs, Museums, Libraries

Additionally, "Eating/Drinking Establishments" within the "I" (Industrial) zone would be limited to a maximum size of 4,000 square feet, with no accessory meeting / banquet space permitted

**Amended Land Uses
(Planning Commission's Recommendation)**

Zoning Designation	New Uses Permitted	Uses Not Permitted
BP (Business Park)	Religious Assembly	
I (Industrial)		Athletic Clubs, Museums, Libraries
IP (Industrial Park)	Religious Assembly	

Additionally, "Eating/Drinking Establishments" within the "I" (Industrial) zone would be limited to a maximum size of 4,000 square feet, with no accessory meeting / banquet space permitted

Third Option

- Council Memo No. 030 (dated 2/2/09) included request from Parks Advisory Board to initiate amendment to allow dog park on "I"-zoned property owned by State of Oregon Youth Authority
- Dog park would fit under "Public Park" or "Commercial Recreation, Area Impact"
 - Neither use permitted within the "I" zone

Third Option (continued)

- "Public Park" and "Commercial Recreation" are considered assembly uses for the purposes of RLUIPA
- If "Public Park" or "Commercial Recreation" are added to the list of permitted uses within the "I" zone, then "Religious Assembly" must also be added.
- The Director and Planning Commission both recommend that assembly and institutional uses be kept out of the "I" Industrial zone so that it can be preserved for industrial uses and employment.

Temporary Uses

- Original proposal would have deleted "Temporary Uses" from Development Code (currently permitted within BP, I, IP, GC and CBD zoning districts.)
- Planning Commission recommended that "Temporary Uses" be considered separately from this amendment.
 - Staff concurs with this recommendation

Questions?

CITY OF GRANTS PASS COMMUNITY DEVELOPMENT DEPARTMENT

**RLUIPA DEVELOPMENT CODE TEXT AMENDMENT
PLANNING COMMISSION FINDINGS OF FACT-TYPE IV**

Procedure Type:	Type IV: Planning Commission Recommendation and City Council Decision
Project Number:	08-40500005
Project Type:	Development Code Text Amendment
Applicant:	City of Grants Pass
Planner Assigned:	Jared Voice
Application Received:	September 24, 2008 <i>Re-submitted November 14, 2008</i>
Application Complete:	November 14, 2008
Date of Planning Commission Staff Report:	January 7, 2009
Date of Planning Commission Hearing:	January 14, 2009
Date of Planning Commission Findings of Fact:	January 28, 2009

I. PROPOSAL:

The proposal as recommended by the Planning Commission consists of amendments to Articles 12, 25 and 30 of the Development Code, to address issues related to the federal Religious Land Use and Institutionalized Persons Act (RLUIPA) and associated case law. The recommended amendments would affect certain land uses within "BP" (Business Park), "I" (Industrial) and "IP" (Industrial Park) zones.

II. AUTHORITY AND CRITERIA:

Section 4.102 of the City of Grants Pass Development Code provides that the Director or City Council may initiate a text amendment. The amendment was initiated by the Director.

Sections 2.060, 7.040 and 7.050 authorize the Urban Area Planning Commission to make a recommendation to the City Council and authorize the City Council to make a final decision on a land use matter requiring a Type IV procedure, in accordance with procedures of Section 2.060.

The text of the Development Code may be recommended for amendment and amended provided the criteria in Section 4.103 of the Development Code are met.

III. APPEAL PROCEDURE:

The City Council's final decision may be appealed to the State Land Use Board of Appeals (LUBA) as provided in state statutes. A notice of intent to appeal must be filed with LUBA within 21 days of the Council's written decision.

IV. PROCEDURE:

- A. An application for a Development Code Text Amendment was submitted by the Director on September 24, 2008. The application was deemed complete on September 26, 2008, and processed in accordance with Section 2.060 of the Development Code, and Sections III and V of the 1998 Intergovernmental Agreement.
- B. Notice of the proposed amendment was mailed to the Oregon Department of Land Conservation and Development (DLCD) on October 8, 2008, in accordance with ORS 197.610 and OAR Chapter 660-Division 18.
- C. Notice of the proposed amendment was mailed to Josephine County on October 8, 2008, in accordance with the 1998 Intergovernmental Agreement.
- D. The application for Development Code Text Amendment was withdrawn and modified. The modified proposal was re-submitted by the Director on November 14, 2008. The application was deemed complete on November 14, 2008, and processed in accordance with Section 2.060 of the Development Code, and Sections III and V of the 1998 Intergovernmental Agreement.
- E. Notice of the proposed amendment was mailed to the Oregon Department of Land Conservation and Development (DLCD) on November 14, 2008, in accordance with ORS 197.610 and OAR Chapter 660-Division 18.
- F. Notice of the proposed amendment was mailed to Josephine County on November 14, 2008, in accordance with the 1998 Intergovernmental Agreement.
- G. Notice of the January 14, 2009 Planning Commission hearing was mailed to affected property owners on December 22, 2008, in accordance with Sections 2.053, 2.063 and 2.090 of the Development Code.
- H. Public notice of the January 6, 2009 public open house was published in the newspaper on December 22, 2008.
- I. A public open house regarding the proposal was held on January 6, 2009.
- J. A public hearing was held by the Planning Commission on January 14, 2009, to consider the proposal and make a recommendation to City Council. The Planning Commission recommended that the City Council adopt the proposed text amendment, with modifications.

V. SUMMARY OF EVIDENCE:

- A. The proposed amendments to Development Code Schedule 12-2, as recommended by the Urban Area Planning Commission, are attached as Exhibit "A" and incorporated herein.
- B. The proposed amendments to Development Code Section 25.042 (4), as recommended by the Urban Area Planning Commission, are attached as Exhibit "B" and incorporated herein.

- C. The proposed amendments to Development Code Article 30, as recommended by the Urban Area Planning Commission, are attached as Exhibit "C" and incorporated herein.
- D. The basic facts and criteria regarding this application are contained in the January 7, 2009, staff report and its exhibits, which are attached as Exhibit "D" and incorporated herein.
- E. The minutes of the public hearing held by the Urban Area Planning Commission on January 14, 2009, which are attached as Exhibit "E", summarize the oral testimony presented and are hereby adopted and incorporated herein.
- F. The PowerPoint presentation given by staff at the January 14, 2009, Planning Commission hearing is attached as Exhibit "F" and incorporated herein.

VI. GENERAL FINDINGS- BACKGROUND AND DISCUSSION:

The City is proposing the Development Code text amendment to address issues related to the federal Religious Land Use and Institutionalized Persons Act (RLUIPA). RLUIPA requires that zoning regulations treat churches and other religious institutions equally to similar public assembly uses such as clubs and lodges, recreation buildings or meeting halls. The primary purpose of the proposed text amendment is to ensure that religious assembly uses are treated equally to similar public assembly uses within the Grants Pass Development Code.

Content of Proposed Text Amendment Submitted by Director

The bulk of the proposal (as submitted by the Director) consisted of amendments to Articles 12 (Zoning Districts) and 30 (Definitions) of the Development Code. Housekeeping amendments to Article 20 and 25 were also included within the submitted proposal.

The amendment to Article 12 would have affected certain land uses within specific commercial and industrial zoning districts. The following table summarizes which land uses would have been impacted within each zone under the Director's proposal.

Zoning Designation	New Land Uses Permitted	Land Uses Not Permitted*
BP (Business Park)	Religious Assembly	Temporary Uses
I (Industrial)		Athletic Clubs, Cultural Exhibits and Libraries, Temporary Uses
IP (Industrial Park)		Athletic Clubs, Cultural Exhibits and Libraries, Temporary Uses
GC (General Commercial)		Temporary Uses
CBD (Central Business District)		Temporary Uses

*Column depicts land uses that are currently permitted within each zoning district but would not be permitted upon approval of the Director's proposal. If said uses exist upon approval of the amendment, they would be allowed to remain as non-conforming uses, but would be subject to the provisions of Development Code Article 15.

NOTE: In addition to the above uses, "Eating / Drinking Establishments" within the "I" (Industrial) zone would be limited to a maximum size of 4,000 square feet.

The amendments to Article 30 (Development Code Definitions) were being proposed primarily for clarification purposes. These amendments are not expected to impact individual property owners.

Detailed staff responses to the criteria, based on the original proposal; are contained in the Planning Commission staff report. Responses to the criteria within these Findings of Fact are based on the modified proposal as recommended by the Urban Area Planning Commission.

Planning Commission Amendment of Original Proposal

After considering the application and public testimony, the Planning Commission recommended approval of the proposed text amendment, with modifications to some of the content. Primarily, the Planning Commission specified that “Temporary Uses” should not be deleted from the Development Code as part of the text amendment, as was originally proposed. Additionally, the Planning Commission found that certain public assembly uses, including religious assembly, athletic clubs, cultural exhibits and libraries, are an appropriate permitted use within the IP zone. The following table summarizes which specific land uses would be impacted under the proposal as recommended by the Planning Commission.

Zoning Designation	New Land Uses Permitted	Land Uses Not Permitted*
BP (Business Park)	Religious Assembly	
I (Industrial)		Athletic Clubs, Cultural Exhibits and Libraries
IP (Industrial Park)	Religious Assembly	

*Column depicts land uses that are currently permitted within the “I” zoning district but would not be permitted upon approval of the proposal recommended by the Planning Commission. If said uses exist upon approval of the amendment, they would be allowed to remain as non-conforming uses, but would be subject to the provisions of Development Code Article 15.

NOTE: In addition to the above uses, “Eating / Drinking Establishments” within the “I” (Industrial) zone would be limited to a maximum size of 4,000 square feet.

Note that by retaining “Athletic Clubs” as a permitted use within the IP zone, the housecleaning amendment to Article 20 that was part of the original proposal is no longer necessary to retain consistency within the Code. Therefore, the Article 20 amendment is not included under the Planning Commission’s recommended proposal.

RLUIPA Summary

The Religious Land Use and Institutionalized Persons Act was signed into law by President Bill Clinton on September 25, 2000. The bill, sponsored by Republican Senator Orrin Hatch and Democratic Senator Ted Kennedy, allows a government to regulate religious land uses as long as applying a regulation does not “substantially burden” the free exercise of religion. A substantial burden is defined as regulations that are “oppressive to a significantly great extent” or those that render a proposed religious land use “effectively impracticable.” A government must also demonstrate that the imposition of any burden on religious exercise is in furtherance of a compelling governmental interest, and that the burden is the least restrictive means of furthering that compelling governmental interest.

Additionally, RLUIPA requires that “no government shall impose or implement a land use regulation that treats a religious assembly or institution on less than equal terms with a

nonreligious assembly or institution.” For example, if any public assembly use is permitted in a given zone, a religious assembly use (church) must also be allowed in that zone. Determining which uses listed in the Grants Pass Development Code could be construed as “public assembly”, and therefore similar to religious assembly, is a significant aspect of this proposed text amendment.

RLUIPA as a statute is brief but potentially very broad in application. When initially signed into law in 2000, it was difficult to foresee exactly how it would impact local government land use regulations. Subsequent case law has more explicitly interpreted how the act applies to local land use regulations.

Federal Court Case: Civil Liberties for Urban Believers v. City of Chicago

Since its enactment, there have been numerous court cases related to RLUIPA. Perhaps the most important of these, in terms of clarifying the meaning of “substantial burden on religious exercise” and interpreting the equal protection clause of RLUIPA, is *Civil Liberties for Urban Believers (CLUB) v. City of Chicago*. CLUB is an association of churches that filed a lawsuit against the City of Chicago, challenging the constitutionality of the city’s zoning ordinance and challenging it under RLUIPA. The plaintiffs had previously attempted to locate religious facilities in various city zoning districts and obtain necessary permits. The permit requirements and approval criteria varied by zone. Each of the organizations involved experienced permit delays and denials and the associated monetary costs, although each was ultimately able to get approval for an acceptable site. The plaintiffs argued that the process was too costly for smaller churches and sought repayment of the costs associated with the delays. The following are key findings of this case:

- Administrative and other costs associated with siting a facility are not substantial burdens under RLUIPA.
- The Federal court initially found that Chicago was violating the Equal Protection Clause of the 14th Amendment (and RLUIPA) because clubs and lodges, meeting halls, recreation buildings and community centers were permitted by right in certain zoning districts, while churches were required to obtain a special use permit. The Court found that these were similar uses that should be treated similarly.

IMPORTANT NOTE: Chicago subsequently amended its zoning ordinance to address this issue, and the District Court later found that the zoning amendments brought the ordinance into compliance with the 14th Amendment and RLUIPA.

Relationship Between RLUIPA and Grants Pass Development Code Amendment

The primary purpose of the proposed text amendment is to address the 14th Amendment and equal protection clause of RLUIPA. For example, the Grants Pass Development Code currently does not allow churches within the “BP” Business Park, “I” Industrial or “IP” Industrial Park zones, but does allow similar public assembly uses such as athletic clubs, museums and libraries. This is similar to the scenario under which the Federal Court found Chicago in violation of the 14th Amendment and RLUIPA. By amending the list of permitted uses within these zones, the City is taking steps to ensure that its Development Code is consistent with RLUIPA and the findings of the Chicago case.

Within the “I” Industrial zoning district, “Athletic Clubs” and cultural exhibits (museums)/libraries would be deleted from the list of permitted uses. The intent of the amendment is to preserve the “I” Industrial district for industrial uses, consistent with the Development Code purpose statement for the zone.

Within the “BP” and “IP” zoning districts, “Religious Assembly” (churches) would be added to the list of permitted uses. The “BP” district is intended to provide a mixed-use commercial and light industrial zone. The “IP” district is intended to “provide for light industrial uses in a campus-like setting. High Performance Development Standards assure compatibility with adjacent commercial and residential uses.” The Planning Commission found the purpose of the “BP” and “IP” zones to be compatible with public assembly uses like churches and athletic clubs.

City Council Work Plan

The proposal carries out Outcome D, Work Task 2 of the City Council’s work plan under the City Council Growth Management Goal:

Goal 1. Growth Management: While prospering and growing, we keep the sense of hometown, protect our natural resources and enhance our community improvements.

Outcome D. Other Activities to Manage Growth

- **Workplan Element:** Review and revise sections of the various codes.
- **Timing: Ongoing.** As code issues are identified issues arise through the Council, Urban Area Planning Commission and Staff, the Staff will continue to prepare revisions to the ordinances. These may be individual amendments, or a group of amendments as part of a larger housekeeping amendment.

VII. FINDINGS OF FACT- CONFORMANCE WITH APPLICABLE CRITERIA:

The text of the Development Code may be recommended for amendment and amended provided that all of the following criteria of Section 4.103 of the Development Code are met.

CRITERION 1: The proposed amendment is consistent with the purpose of the subject section and article.

Planning Commission Response: The proposal is consistent with the purpose of the subject sections and articles within the Development Code, including Articles 12, 25 and 30. **See discussion regarding Article 12 amendments below.**

12.011 Purpose. The purpose of this Article is as follows:

- (1) To implement the policies and Land Use Map of the Comprehensive Plan;*
- (2) To protect the right to use and enjoy real property;*
- (3) To protect the health, safety and welfare of the community;*
- (4) To serve as a basis for resolving land use conflict.*

Planning Commission Response: Satisfied. The proposal primarily amends Schedule 12-2, (*Permitted Uses and Site Plan Review Procedures*)

of Article 12 ("Zoning Districts"). The proposal is consistent with the "Purpose" statement for Article 12 as stated above.

The purpose statement for each affected zoning district is listed below.

12.321- Business Park District (BP). The purpose of the Business Park District is to provide a mixed-use zone for light industrial and commercial uses. Retail trade is permitted as an accessory use or when determined to be compatible with, or can be made compatible with, light industrial or wholesale trade uses via a discretionary review process. Performance Development Standards are designed to ensure the compatibility of the light industrial uses with the commercial uses, and the compatibility with adjacent Commercial and Residential Zoning Districts.

12.322- Industrial Park District (IP). The purpose of the Industrial Park District is to provide for light industrial uses in a campus-like setting. High Performance Development Standards assure compatibility among Industrial Park users and the compatibility with adjacent commercial and residential uses.

Planning Commission Response: Satisfied. The addition of "Religious Assembly" as a permitted use is consistent with the purpose of the BP and IP zoning districts. The BP zone is intended to provide a mixed-use commercial and light industrial district that is compatible with public assembly uses. The "IP" district is intended to "provide for light industrial uses in a campus-like setting. High Performance Development Standards assure compatibility with adjacent commercial and residential uses." The Planning Commission finds the purpose of the "BP" and "IP" zones to be compatible with public assembly uses like churches and athletic clubs.

12.323- Industrial District (I). The purpose of the Industrial District is to provide for those industrial uses with heavier impacts upon their surroundings and the need for outdoor functions. Performance standards are less than required for other industrial districts and graduated buffering standards ensure compatibility with neighboring zones of lesser intensity of use. It is the express intent of the Industrial District to maintain lands for industrial use, with commercial and residential uses limited to those uses accessory to industrial development.

Planning Commission Response: Satisfied. The proposal is consistent with the purpose statement for the "I" zoning district, which is intended to serve industrial land uses. The proposal would delete "Athletic Clubs", museums and libraries from the list of permitted uses within the "I" zone. None of these uses are considered "industrial". Additionally, the proposal would limit the size of "Eating/Drinking Establishments" within the "I" zone to 4,000 square feet or less. This is consistent with the purpose statement's intent of limiting commercial uses within the zone to those "accessory to industrial development" by allowing only smaller restaurants, which are generally high-turnover, as a service to adjacent industrial uses.

CRITERION 2: The proposed amendment is consistent with other provisions of this Code.

Planning Commission Response: Satisfied. The proposed amendment is internally consistent with other provisions of the Code. Housekeeping amendments to Articles 25 and 30 are intended to preserve and enhance consistency within the Code.

CRITERION 3: The proposed amendment is consistent with the goals and policies of the Comprehensive Plan, and most effectively carries out those goals and policies of all alternatives considered.

Planning Commission Response: Satisfied. See below

Comprehensive Plan Consistency

The proposed amendment is consistent with the goals and policies of the Comprehensive Plan. Applicable goals and policies are:

Element 2. Citizen Involvement.

Policy 2.2. Where a land use issue or action may have an impact upon a particular neighborhood, ward or special interest group, or may affect large numbers of Urban Growth Boundary residents and property owners, special workshop sessions shall be held to assure access by affected citizens to all phases of the land use decision making process.

Planning Commission Response: Satisfied. The proposed amendment, as submitted by the Director, would potentially impact GC, CBD, BP, I and IP property owners within the City and Urban Growth Boundary. Written notice of the amendment and Planning Commission hearing was mailed to each property owner over 20 days in advance of the hearing. An additional public open house was held on January 6, 2009, to allow for public input. The open house was advertised in the newspaper and on the City's website. Additional public notice will be mailed prior to the City Council adoption hearing.

Element 8. Economy

GOAL: To improve, expand, diversify and stabilize the economic base of the community.

Policy 8.1. The City and County shall endeavor to improve, expand, diversify and stabilize the economic base of the community:

- (d) by insuring that an adequate quality and quantity of industrial land is available, properly zoned and serviced.
- (e) by protecting existing and planned commercial and industrial areas from the intrusion of incompatible land uses through land use regulation.

Planning Commission Response: Satisfied. The proposed text amendment is consistent with these policies. The addition of "Religious Assembly" as a permitted use is consistent with the purpose statements of the "BP" and "IP" zoning districts, which are intended to provide mixed-use commercial / light industrial uses and campus-like light industrial uses, respectively. The permitted uses and standards applied within these zones ensure compatibility with public assembly uses. The purpose of the "I" zoning district is to retain land exclusively for industrial land uses. The proposal would delete "Athletic Clubs", museums and libraries from the list of permitted uses within the "I" zone. None of these uses are considered "industrial". Additionally, the proposal would limit the size of "Eating/Drinking Establishments" within the "I" zone to 4,000 square feet or less. This is consistent with the policies of "insuring an adequate quality and quantity of industrial land" and "protecting existing and planned commercial and industrial areas from the intrusion of incompatible land uses."

Most Effective Alternative

Alternatives to approving the proposal are:

- 1) Allow religious assembly (churches) as a permitted use within all zoning districts, including I.
 - The proposed amendment more effectively carries out the purpose statement of the Industrial zoning district than this alternative.
- 2) Retain the existing standards within the Development Code.
 - The proposed amendment more effectively carries out the goals and policies stated above than the existing standards.
- 3) Original alternative proposed by the Director
 - The proposed amendment more effectively carries out the goals and policies stated above than the original proposal by the Director because it is more permissive rather than more restrictive with the allowance of uses in different zoning districts.

CRITERION 4: The proposed amendment is consistent with the functions, capacities, and performance standards of transportation facilities identified in the Master Transportation Plan.

Planning Commission Response: Satisfied. The proposal will not directly affect the functions, capacities or performance standards of the Master Transportation Plan.

VIII. RECOMMENDATION:

The Planning Commission recommended that City Council **APPROVE** the proposed text amendment, with the modifications listed below. The vote was 5-3-0, with Commissioners Berlant, Sackett, Kellenbeck, Fitzgerald and Fedosky in favor, and Commissioners Arthur, Wickham and Fowler opposed. The Planning Commission requested the following modifications to the Director's proposal:

- Retain "Temporary Uses" as a permitted use within Schedule 12-2.
- Retain athletic clubs, museums and libraries as a permitted use within the IP zoning district.
- Add "Religious Assembly" as a permitted use within the IP district.
- Revise the language within Sections 25.042 (4)(a) and (g) to reference the language "in assembly areas."

IX. FINDINGS APPROVED BY THE URBAN AREA PLANNING COMMISSION this 28th Day of January 2009.



Commissioner Gary Berlant, Chairperson

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²⁴Schedule 12-2. Permitted Uses and Site Plan Review Procedures

Land Use Types	Zoning Districts											
	Residential						Commercial			Industrial		
	UR	R-1-12 R-1-10 R-1-8	R-1-6	R-2	R-3	R-4	NC	GC	CBD	BP	IP	I
General activities not covered below, exempt from Development Permit	P-I-EX. See Section 2.033											
General activities not covered below, requiring an administratively issued use permit	P-I-AU. See Section 2.034											
General activities not covered below, where Building Permit serves as Development Permit	P-I-A. See Section 2.035											
1) Agriculture												
a) Intensive	P-I-EX	-	-	-	-	-	-	-	-	P-I-EX	P-I-EX	P-I-EX
b) Non Intensive	P-I-EX	P-I-EX	P-I-EX	P-I-EX	P-I-EX	P-I-EX	P-I-EX	P-I-EX	P-I-EX	P-I-EX	P-I-EX	P-I-EX
c) Forestry	P-I-EX	-	-	-	-	-	-	-	-	-	-	-
2) Residential Dwelling Unit												
a) Existing	P-I-A (e)	P-I-A (e)	P-I-A (e)	P-I-A (e)	P-I-A (e)	P-I-A (e)	P-I-A (e)	P-I-A (e)	P-I-A (e)	P-I-A (e)	P-I-A (e)	P-I-A (e)
b) New												

EXHIBIT A
 to OAPC FOR

Land Use Types	UR	R-1-12 R-1-10 R-1-8	R-1-6	R-2	R-3	R-4	NC	GC	CBD	BP	IP	I
1. Detached (1)	P-I-A	P-I-A	P-I-A	P-I-A	P-I-A	P-I-A	-	P-I-A	P-I-A	-	-	-
2. Detached (2)	PUD	PUD	P-II	P-I-A	P-I-A	P-I-A	-	P-I-A	P-I-A	-	-	-
3. Duplex	PUD	PUD	P-II	P-IA	P-IA	P-IA	-	P-I-A	P-I-A	-	-	-
4. Multi-Dwelling	PUD	PUD	PUD	P-II	P-I-C	P-I-C	-	P-I-C	P-I-C	-	-	-
5. Manufactured Housing												
"A" Individual Lot	P-I-A	P-I-A	P-I-A	P-I-A	P-I-A	P-I-A	-	P-I-A	P-I-A	-	-	-
"B" Manufactured Dwelling Park	-	-	-	P-III (d)	P-III (d)	P-I-C	-	-	-	-	-	-
"C" Health Condition	P-II	P-II	P-II	P-II	P-II	P-II	-	P-II	P-II	-	-	-
c) Group Quarters	-	-	-	-	-	P-II	-	-	P-II	-	-	-
d) Home Occupation												
1. Occupational Use, per 14.211	P-I-EX	P-I-EX	P-I-EX	P-I-EX	P-I-EX	P-I-EX	P-I-EX (f)	P-I-EX	P-I-EX	P-I-EX (f)	P-I-EX (f)	P-I-EX (f)
2. Minor, per 14.220	P-I-AU	P-I-AU	P-I-AU	P-I-AU	P-I-AU	P-I-AU	P-I-AU (f)	P-I-AU	P-I-AU	P-I-AU (f)	P-I-AU (f)	P-I-AU (f)
3. Major, per 14.220	P-II	P-II	P-II	P-II	P-II	P-II	P-I-C (f)	P-I-C	P-I-C	P-I-C (f)	P-I-C (f)	P-I-C (f)
e) Residential Accessory -Building -Use	P-I-A P-I-EX	P-I-A P-I-EX	P-I-A P-I-EX	P-I-A P-I-EX	P-I-A P-I-EX	P-I-A P-I-EX	P-I-A P-I-EX (e)	P-I-A P-I-EX	P-I-A P-I-EX	P-I-A P-I-EX (e)	P-I-A P-I-EX (e)	P-I-A P-I-EX (e)
f) Transient Quarters	-	-	-	-	-	-	-	-	-	P-III	-	P-III
g h) Residential Home, per 14.510	P-I-A	P-I-A	P-I-A	P-I-A	P-I-A	P-I-A	P-I-A (f)	P-I-A	P-I-A	P-I-A (f)	P-I-A (f)	P-I-A (f)

Land Use Types	UR	R-1-12 R-1-10 R-1-8	R-1-6	R-2	R-3	R-4	NC	GC	CBD	BP	IP	I
h) Residential Facility, per 14.521	P-II	P-II	P-II	P-II	P-I-C	P-I-C	P-I-C	P-I-C	P-I-C	-	-	-
i) Dwelling, Accessory	-	-	-	-	-	-	P-I-C	P-I-C	P-I-C	-	-	-
3) Trade												
a) Retail Indoor	-	-	-	-	-	-	P-II	P-(a)	P-(a)	P-(b)	-	-
b) Retail Outdoor	-	-	-	-	-	-	-	P-(a)	-	P-(b)	-	-
c) Wholesale	-	-	-	-	-	-	-	P-(a)	-	P-(b)	-	-
d) Itinerant Use, per 14.120	-	-	-	-	-	-	-	P-I-AU	P-I-AU	-	-	-
4) Services												
a) Professional Office	-	-	-	-	-	P-II	-	P-(a)	P-(a)	P-(b)	P*-(b)	-
b) Business Office	-	-	-	-	-	-	-	P-(a)	P-(a)	P-(b)	-	-
c) Limited Office	P-II	P-II	P-II	P-II	P-II	P-II	-	-	-	-	-	-
d) Repair/Maintenance, Commercial	-	-	-	-	-	-	-	P-(a)	P-(a)	P-(b)	-	P-(b)
e) Auto Service Station	-	-	-	-	-	-	-	P-(a)	-	P-(b)	-	-
f) Eating/Drinking Establishment	-	-	-	-	-	-	-	P-(a)	P-(a)	P-(b)	-	P-(b)
g) Hotel/Motel	-	-	-	-	-	-	-	P-(a)	P-(a)	-	-	-
h) RV Parks	-	-	-	-	-	-	-	P-III	-	-	-	-
i) Day Care/Family, per 14.310	P-I-A	P-I-A	P-I-A	P-I-A	P-I-A	P-I-A	P-I-A (f)	P-I-A	P-I-A	P-I-A (f)	P-I-A (f)	P-I-A (f)
j) Day Care/Group, per 14.320	P-II	P-II	P-II	P-II	P-II	P-II	-	P-II	P-II	P-II	P-II	P-II

Land Use Types	UR	R-1-12 R-1-10 R-1-8	R-1-6	R-2	R-3	R-4	NC	GC	CBD	BP	IP	I
k) Group Care	-	-	-	-	P-III	P-III	-	P-(a)	P-(a)	-	-	-
l) Hospitals	-	-	-	-	-	P-III	-	P-III	-	-	-	-
m) Vet. Clinics	-	-	-	-	-	-	-	P-(a)	-	P-(b)	-	-
n) Commercial Accessory -Building -Use		- -	- -	- -	- -	- -	P-(g) P-EX	P-(g) P-EX	P-(g) P-EX	P-(g) P-EX	-	-
o) Bed & Breakfast, per 14.420	P-II	P-III	P-III	P-III	P-III	P-II	-	P-(a)	P-(a)	-	-	-
p) Voluntary Parking -Local Impact -Area Impact	- -	- -	- -	P-II P-III	P-II P-III	P-II P-III	- -	- -	- -	- -	- -	- -
q) Personal Service	-	-	-	-	-	P-II	P-(a)	P-(a)	P-(a)	P-(b)	-	-
5) Recreation												
a) Residential -Local Impact -Area Impact	P-I-C P-II	P-I-C P-III	P-I-C P-III	P-I-C P-II	P-I-C P-II	P-I-C P-II	- -	- -	- -	- -	- -	- -
b) Commercial -Local Impact -Area Impact	- -	- -	- -	- -	- -	- -	P-(a) -	P-(a) P-(a)	P-(a) P-(a)	P-(b) P-(b)	- -	- -
c) Athletic Clubs	-	-	-	-	-	-	-	P-(a)	P-(a)	P-(b)	P-(b)	P-(b)
6) Public												
a) Minor Public	P-II (h)	P-III (h)	P-III (h)	P-II (h)	P-II (h)	P-II (h)	P-(a) (h)	P-(a) (h)	P-(a) (h)	P-(b) (h)	P-(b) (h)	P-(b) (h)
b) Major Public	-	-	-	-	-	-	-	-	-	P-(b)	P-(b)	P-(b)
c) Schools	P-II	P-III	P-III	P-III	P-II	P-II	-	P-(a)	P-(a)	P-(b)	-	-
d) Religious Assembly Churches	P-II	P-II	P-II	P-II	P-I-C	P-I-C	P-(a)	P-(a)	P-(a)	P-(b)	P-(b)	-

Land Use Types	UR	R-1-12 R-1-10 R-1-8	R-1-6	R-2	R-3	R-4	NC	GC	CBD	BP	IP	I
<i>e) Cultural Exhibit and Libraries</i>	P-II	P-III	P-III	P-III	P-II	P-II	P-(a)	P-(a)	P-(a)	P-(b)	P-(b)	I
f) Cemeteries	P-III	P-III	P-III	P-III	-	-	-	-	-	P-(b)	-	-
g) Mortuaries	-	-	-	-	-	P-III	-	P-(a)	-	P-(b)	-	-
h) Lodges	-	P-III	P-III	P-III	P-II	P-II	-	P-(a)	P-(a)	P-(b)	-	-
i) Commercial Parking	-	-	-	-	-	-	-	P-(a)	P-(a)	P-(b)	-	-
²⁰ j) Transportation Facilities outlined in the Master Transportation Plan, and local access streets	P-I-(c)	P-I-(c)	P-I-(c)	P-I-(c)	P-I-(c)	P-I-(c)	P-I-(c)	P-I-(c)	P-I-(c)	P-I-(c)	P-I-(c)	P-I-(c)
²¹ k) Transportation Facilities not outlined in the Master Transportation Plan, nor part of a subdivision or PUD, nor local access streets	P-II	P-II	P-II	P-II	P-II	P-II	P-II	P-II	P-II	P-II	P-II	P-II
l) Public Parks	P-III	P-III	P-III	P-II	P-II	P-II	-	P-II	P-II	P-II	-	-
7) Industrial												
a) Repair/Maintenance, Industrial	-	-	-	-	-	-	-	-	-	P-(b)	-	P-(b)
b) Indoor	-	-	-	-	-	-	-	-	-	P-(b)	P-(b)	P-(b)
c) Outdoor	-	-	-	-	-	-	-	-	-	-	-	P-(b)
d) Prohibited	-	-	-	-	-	-	-	-	-	X	X	X
e) Industrial Accessory -Building -Use	- -	- -	- -	- -	- -	- -	- -	- -	- -	P-(g) P-I-EX	P-(g) P-I-EX	P-(g) P-I-EX
f) Outdoor Storage	-	-	-	-	-	-	-	-	-	P-II	-	P-II

Table Legend:

P	=Permitted Use
-	=Use Not Permitted
X	=Use Specifically Prohibited (Uses defined in Article 30 as "Industrial, Prohibited")
C	=Use Conditionally Permitted (See Article 16)
I-EX	=Type I Procedure, Exempt from Development Permit Review, Section 2.033
I-AU	=Type I Procedure, Administrative Use Permit Review Only, Section 2.034
I-A	=Type I Procedure, Building Permit Serves as Development Permit, Section 2.035
I-B	=Type I Procedure, Director's Decision without Comment Period, Section 2.036
I-C	=Type I Procedure, Director's Decision with Comment Period, Section 2.037
II	=Type II Procedure, Hearings Officer's Decision, Section 2.040
III	=Type III Procedure, Planning Commission's Decision, Section 2.050
IV-A	=Type IV Procedure, City Council Decision without Planning Commission Recommendation, Section 2.060
IV-B	=Type IV Procedure, City Council Decision with Planning Commission Recommendation, Section 2.060
V	=Type V Procedure, Joint Board of County Commissioners & City Council Decision with Planning Commission Recommendation, Section 2.070
*	=Professional Office use permitted in the Industrial Park District only when subject property is located within the Medical Overlay District.

Table Notes:

- (a) A Type II Procedure is required if the subject property adjoins a residential zone, otherwise a Type I-C Procedure is required.
- (b) A Type II Procedure is required if the subject property adjoins a residential or commercial zone, otherwise Type I-C Procedure is required.
- (c) Type I-A, except the following are exempt (Type I-EX): operation, maintenance, repair, and preservation of existing transportation facilities; dedication or public acquisition of rights-of-way and easements; authorization of construction and construction of facilities and improvements, where the improvements are within the existing right-of-way or easement area or are consistent with clear and objective dimensional standards; and emergency measures necessary for the safety and protection of property.
- (d) Manufactured Dwelling Parks are not permitted in commercial or industrial zones or commercial or industrial Comprehensive Plan land use districts. Siting of an individual home within an approved manufactured dwelling park requires a Type I-A procedure.
- (e) An existing residential dwelling unit is a permitted use in this zone. In zones where a new residential dwelling unit is not a permitted use, this provision allows the existing residential dwelling unit to continue or expand without being subject to the nonconforming use provisions of the Development Code. There may be nonconforming development provisions that are applicable. If an existing dwelling unit is removed in a zone where a new dwelling unit is not permitted, it shall not be replaced.

In zones where a new residential dwelling unit is not a permitted use, this provision does not allow for expansion that increases the number of dwelling units.

In zones where a new residential dwelling unit is not a permitted use, this provision allows for a new residential accessory structure or accessory use associated with the existing residential dwelling.
- (f) These uses are permitted within an existing dwelling unit only, since a new dwelling unit is not permitted in the zoning district.
- (g) A commercial or industrial accessory building of 400 square feet or less that comprises less

than 25 percent of the existing floor area of buildings and meets the definition of a minor modification in Section 19.058 of this Code is reviewed through a Type I-A procedure. All other commercial or industrial accessory buildings are subject to the applicable site plan review procedures.

- (h) A Type I-A Procedure is required for water and sewer pump stations. All other minor public facilities are reviewed through the procedure specified in the table.
- (i) A Type III Procedure is required if the tower height exceeds the zone height limit, otherwise a Type II Procedure is required.

(j) An Eating / Drinking Establishment located within the I (Industrial) zoning district shall have a maximum gross square footage allotment of 4,000 square feet or less, including any covered outdoor covered seating areas. Square footage shall be limited to that necessary to accommodate food preparation, storage, restroom facilities, and customer service and seating areas. General meeting space, including any space used for the hosting of parties, banquets, receptions, meetings, or similar social events, shall not be permitted on any portion of the premises, except as authorized through a Special Occurrence Permit issued by the City of Grants Pass.

(4) Public Assembly Uses	
(a) Church: Religious Assembly:	One space for every three fixed seats or every seven foot of bench length, or every 28 sq.ft. where no permanent seats or benches are maintained in assembly areas main auditorium or cultural hall whichever is greater.
(b) Library; reading room; museum; art gallery:	One space per 500 square feet of floor area.
(c) Day Care Facility:	One space per attendant in addition to residential parking requirements. Resident attendants are not counted in parking requirements for attendant parking.
(d) Elementary or Junior High School:	Two spaces for each teaching station plus one for every eight fixed seats or every 100 sq. ft. of seating area where there are no fixed seats in the auditorium or assembly area.
(e) High School:	Two spaces for each teaching station plus one for every four fixed seats or for every 50 sq. ft. of seating area where there are no fixed seats in auditorium.
(f) College; commercial school for adults:	Two spaces for each teaching station plus one space for every two students of design capacity.
(g) Other auditorium; meeting rooms; or theater	One space per 3 seats or 7 ft of bench length, or every 28 sq. ft. where no permanent seats or benches are maintained in assembly areas.
(h) Limited school service facility:	One space per 400 sq. ft. of floor area.
(5) Commercial Recreation Uses	
(a) Stadium; sports arena:	One space per 5 seats, or 10 ft of bench length.
(b) Bowling Alley:	Six spaces per line.
(c) Dance Hall; Skating Rink:	One space per 100 sq. ft. of floor area.

EXHIBIT B
to VAPC FOF

**Proposed Definition Amendments
Recommended by Urban Area Planning Commission
Article 30, City of Grants Pass Development Code**

~~Church: The building and premises used for the conduct of regular religious services; church shall not include schools, other than premises used for religious instruction during regular religious services. See also "Schools."~~

Cultural Exhibits and Libraries: Museum-like preservation and exhibition of objects in one or more of the arts and sciences, gallery exhibition of works of art, or library collection of books, manuscripts, etc., for study and reading. Specifically excluded from this category are exhibitions where items displayed are available for retail sale (see "Trade, Retail.")

⁸²Public, Minor: Government, public or semi-public facilities and utilities which have a local impact upon surrounding properties, including libraries, museums, fire stations, reservoirs and wholly-enclosed pumping stations or utility sub-stations. It also includes municipal water or sewage treatment plants when separated from any adjacent residential development by a minimum 50 foot wide Type B landscaped buffer.

Recreation, Commercial: Provision of sports, recreation and entertainment for both participants and spectators, provided both indoors and outdoors. Specifically excluded from this category are "Residential Recreation" and "Athletic Club" uses. Commercial Recreation uses are of two types:

- (1) Local Impact: ~~Uses catering primarily to participants, with only incidental spectator use,~~ **Commercial recreation uses** conducted within an enclosed building with a capacity of 300 persons or less. **Typical uses include theaters and meeting or banquet halls.**
- (2) Area Impact: ~~Uses catering primarily to spectators of an event;~~ **Commercial recreation** uses conducted outdoors, or conducted within an enclosed building

EXHIBIT C
to UAPC FGF

with a capacity of over 300 persons. Typical uses include theaters, meeting or banquet halls, cinemas, theme parks, stadiums, miniature golf facilities, and zoos.

Recreation, Residential: Provision of recreation facilities for participants, with only incidental spectator use, such that compatibility with residential uses can be maintained. Provided primarily outdoors, with only incidental and accessory indoor uses. Residential recreation uses are of two types:

- (1) Local Impact: Facilities for the private use of an individual family and non-paying guests, including members of a PUD. Typical uses include swimming pools, open space, club houses, or other recreational facilities located within a residential subdivision, PUD, or multi-family development.
- (2) Area Impact: Facilities for use of the general public or membership of a private organization (where not a part of a PUD) which consist primarily of vegetative landscaping, or similar natural-appearing areas, and focus on outdoor recreation. Lands tend to have few structures, but accessory uses such as club houses, maintenance facilities, concession stands, etc. may be permitted by the Review Body. Typical uses include golf courses, privately-owned parks and plazas, botanical gardens, and nature preserves.

Religious Assembly: The building and premises used for the conduct of regular religious services, such as customarily occur in synagogues, temples, mosques and churches. Specifically excluded from this category are schools, other than premises used for religious instruction during regular religious services. See also "Schools."

CITY OF GRANTS PASS COMMUNITY DEVELOPMENT DEPARTMENT

**RLUIPA DEVELOPMENT CODE TEXT AMENDMENT
PLANNING COMMISSION STAFF REPORT-TYPE IV**

Procedure Type:	Type IV: Planning Commission Recommendation and City Council Decision
Project Number:	08-40500005
Project Type:	Development Code Text Amendment
Applicant:	City of Grants Pass
Planner Assigned:	Jared Voice
Application Received:	September 24, 2008 <i>Re-submitted November 14, 2008</i>
Application Complete:	November 14, 2008
Date of Planning Commission Staff Report:	January 7, 2009
Date of Planning Commission Hearing:	January 14, 2009

I. PROPOSAL:

The proposal consists of amendments to Articles 12, 20, 25 and 30 of the Development Code (*Exhibits 1-4*), to address issues related to the federal Religious Land Use and Institutionalized Persons Act (RLUIPA) and associated case law. The amendments would affect certain land uses within "BP" (Business Park), "I" (Industrial), "IP" (Industrial Park), "GC" (General Commercial) and "CBD" (Central Business District) zones.

II. AUTHORITY AND CRITERIA:

Section 4.102 of the City of Grants Pass Development Code provides that the Director or City Council may initiate a text amendment. The amendment was initiated by the Director.

Sections 2.060, 7.040 and 7.050 authorize the Urban Area Planning Commission to make a recommendation to the City Council and authorize the City Council to make a final decision on a land use matter requiring a Type IV procedure, in accordance with procedures of Section 2.060.

The text of the Development Code may be recommended for amendment and amended provided the criteria in Section 4.103 of the Development Code are met.

III. APPEAL PROCEDURE:

The City Council's final decision may be appealed to the State Land Use Board of Appeals (LUBA) as provided in state statutes. A notice of intent to appeal must be filed with LUBA within 21 days of the Council's written decision.

IV. BACKGROUND AND DISCUSSION:

The City is proposing the Development Code text amendment to address issues related to the federal Religious Land Use and Institutionalized Persons Act (RLUIPA). RLUIPA requires that zoning regulations treat churches and other religious institutions equally to similar public assembly uses such as clubs and lodges, recreation buildings or meeting halls. The primary purpose of the proposed text amendment is to ensure that religious assembly uses are treated equally to similar public assembly uses within the Grants Pass Development Code.

Content of Proposed Text Amendment

The bulk of the proposal consists of amendments to Articles 12 (Zoning Districts) and 30 (Definitions) of the Development Code. Housekeeping amendments to Articles 20 and 25 are also included within the proposal.

The amendment to Article 12 would affect certain land uses within specific commercial and industrial zoning districts. The following table summarizes which land uses would be impacted within each zone.

Zoning Designation	New Land Uses Permitted	Land Uses Not Permitted*
BP (Business Park)	Religious Assembly	Temporary Uses
I (Industrial)		Athletic Clubs, Cultural Exhibits and Libraries, Temporary Uses
IP (Industrial Park)		Athletic Clubs, Cultural Exhibits and Libraries, Temporary Uses
GC (General Commercial)		Temporary Uses
CBD (Central Business District)		Temporary Uses

*Column depicts land uses that are currently permitted within each zoning district but would not be permitted upon approval of the proposal. If said uses exist upon approval of the amendment, they would be allowed to remain as non-conforming uses, but would be subject to the provisions of Development Code Article 15.

NOTE: In addition to the above uses, "Eating / Drinking Establishments" within the "I" (Industrial) zone would be limited to a maximum size of 4,000 square feet.

The amendments to Article 30 (Development Code Definitions) are being proposed primarily for clarification purposes. These amendments are not expected to impact individual property owners.

RLUIPA Summary

The Religious Land Use and Institutionalized Persons Act was signed into law by President Bill Clinton on September 25, 2000 (*Exhibit 7.*) The bill, sponsored by Republican Senator Orrin Hatch and Democratic Senator Ted Kennedy, allows a government to regulate religious land uses as long as applying a regulation does not "substantially burden" the free exercise of religion. A substantial burden is defined as regulations that are "oppressive to a significantly great extent" or those that render a proposed religious land use "effectively impracticable." A government must also demonstrate that the imposition of any burden on religious exercise is in furtherance of a compelling governmental interest, and that the burden is the least restrictive means of furthering that compelling governmental interest.

Additionally, RLUIPA requires that “no government shall impose or implement a land use regulation that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.” For example, if any public assembly use is permitted in a given zone, a religious assembly use (church) must also be allowed in that zone. Determining which uses listed in the Grants Pass Development Code could be construed as “public assembly”, and therefore similar to religious assembly, is a significant aspect of this proposed text amendment.

RLUIPA as a statute is brief but potentially very broad in application. When initially signed into law in 2000, it was difficult to foresee exactly how it would impact local government land use regulations. Subsequent case law has more explicitly interpreted how the act applies to local land use regulations.

Federal Court Case: Civil Liberties for Urban Believers v. City of Chicago

Since its enactment, there have been numerous court cases related to RLUIPA. Perhaps the most important of these, in terms of clarifying the meaning of “substantial burden on religious exercise” and interpreting the equal protection clause of RLUIPA, is *Civil Liberties for Urban Believers (CLUB) v. City of Chicago*. CLUB is an association of churches that filed a lawsuit against the City of Chicago, challenging the constitutionality of the city’s zoning ordinance and challenging it under RLUIPA. The plaintiffs had previously attempted to locate religious facilities in various city zoning districts and obtain necessary permits. The permit requirements and approval criteria varied by zone. Each of the organizations involved experienced permit delays and denials and the associated monetary costs, although each was ultimately able to get approval for an acceptable site. The plaintiffs argued that the process was too costly for smaller churches and sought repayment of the costs associated with the delays. The following are key findings of this case:

- Administrative and other costs associated with siting a facility are not substantial burdens under RLUIPA.
- The Federal court initially found that Chicago was violating the Equal Protection Clause of the 14th Amendment (and RLUIPA) because clubs and lodges, meeting halls, recreation buildings and community centers were permitted by right in certain zoning districts, while churches were required to obtain a special use permit. The Court found that these were similar uses that should be treated similarly.

IMPORTANT NOTE: Chicago subsequently amended its zoning ordinance to address this issue, and the District Court later found that the zoning amendments brought the ordinance into compliance with the 14th Amendment and RLUIPA.

Relationship Between RLUIPA and Grants Pass Development Code Amendment

The primary purpose of the proposed text amendment is to address the 14th Amendment and equal protection clause of RLUIPA. For example, the Grants Pass Development Code currently does not allow churches within the “BP” Business Park, “I” Industrial or “IP” Industrial Park zones, but does allow similar public assembly uses such as athletic clubs, museums and libraries. This is similar to the scenario under which the Federal Court found Chicago in violation of the 14th Amendment and RLUIPA. By amending the list of permitted uses within these zones, the City will ensure that its Development Code is consistent with RLUIPA and the findings of the Chicago case.

Within the “I” Industrial and “IP” Industrial Park zoning districts, athletic clubs and cultural exhibits (museums)/libraries would be deleted from the list of permitted uses. The intent

of the amendment is to preserve these zones for industrial uses, consistent with the Development Code purpose statement for each.

Within the "BP" zoning district, religious institutions (churches) would be added to the list of permitted uses. The "BP" district is intended to provide a mixed-use commercial and light industrial zone that is compatible with public assembly uses like churches and athletic clubs.

Additionally, "Temporary Uses", currently listed as permitted within the BP, I, IP, GC and CBD zoning districts, would be deleted from the Development Code altogether. The Code does not provide a definition for "Temporary Uses", nor does it allow them any special exception to standards that apply to regular uses. The deletion of "Temporary Uses" will not affect other defined permitted uses that are temporary in nature, such as "Itinerant Uses", and will ensure that the undefined term is not construed to allow a use that would conflict with RLUIPA requirements.

City Council Work Plan

The proposal carries out Outcome D, Work Task 2 of the City Council's work plan under the City Council Growth Management Goal:

Goal 1. Growth Management: While prospering and growing, we keep the sense of hometown, protect our natural resources and enhance our community improvements.

Outcome D. Other Activities to Manage Growth

- **Workplan Element:** Review and revise sections of the various codes.
- **Timing: Ongoing.** As code issues are identified issues arise through the Council, Urban Area Planning Commission and Staff, the Staff will continue to prepare revisions to the ordinances. These may be individual amendments, or a group of amendments as part of a larger housekeeping amendment.

V. CONFORMANCE WITH APPLICABLE CRITERIA:

The text of the Development Code may be recommended for amendment and amended provided that all of the following criteria of Section 4.103 of the Development Code are met.

CRITERION 1: The proposed amendment is consistent with the purpose of the subject section and article.

Staff Response: The proposal is consistent with the purpose of the subject sections and articles within the Development Code, including Articles 12, 20, 25 and 30. **See discussion regarding Article 12 amendments below.**

12.011 Purpose. The purpose of this Article is as follows:

- (1) To implement the policies and Land Use Map of the Comprehensive Plan;*
- (2) To protect the right to use and enjoy real property;*

- (3) *To protect the health, safety and welfare of the community;*
- (4) *To serve as a basis for resolving land use conflict.*

Staff Response: Satisfied. The proposal primarily amends Schedule 12-2, (*Permitted Uses and Site Plan Review Procedures*) of Article 12 (“Zoning Districts”). The proposal is consistent with the “Purpose” statement for Article 12 as stated above.

The purpose statement for each affected zoning district is listed below.

12.222- General Commercial District (GC). The purpose of the General Commercial District is to provide for all commercial and professional uses, excepting those uses requiring on-site manufacture or assembly. Performance development standards are designed to protect adjacent uses and development from impact, and the market factors of supply, demand, location and cost are expected to provide commercial development in appropriate types, amounts and relationships.

Staff Response: Satisfied. The deletion of “Temporary Uses” as a permitted use within the GC zone is consistent with the purpose statement for the zone. The Code does not provide a definition for “Temporary Uses”, nor does it allow them any special exception to standards that apply to regular uses. To allow a use to occur on a site, temporarily or otherwise, without requiring that use to conform to performance standards required of other uses, would be inconsistent with the purpose statement of the zone.

12.223- Central Business District (CBD). The purpose of the Central Business District is to provide appropriate commercial and professional uses for the Central Business District of Grants Pass. Performance development standards are designed to encourage mixed commercial, professional and high-rise residential uses. The Central Business District recognizes and encourages viable and economic uses, while performance development standards and the Downtown Plan act to maintain and enhance the District’s unique architecture and historic qualities.

Staff Response: Satisfied. The deletion of Temporary Uses as a permitted use within the CBD zone is consistent with the purpose statement for the zone. *See additional discussion above.*

12.321- Business Park District (BP). The purpose of the Business Park District is to provide a mixed-use zone for light industrial and commercial uses. Retail trade is permitted as an accessory use or when determined to be compatible with, or can be made compatible with, light industrial or wholesale trade uses via a discretionary review process. Performance Development Standards are designed to ensure the compatibility of the light industrial uses with the commercial uses, and the compatibility with adjacent Commercial and Residential Zoning Districts.

Staff Response: Satisfied. The deletion of “Temporary Uses” as a permitted use and addition of “Religious Assembly” as a permitted use are consistent with the purpose of the BP zoning district. The BP zone is intended to provide a mixed-use commercial and light industrial district that is compatible with public assembly uses like churches and other religious assembly uses.

12.322- Industrial Park District (IP). The purpose of the Industrial Park District is to provide for light industrial uses in a campus-like setting. High Performance Development Standards assure compatibility among Industrial Park users and the compatibility with adjacent commercial and residential uses.

12.323- Industrial District (I). The purpose of the Industrial District is to provide for those industrial uses with heavier impacts upon their surroundings and the need for outdoor functions. Performance standards are less than required for other industrial districts and graduated buffering standards ensure compatibility with neighboring zones of lesser intensity of use. It is the express intent of the Industrial District to maintain lands for industrial use, with commercial and residential uses limited to those uses accessory to industrial development.

Staff Response: Satisfied. The proposal is consistent with the purpose statements for the IP and I zoning districts. Both zones are intended to serve industrial land uses. The proposal would delete “Athletic Clubs”, museums and libraries from the list of permitted uses within these zoning districts. None of these uses are considered “industrial”. Additionally, the proposal would limit the size of “Eating/Drinking Establishments” within the “I” zone to 4,000 square feet or less. This is consistent with the purpose statement’s intent of limiting commercial uses within the zone to those “accessory to industrial development” by allowing only smaller restaurants, which are generally high-turnover, as a service to adjacent industrial uses.

CRITERION 2: The proposed amendment is consistent with other provisions of this code.

Staff Response: Satisfied. The proposed amendment is internally consistent with other provisions of the Code. Housekeeping amendments to Articles 20, 25 and 30 are intended to preserve and enhance consistency within the Code.

CRITERION 3: The proposed amendment is consistent with the goals and policies of the Comprehensive Plan, and most effectively carries out those goals and policies of all alternatives considered.

Staff Response: Satisfied. See below

Comprehensive Plan Consistency

The proposed amendment is consistent with the goals and policies of the Comprehensive Plan. Applicable goals and policies are:

Element 2. Citizen Involvement.

Policy 2.2. Where a land use issue or action may have an impact upon a particular neighborhood, ward or special interest group, or may affect large numbers of Urban Growth Boundary residents and property owners, special workshop sessions shall be held to assure access by affected citizens to all phases of the land use decision making process.

Staff Response: Satisfied. The proposed amendment will potentially impact GC, CBD, BP, I and IP property owners within the City and Urban Growth Boundary. Written notice of the amendment and Planning Commission hearing was mailed to each property owner over 20 days in advance of the hearing. An additional public open house was held on January 6, 2009, to allow for public input. The open house was advertised in the newspaper and on the City's website.

Element 8. Economy

GOAL: To improve, expand, diversify and stabilize the economic base of the community.

Policy 8.1. The City and County shall endeavor to improve, expand, diversify and stabilize the economic base of the community:

- (d) by insuring that an adequate quality and quantity of industrial land is available, properly zoned and serviced.
- (e) by protecting existing and planned commercial and industrial areas from the intrusion of incompatible land uses through land use regulation.

Staff Response: Satisfied. The proposed text amendment is consistent with these policies. The deletion of "Temporary Uses" as a permitted use and addition of "Religious Assembly" as a permitted use are consistent with the purpose of the "BP" zoning district, which is intended to provide a mixed-use commercial and light industrial district that is compatible with public assembly uses like churches and other religious assembly uses. The purpose of the "I" and "IP" zoning districts are to retain land exclusively for industrial land uses. The proposal would delete "Athletic Clubs", museums and libraries from the list of permitted uses within these zoning districts. None of these uses are considered "industrial". Additionally, the proposal would limit the size of "Eating/Drinking Establishments" within the "I" zone to 4,000 square feet or less. This is consistent with the policies of "insuring an adequate quality and quantity of industrial land" and "protecting existing and planned commercial and industrial areas from the intrusion of incompatible land uses."

Most Effective Alternative

Alternatives to approving the proposal are:

- 1) Allow religious assembly (churches) as a permitted use within all zoning districts, including I and IP. The proposed amendment more

effectively carries out the purpose statements of the I and IP zoning districts than this alternative.

- 2) Retain the existing standards within the Development Code. The proposed amendment more effectively carries out the goals and policies stated above than the existing standards.

CRITERION 4: The proposed amendment is consistent with the functions, capacities, and performance standards of transportation facilities identified in the Master Transportation Plan.

Staff Response: Satisfied. The proposal will not directly affect the functions, capacities or performance standards of the Master Transportation Plan.

VI. RECOMMENDATION:

- Staff recommends the Planning Commission **RECOMMEND APPROVAL** of the proposed amendments to City Council, as presented in Exhibits 1, 2, 3 and 4.

VII. PLANNING COMMISSION ACTION:

- A. Positive Action: Recommend that City Council approve the request:
 1. as submitted
 2. with the revisions as modified by the Planning Commission (list):
- B. Negative Action: Recommend that City Council deny the request for the following reasons (list):
- C. Postponement: Continue item
 1. indefinitely.
 2. to a time certain.

NOTE: The application is a legislative amendment and is not subject to the 120-day limit.

VIII. INDEX TO EXHIBITS:

1. Proposed amendments to Schedule 12-2
2. Proposed amendment to Section 20.220
3. Proposed amendment to Section 25.042 (4)
4. Proposed amendments to Article 30
5. Informational Handout, 12/22/08
6. Letter in Support of Proposal From City Economic Development Coordinator
7. Religious Land Use and Institutionalized Persons Act (RLUIPA)

Jh/cap/jv

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24 Schedule 12-2. Permitted Uses and Site Plan Review Procedures												
	Zoning Districts											
	Residential						Commercial			Industrial		
Land Use Types	UR	R-1-12 R-1-10 R-1-8	R-1-6	R-2	R-3	R-4	NC	GC	CBD	BP	IP	I
General activities not covered below, exempt from Development Permit	P-I-EX. See Section 2.033											
General activities not covered below, requiring an administratively issued use permit	P-I-AU. See Section 2.034											
General activities not covered below, where Building Permit serves as Development Permit	P-I-A. See Section 2.035											
1) Agriculture												
a) Intensive	P-I-EX	-	-	-	-	-	-	-	-	P-I-EX	P-I-EX	P-I-EX
b) Non Intensive	P-I-EX	P-I-EX	P-I-EX	P-I-EX	P-I-EX	P-I-EX	P-I-EX	P-I-EX	P-I-EX	P-I-EX	P-I-EX	P-I-EX
c) Forestry	P-I-EX	-	-	-	-	-	-	-	-	-	-	-
2) Residential Dwelling Unit												
a) Existing	P-I-A (e)	P-I-A (e)	P-I-A (e)	P-I-A (e)	P-I-A (e)	P-I-A (e)	P-I-A (e)	P-I-A (e)	P-I-A (e)	P-I-A (e)	P-I-A (e)	P-I-A (e)
b) New												

EXHIBIT 1b
to Ordinance Staff Report

Land Use Types	UR	R-1-12 R-1-10 R-1-8	R-1-6	R-2	R-3	R-4	NC	GC	CBD	BP	IP	I
1. Detached (1)	P-I-A	P-I-A	P-I-A	P-I-A	P-I-A	P-I-A	-	P-I-A	P-I-A	-	-	-
2. Detached (2)	PUD	PUD	P-II	P-I-A	P-I-A	P-I-A	-	P-I-A	P-I-A	-	-	-
3. Duplex	PUD	PUD	P-II	P-IA	P-IA	P-IA	-	P-I-A	P-I-A	-	-	-
4. Multi-Dwelling	PUD	PUD	PUD	P-II	P-I-C	P-I-C	-	P-I-C	P-I-C	-	-	-
5. Manufactured Housing												
"A" Individual Lot	P-I-A	P-I-A	P-I-A	P-I-A	P-I-A	P-I-A	-	P-I-A	P-I-A	-	-	-
"B" Manufactured Dwelling Park	-	-	-	P-III (d)	P-III (d)	P-I-C	-	-	-	-	-	-
"C" Health Condition	P-II	P-II	P-II	P-II	P-II	P-II	-	P-II	P-II	-	-	-
c) Group Quarters	-	-	-	-	-	P-II	-	-	P-II	-	-	-
d) Home Occupation												
1. Occupational Use, per 14.211	P-I-EX	P-I-EX	P-I-EX	P-I-EX	P-I-EX	P-I-EX	P-I-EX (f)	P-I-EX	P-I-EX	P-I-EX (f)	P-I-EX (f)	P-I-EX (f)
2. Minor, per 14.220	P-I-AU	P-I-AU	P-I-AU	P-I-AU	P-I-AU	P-I-AU	P-I-AU (f)	P-I-AU	P-I-AU	P-I-AU (f)	P-I-AU (f)	P-I-AU (f)
3. Major, per 14.220	P-II	P-II	P-II	P-II	P-II	P-II	P-I-C (f)	P-I-C	P-I-C	P-I-C (f)	P-I-C (f)	P-I-C (f)
e) Residential Accessory Building Use	P-I-A P-I-EX	P-I-A P-I-EX	P-I-A P-I-EX	P-I-A P-I-EX	P-I-A P-I-EX	P-I-A P-I-EX	P-I-A P-I-EX (e)	P-I-A P-I-EX	P-I-A P-I-EX	P-I-A P-I-EX (e)	P-I-A P-I-EX (e)	P-I-A P-I-EX (e)
f) Transient Quarters	-	-	-	-	-	-	-	-	-	P-III	-	P-III
g) Residential Home, per 14.510	P-I-A	P-I-A	P-I-A	P-I-A	P-I-A	P-I-A	P-I-A (f)	P-I-A	P-I-A	P-I-A (f)	P-I-A (f)	P-I-A (f)

Land Use Types	UR	R-1-12 R-1-10 R-1-8	R-1-6	R-2	R-3	R-4	NC	GC	CBD	BP	IP	I
h) Residential Facility, per 14.521	P-II	P-II	P-II	P-II	P-I-C	P-I-C	P-I-C	P-I-C	P-I-C	-	-	-
i) Dwelling, Accessory	-	-	-	-	-	-	P-I-C	P-I-C	P-I-C	-	-	-
3) Trade												
a) Retail Indoor	-	-	-	-	-	-	P-II	P-(a)	P-(a)	P-(b)	-	-
b) Retail Outdoor	-	-	-	-	-	-	-	P-(a)	-	P-(b)	-	-
c) Wholesale	-	-	-	-	-	-	-	P-(a)	-	P-(b)	-	-
d) Itinerant Use, per 14.120	-	-	-	-	-	-	-	P-I-AU	P-I-AU	-	-	-
4) Services												
a) Professional Office	-	-	-	-	-	P-II	-	P-(a)	P-(a)	P-(b)	P*-(b)	-
b) Business Office	-	-	-	-	-	-	-	P-(a)	P-(a)	P-(b)	-	-
c) Limited Office	P-II	P-II	P-II	P-II	P-II	P-II	-	-	-	-	-	-
d) Repair/Maintenance, Commercial	-	-	-	-	-	-	-	P-(a)	P-(a)	P-(b)	-	P-(b)
e) Auto Service Station	-	-	-	-	-	-	-	P-(a)	-	P-(b)	-	-
f) Eating/Drinking Establishment	-	-	-	-	-	-	-	P-(a)	P-(a)	P-(b)	-	P-(b) (f)
g) Hotel/Motel	-	-	-	-	-	-	-	P-(a)	P-(a)	-	-	-
h) RV Parks	-	-	-	-	-	-	-	P-III	-	-	-	-
i) Day Care/Family, per 14.310	P-I-A	P-I-A	P-I-A	P-I-A	P-I-A	P-I-A	P-I-A (f)	P-I-A	P-I-A	P-I-A (f)	P-I-A (f)	P-I-A (f)
j) Day Care/Group, per 14.320	P-II	P-II	P-II	P-II	P-II	P-II	-	P-II	P-II	P-II	P-II	P-II

Land Use Types	UR	R-1-12 R-1-10 R-1-8	R-1-6	R-2	R-3	R-4	NC	GC	CBD	BP	IP	I
k) Group Care	-	-	-	-	P-III	P-III	-	P-(a)	P-(a)	-	-	-
l) Hospitals	-	-	-	-	-	P-III	-	P-III	-	-	-	-
m) Vet. Clinics	-	-	-	-	-	-	-	P-(a)	-	P-(b)	-	-
n) Commercial Accessory -Building -Use		-	-	-	-	-	P-(g) P-EX	P-(g) P-EX	P-(g) P-EX	P-(g) P-EX	-	-
o) Bed & Breakfast, per 14,420	P-II	P-III	P-III	P-III	P-III	P-II	-	P-(a)	P-(a)	-	-	-
p) Voluntary Parking -Local Impact -Area Impact	- -	- -	- -	P-II P-III	P-II P-III	P-II P-III	- -	- -	- -	- -	- -	- -
q) Personal Service	-	-	-	-	-	P-II	P-(a)	P-(a)	P-(a)	P-(b)	-	-
5) Recreation												
a) Residential -Local Impact -Area Impact	P-I-C P-II	P-I-C P-III	P-I-C P-III	P-I-C P-II	P-I-C P-II	P-I-C P-II	- -	- -	- -	- -	- -	- -
b) Commercial -Local Impact -Area Impact	- -	- -	- -	- -	- -	- -	P-(a) -	P-(a) P-(a)	P-(a) P-(a)	P-(b) P-(b)	- -	- -
c) Athletic Clubs	-	-	-	-	-	-	-	P-(a)	P-(a)	P-(b)	P-(b)	P-(b)
6) Public												
a) Minor Public	P-II (h)	P-III (h)	P-III (h)	P-II (h)	P-II (h)	P-II (h)	P-(a) (h)	P-(a) (h)	P-(a) (h)	P-(b) (h)	P-(b) (h)	P-(b) (h)
b) Major Public	-	-	-	-	-	-	-	-	-	P-(b)	P-(b)	P-(b)
c) Schools	P-II	P-III	P-III	P-III	P-II	P-II	-	P-(a)	P-(a)	P-(b)	-	-
d) <u>Religious Assembly Churches</u>	P-II	P-II	P-II	P-II	P-I-C	P-I-C	P-(a)	P-(a)	P-(a)	P-(b)	-	-

EXHIBIT 1d
to UAC Staff Report

EXHIBIT 1e
to CAPC State Report

Land Use Types	UR	R-1-12 R-1-10 R-1-8	R-1-6	R-2	R-3	R-4	NC	GC	CBD	BP	IP	I
e) Cultural Exhibit and Libraries	P-II	P-III	P-III	P-III	P-II	P-II	P-(a)	P-(a)	P-(a)	P-(b)	I	I
f) Cemeteries	P-III	P-III	P-III	P-III	-	-	-	-	-	P-(b)	-	-
g) Mortuaries	-	-	-	-	-	P-III	-	P-(a)	-	P-(b)	-	-
h) Lodges	-	P-III	P-III	P-III	P-II	P-II	-	P-(a)	P-(a)	P-(b)	-	-
i) Commercial Parking	-	-	-	-	-	-	-	P-(a)	P-(a)	P-(b)	-	-
²⁰ j) Transportation Facilities outlined in the Master Transportation Plan, and local access streets	P-I-(c)	P-I-(c)	P-I-(c)	P-I-(c)	P-I-(c)	P-I-(c)	P-I-(c)	P-I-(c)	P-I-(c)	P-I-(c)	P-I-(c)	P-I-(c)
²¹ k) Transportation Facilities not outlined in the Master Transportation Plan, nor part of a subdivision or PUD, nor local access streets	P-II	P-II	P-II	P-II	P-II	P-II	P-II	P-II	P-II	P-II	P-II	P-II
l) Public Parks	P-III	P-III	P-III	P-II	P-II	P-II	-	P-II	P-II	P-II	-	-
7) Industrial												
a) Repair/Maintenance, Industrial	-	-	-	-	-	-	-	-	-	P-(b)	-	P-(b)
b) Indoor	-	-	-	-	-	-	-	-	-	P-(b)	P-(b)	P-(b)
c) Outdoor	-	-	-	-	-	-	-	-	-	-	-	P-(b)
d) Prohibited	-	-	-	-	-	-	-	-	-	X	X	X
e) Industrial Accessory -Building -Use	- -	- -	- -	- -	- -	- -	- -	- -	- -	P-(g) P-I-EX	P-(g) P-I-EX	P-(g) P-I-EX
f) Outdoor Storage	-	-	-	-	-	-	-	-	-	P-II	-	P-II

Land Use Types	UR	R-1-12 R-1-10 R-1-8	R-1-6	R-2	R-3	R-4	NC	GC	CBD	BP	IP	I
Temporary Uses	I	I	I	I	I	I	I	P-(a)	P-(a)	P-(b)	P-(b)	P-(b)
²⁶ g) Telecommunication Facility												
a) New Transmission Tower	-	-	-	-	-	-	-	C-(i)	-	C-(i)	C-(i)	C-(i)
b) Rooftop Mounted Antenna	C-II	C-II	C-II	C-II	C-II	C-II	C-II	C-I-C	C-I-C	C-I-C	C-I-C	C-I-C
c) Façade-Mounted Antenna	C-II	C-II	C-II	C-II	C-II	C-II	C-II	C-I-C	C-II	C-I-C	C-I-C	C-I-C
d) Collocated Antenna on Existing Transmission Tower or Other Structure Other Than Building Rooftop or Façade	C-II	C-II	C-II	C-II	C-II	C-II	C-II	C-II	C-II	C-I-C	C-I-C	C-I-C
e) Ancillary Facilities Located Within an Existing Permanent Permitted Structure	P-I-A	P-I-A	P-I-A	P-I-A	P-I-A	P-I-A	P-I-A	P-I-A	P-I-A	P-I-A	P-I-A	P-I-A

EXHIBIT 14
to UAC Staff Report

Table Legend:

P	=Permitted Use
-	=Use Not Permitted
X	=Use Specifically Prohibited (Uses defined in Article 30 as "Industrial, Prohibited")
C	=Use Conditionally Permitted (See Article 16)
I-EX	=Type I Procedure, Exempt from Development Permit Review, Section 2.033
I-AU	=Type I Procedure, Administrative Use Permit Review Only, Section 2.034
I-A	=Type I Procedure, Building Permit Serves as Development Permit, Section 2.035
I-B	=Type I Procedure, Director's Decision without Comment Period, Section 2.036
I-C	=Type I Procedure, Director's Decision with Comment Period, Section 2.037
II	=Type II Procedure, Hearings Officer's Decision, Section 2.040
III	=Type III Procedure, Planning Commission's Decision, Section 2.050
IV-A	=Type IV Procedure, City Council Decision without Planning Commission Recommendation, Section 2.060
IV-B	=Type IV Procedure, City Council Decision with Planning Commission Recommendation, Section 2.060
V	=Type V Procedure, Joint Board of County Commissioners & City Council Decision with Planning Commission Recommendation, Section 2.070
*	=Professional Office use permitted in the Industrial Park District only when subject property is located within the Medical Overlay District.

Table Notes:

- (a) A Type II Procedure is required if the subject property adjoins a residential zone, otherwise a Type I-C Procedure is required.
- (b) A Type II Procedure is required if the subject property adjoins a residential or commercial zone, otherwise Type I-C Procedure is required.
- (c) Type I-A, except the following are exempt (Type I-EX): operation, maintenance, repair, and preservation of existing transportation facilities; dedication or public acquisition of rights-of-way and easements; authorization of construction and construction of facilities and improvements, where the improvements are within the existing right-of-way or easement area or are consistent with clear and objective dimensional standards; and emergency measures necessary for the safety and protection of property.
- (d) Manufactured Dwelling Parks are not permitted in commercial or industrial zones or commercial or industrial Comprehensive Plan land use districts. Siting of an individual home within an approved manufactured dwelling park requires a Type I-A procedure.
- (e) An existing residential dwelling unit is a permitted use in this zone. In zones where a new residential dwelling unit is not a permitted use, this provision allows the existing residential dwelling unit to continue or expand without being subject to the nonconforming use provisions of the Development Code. There may be nonconforming development provisions that are applicable. If an existing dwelling unit is removed in a zone where a new dwelling unit is not permitted, it shall not be replaced.

In zones where a new residential dwelling unit is not a permitted use, this provision does not allow for expansion that increases the number of dwelling units.

In zones where a new residential dwelling unit is not a permitted use, this provision allows for a new residential accessory structure or accessory use associated with the existing residential dwelling.
- (f) These uses are permitted within an existing dwelling unit only, since a new dwelling unit is not permitted in the zoning district.
- (g) A commercial or industrial accessory building of 400 square feet or less that comprises less than 25 percent of the existing floor area of buildings and meets the definition of a minor modification in Section 19.058 of this Code is reviewed through a Type I-A procedure. All other commercial or industrial accessory buildings are subject to the applicable site plan review procedures.
- (h) A Type I-A Procedure is required for water and sewer pump stations. All other minor public facilities are reviewed through the procedure specified in the table.
- (i) A Type III Procedure is required if the tower height exceeds the zone height limit, otherwise a Type II Procedure is required.

(j) *An Eating / Drinking Establishment located within the I (Industrial) zoning district shall have a maximum gross square footage allotment of 4,000 square feet or less, including any covered outdoor covered/seating areas. Square footage shall be limited to that necessary to accommodate food preparation, storage, restroom facilities, and customer service and seating areas. General meeting space, including any space used for the hosting of parties, banquets, receptions, meetings, or similar social events, shall not be permitted on any portion of the premises, except as authorized through a Special Occurrence Permit issued by the City of Grants Pass.*

2. A Planned Unit Development which includes a detailed description of the concept, a detailed master plan, and detailed architectural renderings of all buildings to be included in the Planned Unit Development which will not otherwise comply with the standards of this Code. This option is desirable for properties under one ownership, where development will proceed at one time, or through short-term phasing. This procedure requires a Planned Unit Development through Type III review.

20.220. Applicability

1. These standards shall apply to new construction, to the full building for reconstruction that removes more than 50% of the original structure, and to the new portion of a building for a major site plan reviews for expansion of more than 25% of the original structure. Percentage of expansion shall be determined cumulatively. In addition, for a remodel that adds architectural elements described in this article, such as a cornice or taller roof feature, those elements shall be designed to meet the standards of this Article.
2. **“I” and “IP” Zones.** The standards do not apply to industrial uses in the “I” Outdoor Industrial and “IP” Indoor Industrial zone, but do apply to “trade”, “service”, and “recreation” uses which may be allowed in either the “I” and “IP” zones, such as restaurants, ~~athletic clubs~~, and professional office buildings.
3. **“BP” Zone.**
 - a. The standards apply to non-industrial uses in the “BP” zone, including “trade”, “service”, and “recreation” uses such as retail uses, restaurants, athletic clubs, and professional office buildings.
 - b. The standards do not apply to industrial uses in the “BP” Business Park zone, except for the following:
 - i. buildings on properties that abut or face a state highway, which are subject to these standards;
 - ii. buildings on properties that abut or face an arterial street that intersects a state highway, which are subject to these standards. The review body may waive the requirements of this Article for industrial development in a BP zone if the property is more than 1,320 feet from a state highway and the review body determines the property is not visible from a state highway or Interstate 5;
 - iii. buildings on properties within 1,320 feet of Interstate 5;
 - iv. buildings on properties that that face commercial or residential zones at an exterior property line, which are subject to these standards.

(4) Public Assembly Uses	
(a) Church: Religious Assembly	One space for every three fixed seats or every seven foot of bench length, or every 28 sq.ft. where no permanent seats or benches are maintained, in main auditorium or cultural hall, whichever is greater.
(b) Library; reading room; museum; art gallery:	One space per 500 square feet of floor area.
(c) Day Care Facility:	One space per attendant in addition to residential parking requirements. Resident attendants are not counted in parking requirements for attendant parking.
(d) Elementary or Junior High School:	Two spaces for each teaching station plus one for every eight fixed seats or every 100 sq. ft. of seating area where there are no fixed seats in the auditorium or assembly area.
(e) High School:	Two spaces for each teaching station plus one for every four fixed seats or for every 50 sq. ft. of seating area where there are no fixed seats in auditorium.
(f) College: commercial school for adults:	Two spaces for each teaching station plus one space for every two students of design capacity.
(g) Other auditorium; meeting rooms; or theater	One space per 3 seats or 7 ft of bench length, or every 28 sq. ft. where no permanent seats or benches are maintained.
(h) Limited school service facility:	One space per 400 sq. ft. of floor area.
(5) Commercial Recreation Uses	
(a) Stadium; sports arena:	One space per 5 seats, or 10 ft of bench length.
(b) Bowling Alley:	Six spaces per line.
(c) Dance Hall; Skating Rink:	One space per 100 sq. ft. of floor area.

Proposed Definition Amendments
Article 30, City of Grants Pass Development Code

~~Church: The building and premises used for the conduct of regular religious services; church shall not include schools, other than premises used for religious instruction during regular religious services. See also "Schools."~~

~~**Cultural Exhibits and Libraries:** Museum-like preservation and exhibition of objects in one or more of the arts and sciences, gallery exhibition of works of art, or library collection of books, manuscripts, etc., for study and reading. Specifically excluded from this category are exhibitions where items displayed are available for retail sale (see "Trade, Retail.")~~

⁸²~~Public, Minor: Government, public or semi-public facilities and utilities which have a local impact upon surrounding properties, including libraries, museums, fire stations, reservoirs and wholly-enclosed pumping stations or utility sub-stations. It also includes municipal water or sewage treatment plants when separated from any adjacent residential development by a minimum 50 foot wide Type B landscaped buffer.~~

~~Recreation, Commercial: Provision of sports, recreation and entertainment for both participants and spectators, provided both indoors and outdoors. Specifically excluded from this category are "Residential Recreation" and "Athletic Club" uses. Commercial Recreation uses are of two types:~~

- ~~(1) Local Impact: Uses catering primarily to participants, with only incidental spectator use, Commercial recreation uses conducted within an enclosed building with a capacity of 300 persons or less. Typical uses include theaters and meeting or banquet halls.~~
- ~~(2) Area Impact: Uses catering primarily to spectators of an event; Commercial recreation uses conducted outdoors, or conducted within an enclosed building with a capacity of over 300 persons. Typical uses~~

EXHIBIT 4
to UAPC Staff Report

include theaters, meeting or banquet halls, cinemas, theme parks, stadiums, miniature golf facilities, and zoos.

Recreation, Residential: Provision of recreation facilities for participants, with only incidental spectator use, such that compatibility with residential uses can be maintained. Provided primarily outdoors, with only incidental and accessory indoor uses. Residential recreation uses are of two types:

- (1) Local Impact: Facilities for the private use of an individual family and non-paying guests, including members of a PUD. Typical uses include swimming pools, open space, club houses, or other recreational facilities located within a residential subdivision, PUD, or multi-family development.
- (2) Area Impact: Facilities for use of the general public or membership of a private organization (where not a part of a PUD) which consist primarily of vegetative landscaping, or similar natural-appearing areas, and focus on outdoor recreation. Lands tend to have few structures, but accessory uses such as club houses, maintenance facilities, concession stands, etc. may be permitted by the Review Body. Typical uses include golf courses, privately-owned parks and plazas, botanical gardens, and nature preserves.

Religious Assembly: The building and premises used for the conduct of regular religious services, such as customarily occur in synagogues, temples, mosques and churches. Specifically excluded from this category are schools, other than premises used for religious instruction during regular religious services. See also "Schools."

City of Grants Pass



December 22, 2008

RE: RLUIPA Development Code Text Amendment

Dear Concerned Citizen:

Thank you for your interest in this proposed Development Code text amendment, which is intended to address issues related to the federal Religious Land Use and Institutionalized Persons Act (RLUIPA) and associated case law. The proposed text amendment would affect certain land uses within most commercial and industrial zones in the Grants Pass Urban Growth Boundary. The purpose of this letter is to provide an overview of the content of the proposed text amendment, summarize the history of RLUIPA, and explain how the text amendment ensures that Grants Pass land use laws remain consistent with federal requirements. Note that this letter provides a summary that is meant to supplement, not substitute for, a thorough reading of the actual text of the proposed amendment.

Content of Proposed Text Amendment

The bulk of the proposal consists of amendments to Articles 12 (Zoning Districts) and 30 (Definitions) of the Development Code.

The amendment to Article 12 would affect certain land uses within specific commercial and industrial zoning districts. The following table summarizes which land uses would be impacted within each zone.

Zoning Designation	New Land Uses Permitted	Land Uses Not Permitted*
BP (Business Park)	Religious Assembly	Temporary Uses
I (Industrial)		Athletic Clubs, Cultural Exhibits and Libraries, Temporary Uses
IP (Industrial Park)		Athletic Clubs, Cultural Exhibits and Libraries, Temporary Uses
GC (General Commercial)		Temporary Uses
CBD (Central Business District)		Temporary Uses

*Column depicts land uses that are currently permitted within each zoning district but would not be permitted upon approval of the proposal. If said uses exist upon approval of the amendment, they would be allowed to remain as non-conforming uses, but would be subject to the provisions of Development Code Article 15.

NOTE: In addition to the above uses, "Eating / Drinking Establishments" within the "I" (Industrial) zone would be limited to a maximum size of 4,000 square feet.

EXHIBIT 5

The amendments to Article 30 are being proposed primarily for clarification purposes. These amendments are not expected to impact individual property owners. The specific text of the Article 30 amendments is available upon request.

Summary of RLUIPA

The Religious Land Use and Institutionalized Persons Act was signed into law by President Bill Clinton on September 25, 2000. The bill, sponsored by Republican Senator Orrin Hatch and Democratic Senator Ted Kennedy, allows a government to regulate religious land uses as long as applying a regulation does not “substantially burden” the free exercise of religion. A substantial burden is defined as regulations that are “oppressive to a significantly great extent” or those that render a proposed religious land use “effectively impracticable.” A government must also demonstrate that the imposition of any burden on religious exercise is in furtherance of a compelling governmental interest, and that the burden is the least restrictive means of furthering that compelling governmental interest.

Additionally, RLUIPA requires that “no government shall impose or implement a land use regulation that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.” For example, if any public assembly use is permitted in a given zone, a religious assembly use (church) must also be allowed in that zone. Determining which uses listed in the Grants Pass Development Code could be construed as “public assembly”, and therefore similar to religious assembly, is a significant aspect of this proposed text amendment.

Federal Court Case: Civil Liberties for Urban Believers v. City of Chicago

Since its enactment, there have been numerous court cases related to RLUIPA. Perhaps the most important of these, in terms of clarifying the meaning of “substantial burden on religious exercise” and interpreting the equal protection clause of RLUIPA, is *Civil Liberties for Urban Believers (CLUB) v. City of Chicago*. CLUB is an association of churches that filed a lawsuit against the City of Chicago, challenging the constitutionality of the city’s zoning ordinance and challenging it under RLUIPA. The plaintiffs had previously attempted to locate religious facilities in various city zoning districts and obtain necessary permits. The permit requirements and approval criteria varied by zone. Each of the organizations involved experienced permit delays and denials and the associated monetary costs, although each was ultimately able to get approval for an acceptable site. The plaintiffs argued that the process was too costly for smaller churches and sought repayment of the costs associated with the delays. The following are key findings of this case:

- Administrative and other costs associated with siting a facility are not substantial burdens under RLUIPA.
- The Federal court initially found that Chicago was violating the Equal Protection Clause of the 14th Amendment (and RLUIPA) because clubs and lodges, meeting halls, recreation buildings and community centers were permitted by right in certain zoning districts, while churches were required to obtain a special use permit. The

EXHIBIT 5b
to DAG Staff Report

IMPORTANT NOTE: Chicago subsequently amended its zoning ordinance to address this issue, and the District Court later found that the zoning amendments brought the ordinance into compliance with the 14th Amendment and RLUIPA.

Relationship Between RLUIPA and Grants Pass Development Code Amendment

The primary purpose of the proposed text amendment is to address the 14th Amendment / equal protection clause of RLUIPA. For example, the Grants Pass Development Code currently does not allow churches within the “BP” Business Park, “I” Industrial or “IP” Industrial Park zones, but does allow similar public assembly uses such as athletic clubs, museums and libraries. This is similar to the scenario under which the Federal Court found Chicago in violation of the 14th Amendment and RLUIPA. By amending the list of permitted uses within these zones, the City will ensure that its Development Code is consistent with RLUIPA and the findings of the Chicago case.

Within the “I” Industrial and “IP” Industrial Park zoning districts, athletic clubs and cultural exhibits (museums)/libraries would be deleted from the list of permitted uses. The intent of the amendment is to preserve these zones for industrial uses, consistent with the Development Code purpose statement for each.

Within the “BP” zoning district, religious institutions (churches) would be added to the list of permitted uses. The “BP” district is intended to provide a mixed-use commercial and light industrial zone that is compatible with public assembly uses like churches and athletic clubs.

Additionally, “Temporary Uses”, currently listed as permitted within the BP, I, IP, GC and CBD zoning districts, would be deleted from the Development Code altogether. The Code does not provide a definition for “Temporary Uses”, nor does it allow them any special exception to standards that apply to regular uses. The deletion of “Temporary Uses” will not affect other defined permitted uses that are temporary in nature, such as “Itinerant Uses”.

Hopefully this letter helps to understand the issue at hand. If you have comments regarding the proposal, they may be put on the record orally or in writing at either the Planning Commission or City Council hearing, or submitted in writing to me to be attached to the record.

If you have any further questions, please feel free to contact me by telephone at (541) 474-6355, ex. 6317, or by email at jvoice@grantspassoregon.gov.

Sincerely,



Jared Voice
Associate Planner

Cc: James E. Huber, Kris Woodburn, c/f

EXHIBIT 5c
1. NAC Staff Report

City of Grants Pass



January 7, 2009

Jared Voice, Associate Planner
City of Grants Pass
101 NW "A" Street
Grants Pass, Oregon 97526

Dear Jared,

I am pleased to support the RLUIPA Development Code Text Amendment. This amendment will help protect a limited resource that is definitely needed in Grants Pass. That is land usable for industrial activities.

As you know, a recent study of ECONorthwest concluded that Grants Pass is short close to 200 acres of industrial land it needs to meet its 20-year growth plan for industrial property. By removing non-industrial uses from that land you are protecting the industrial base that every city needs to keep a productive workforce and a healthy tax base. At the same time, by allowing churches into Business Park zones, you are allowing them to be in more areas of the city and in better locations than they are currently.

I support this Code Text Amendment.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Dahl".

Steve Dahl
Economic Development Coordinator

EXHIBIT 6
to UAPC Staff Report

One Hundred Sixth Congress

of the

United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington. on Monday,
the twenty-fourth day of January, two thousand

An Act

To protect religious liberty, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of
America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Religious Land Use and Institutionalized Persons Act of 2000'.

SEC. 2. PROTECTION OF LAND USE AS RELIGIOUS EXERCISE.

(a) **SUBSTANTIAL BURDENS -**

(1) **GENERAL RULE-** No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution--

(A) is in furtherance of a compelling governmental interest; and

(B) is the least restrictive means of furthering that compelling governmental interest.

(2) **SCOPE OF APPLICATION-** This subsection applies in any case in which --

(A) the substantial burden is imposed in a program or activity that receives Federal financial assistance, even if the burden results from a rule of general applicability;

EXHIBIT 7
to OASD Staff Report

(B) the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, even if the burden results from a rule of general applicability; or

(C) the substantial burden is imposed in the implementation of a land use regulation or system of land use regulations, under which a government makes, or has in place formal or informal procedures or practices that permit the government to make, individualized assessments of the proposed uses for the property involved,

(b) DISCRIMINATION AND EXCLUSION-

(1) **EQUAL TERMS-** No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.

(2) **NONDISCRIMINATION-** No government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.

(3) **EXCLUSIONS AND LIMITS-** No government shall impose or implement a land use regulation that--

(A) totally excludes religious assemblies from a jurisdiction; or

(B) unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.

SEC. 3. PROTECTION OF RELIGIOUS EXERCISE OF INSTITUTIONALIZED PERSONS.

(a) **GENERAL RULE-** No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution, as defined in section 2 of the Civil Rights of Institutionalized Persons Act (42 U.S.C. 1997), even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person--

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

(b) **SCOPE OF APPLICATION-** This section applies in any case in which--

(1) the substantial burden is imposed in a program or activity that receives Federal financial assistance; or

(2) the substantial burden affects; or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes.

SEC. 4. JUDICIAL RELIEF.

(a) CAUSE OF ACTION- A person may assert a violation of this Act as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.

(b) BURDEN OF PERSUASION- If a plaintiff produces prima facie evidence to support a claim alleging a violation of the Free Exercise Clause or a violation of section 2, the government shall bear the burden of persuasion on any element of the claim, except that the plaintiff shall bear the burden of persuasion on whether the law (including a regulation) or government practice that is challenged by the claim substantially burdens the plaintiffs exercise of religion.

(c) FULL FAITH AND CREDIT- Adjudication of a claim of a violation of section 2 in a non-Federal forum shall not be entitled to full faith and credit in a Federal court unless the claimant had a full and fair adjudication of that claim in the non-Federal forum.

(d) ATTORNEYS FEES- Section 722(b) of the Revised Statutes (42 U.S.C. 1988(b)) is amended--

(1) by inserting 'the Religious Land Use and Institutionalized Persons Act of 2000,' after 'Religious Freedom Restoration Act of 1993,'; and

(2) by striking the comma that follows a comma.

(e) PRISONERS- Nothing in this Act shall be construed to amend or repeal the Prison Litigation Reform Act of 1995 (including provisions of law amended by that Act).

(f) AUTHORITY OF UNITED STATES TO ENFORCE THIS ACT- The United States may bring an action for injunctive or declaratory relief to enforce compliance with this Act. Nothing in this subsection shall be construed to deny, impair, or otherwise affect any right or authority of the Attorney General, the United States, or any agency, officer, or employee of the United States, acting under any law other than this subsection, to institute or intervene in any proceeding.

(g) LIMITATION- If the only jurisdictional basis for applying a provision of this Act is a claim that a substantial burden by a government on religious exercise affects, or that removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, the provision shall not apply if the government demonstrates that all substantial burdens on, or the

EXHIBIT 7c
to UAPC Staff Report

removal of all substantial burdens from, similar religious exercise throughout the Nation would not lead in the aggregate to a substantial effect on commerce with foreign nations, among the several States, or with Indian tribes.

SEC. 5. RULES OF CONSTRUCTION.

(a) **RELIGIOUS BELIEF UNAFFECTED-** Nothing in this Act shall be construed to authorize any government to burden any religious belief

(b) **RELIGIOUS EXERCISE NOT REGULATED-** Nothing in this Act shall create any basis for restricting or burdening religious exercise or for claims against a religious organization including any religiously affiliated school or university, not acting under color of law.

(c) **CLAIMS TO FUNDING UNAFFECTED-** Nothing in this Act shall create or preclude a right of any religious organization to receive funding or other assistance from a government, or of any person to receive government funding for a religious activity, but this Act may require a government to incur expenses in its own operations to avoid imposing a substantial burden on religious exercise.

(d) **OTHER AUTHORITY TO IMPOSE CONDITIONS ON FUNDING UNAFFECTED-** Nothing in this Act shall--

(1) authorize a government to regulate or affect, directly or indirectly, the activities or policies of a person other than a government as a condition of receiving funding or other assistance; or

(2) restrict any authority that may exist under other law to so regulate or affect, except as provided in this Act.

(e) **GOVERNMENTAL DISCRETION IN ALLEVIATING BURDENS ON RELIGIOUS EXERCISE-** A government may avoid the preemptive force of any provision of this Act by changing the policy or practice that results in a substantial burden on religious exercise, by retaining the policy or practice and exempting the substantially burdened religious exercise, by providing exemptions from the policy or practice for applications that substantially burden religious exercise, or by any other means that eliminates the substantial burden.

(f) **EFFECT ON OTHER LAW-** With respect to a claim brought under this Act, proof that a substantial burden on a person's religious exercise affects, or removal of that burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, shall not establish any inference or presumption that Congress intends that any religious exercise is, or is not, subject to any law other than this Act.

(g) **BROAD CONSTRUCTION-** This Act shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this Act and the Constitution.

EXHIBIT 7d
to UAPL Staff Report

(h) **NO PREEMPTION OR REPEAL**- Nothing in this Act shall be construed to preempt State law, or repeal Federal law, that is equally as protective of religious exercise as, or more protective of religious exercise than, this Act.

(i) **SEVERABILITY**- If any provision of this Act or of an amendment made by this Act, or any application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provision to any other person or circumstance shall not be affected.

SEC. 6. ESTABLISHMENT CLAUSE UNAFFECTED.

Nothing in this Act shall be construed to affect, interpret, or in any way address that portion of the first amendment to the Constitution prohibiting laws respecting an establishment of religion (referred to in this section as the 'Establishment Clause'). Granting government funding, benefits, or exemptions, to the extent permissible under the Establishment Clause, shall not constitute a violation of this Act. In this section, the term 'granting', used with respect to government funding, benefits, or exemptions, does not include the denial of government funding, benefits, or exemptions.

SEC. 7. AMENDMENTS TO RELIGIOUS FREEDOM RESTORATION ACT.

(a) **DEFINITIONS**- Section 5 of the Religious Freedom Restoration Act of 1993 (42 U.S.C., 2000bb-2) is amended--

(1) in paragraph (1), by striking 'a State, or a subdivision of a State' and inserting 'or of a covered entity';

(2) in paragraph (2), by striking 'term' and all that follows through 'includes' and inserting 'term 'covered entity' means'; and

(3) in paragraph (4), by striking all after 'means' and inserting 'religious exercise, as defined in section 8 of the Religious Land Use and Institutionalized Persons Act of 2000.'.

(b) **CONFORMING AMENDMENT**- Section 6(a) of the Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb-3(a)) is amended by striking 'and State'.

SEC. 8. DEFINITIONS.

In this Act:

(1) **CLAIMANT**- The term 'claimant' means a person raising a claim or defense under this Act.

EXHIBIT 7e
to OAPC Staff Report

(2) DEMONSTRATES- The term 'demonstrates' means meets the burdens of going forward with the evidence and of persuasion.

(3) FREE EXERCISE CLAUSE- The term 'Free Exercise Clause' means that portion of the first amendment to the Constitution that proscribes laws prohibiting the free exercise of religion.

(4) GOVERNMENT- The term 'government'--

(A) means--

(i) a State, county, municipality, or other governmental entity created under the authority of a State;

(ii) any branch, department, agency, instrumentality, or official of an entity listed in clause (i); and

(iii) any other person acting under color of State law; and

(B) for the purposes of sections 4(b) and 5, includes the United States, a branch, department, agency, instrumentality, or official of the United States, and any other person acting under color of Federal law.

(5) LAND USE REGULATION- The term 'land use regulation' means a zoning or landmarking law, or the application of such a law, that limits or restricts a claimant's use or development of land (including a structure affixed to land), if the claimant has an ownership, leasehold, easement, servitude, or other property interest in the regulated land or a contract or option to acquire such an interest.

(6) PROGRAM OR ACTIVITY- The term 'program or activity' means all of the operations of any entity as described in paragraph (1) or (2) of section 606 of the Civil Rights Act of 1964 (42 U.S.C. 2000d-4a).

(7) RELIGIOUS EXERCISE-

(A) IN GENERAL- The term 'religious exercise' includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief.

(B) RULE- The use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose.

Speaker of the House of Representatives.

EXHIBIT 7F
to OAR, Staff Report

URBAN AREA PLANNING COMMISSION
January 14, 2009
7:00 p.m.
Council Chambers

1. ROLL CALL

The Urban Area Planning Commission met in regular session on the above date with Chair Berlant presiding. Commissioners Arthur, Kellenbeck, Wickham, Fitzgerald, Sackett, Fowler were present and Fedosky arrived late. Also present and representing the City was Principal Planner Angeli Paladino and Associate Planner Jared Voice.

2. VOTE FOR CHAIR AND VICE CHAIR:

Chair Berlant stated, next on the agenda is the election of the chair and Vice Chair. I will accept nominations.

Commissioner Fitzgerald nominates Commissioner Berlant and Commissioner Kellenbeck seconds the nomination.

Chair Berlant asked if there are any other nominations.

Commissioner Wickham nominates Commissioner Kellenbeck, stating that she seems to be well informed and one that actually opens the book and the Code and reads it, and respects it, so I would nominate Commissioner Kellenbeck. No one seconded the nomination.

Chair Berlant stated that nomination failed due to no second. He asked if there were any other nominations. Okay, well let's do them separately. Chair Berlant verifies if there needs a vote on that nomination and the answer was no. Chair Berlant then asked for a vote on the nomination of himself to remain as Chair, and all voted yes. I'll take over as chair. Now for Vice Chair?

Commissioner Fitzgerald stated, well let's have Commissioner Kellenbeck be Vice Chair and Commissioner Wickham seconded the nomination

Chair Berlant asked if there were any more nominations. Seeing none, he called for a vote on the nomination and all present said yes.

Let the record reflect that Fedosky just showed up and missed the voting.

MOTION

Commissioner Fitzgerald moved and Commissioner Kellenbeck seconded a nomination for Commissioner Berlant to remain as Chair. The motion passed unanimously.

MOTION

Commissioner Fitzgerald moved and Commissioner Wickham seconded a motion to nominate Commissioner Kellenbeck for Vice Chair. The motion passed unanimously.

2. ITEMS FROM PUBLIC:

EXHIBIT E
to UAPC F.O.F.

Chair Berlant stated, next on the agenda is items from the public. Anybody who wants to address the Commission on any matter that is not part of the regular Agenda, may come forward and do so at this time. No one came forward.

3. CONSENT AGENDA

a. MINUTES:

i. December 10, 2008 Pgs. 1-12

Chair Berlant stated, next is the Consent Agenda which includes two items; the minutes from December 10, 2008, and the Findings of Fact for Harvest Meadows Estates Tentative Subdivision of Final Plat.

Commissioner Arthur asked if they had missed approving the Findings of Fact last time.

Commissioner Wickham stated, well we haven't met since then.

Commissioner Arthur stated, in our minutes it says nothing was noted on the Westlake Village Finding of Fact. I'm wondering ...

Principal Planner Angeli-Paladino stated, I understand you voted on the Consent Calendar in December and that would have been included. (There was discussion between the minute taker and Principal Planner Angeli-Paladino about the vote for the Consent Calendar and how to have it corrected.)

Commissioner Arthur stated, so it wasn't just the minutes we voted on, it was the Consent Calendar.

Commissioner Sackett stated, okay I have a couple errors in the minutes -- on page 5, in the third paragraph up from the bottom, it shows I said that and I don't know but somebody else said that. I maybe should have said that, but I'm not sure what Commissioner said it, but it wasn't me.

Commissioner Kellenbeck stated, I'm pretty sure that was Commissioner Wickham.

Commissioner Sackett stated, I agree, I think that might have been Commissioner Wickham. One other mistake that was made on here is on page 10, in the last paragraph at about the third line up, it show Redwood Highway and it should be Redwood Avenue. So that needs to be changed from Redwood Highway to Redwood Avenue.

The minute taker asked off microphone for verification of where the correction needed to be made. Commissioner Sackett replied, it is third line up from the bottom -- actually, the fourth and the third line from the bottom where it says Redwood Avenue. "Without going back down to Redwood Highway" it says, and it's supposed to be "going back down to Redwood Avenue."

Commissioner Kellenbeck makes a motion to approve the Consent Agenda with the changes stated. Commissioner Sackett seconded

MOTION

Commissioner Kellenbeck moved and Commissioner Sackett seconded a motion to accept the minutes as corrected. The motion passed unanimously.

b. FINDINGS OF FACT:

i. 08-10400004 & 08-10600005: Harvest Meadow Estates Tentative Subdivision and Final Plat (Previously Ula Estates)

Proposal: Twenty-three (23) lot residential subdivision in the R-1-8 zone district located off of Darneille Lane and Leonard Road. The application is filed jointly with review for Final Plat
Address: 816 & 818 Darneille Lane; 3060 & 3086 Leonard Road
Map & Tax Lot: 36-06-22-10 TL 300, 400, 401 & 402
Owner: Kirk Chapman
Applicant: Same
Planner: Scott Lindberg *Pgs. 13-24*

MOTION

Commissioner Kellenbeck moved and Commissioner Sackett seconded a motion to approve the Findings of Fact for Harvest Meadows Tentative Subdivision and Final Plat (Previously Ula Estates). The motion passed unanimously.

4. PUBLIC HEARINGS:

i. 08-405000005: RLUIPA Development Code Text Amendment

Proposal: Development Code Amendment to Articles 12, 20, 25 and 30 of the Development Code, to address issues related to the federal Religious Land Use and Institutionalized Persons Act (RLUIPA) and associated case law. The amendments would affect certain land uses within the "BP" (Business Park), "I" (Industrial), "IP" (Industrial Park), "GC" (General Commercial) and "CBD" (Central Business District) zones
Applicant: City of Grants Pass
Planner: Jared Associate Planner Voice *Pgs. 25-54*

Chair Berlant asked if there is anyone present who wishes to challenge the authority of the Commission to hear this matter. Seeing none, are there any Commissioners who wish to abstain from participating in the hearing or declare a potential conflict of interest? Seeing none, are there any Commissioners who wish to disclose discussions, contacts, or other ex parte information they received prior to this meeting regarding the application. Seeing none, Chair Berlant stated that in this hearing the decision of the Commission will be based upon specific criteria which are set forth in the Development Code, all testimony given which apply in this case are noted in the Staff Report. If anyone would like a copy of the Staff Report, please let us know and one will be provided. It is important to remember that if you fail to raise an issue with enough detail to afford the Commission and the parties involved an opportunity to respond to the issue, you will not be able to appeal to the Land Use Board of Appeals (LUBA) based on that issue.

Chair Berlant stated, at this time, Staff may present a Staff report.

Associate Planner Jared Associate Planner Voice stated this is a text amendment to our development code to address the Federal Religious Land Use and Institutionalized Person Act (RLUIPA) which I'll refer to as RLUIPA. I'm not sure if that's the correct pronunciation but it's

easier. I'll start going through that now.

This proposal summary, we're looking at amendments to Articles 12, 20, 25 and 30 of the Development Code. The intention behind this is to insure the Code is consistent with Federal RLUIPA and associated case law. Per RLUIPA, if any public assembly use... just as an example, a lodge or a meeting hall -- and I'll get more into that later -- is permitted in a given zone then the City or any government has to allow religious assembly uses in that zone also. They can't discriminate between the different sorts of assembly uses in a given zone. The proposed amendments would also delete a permitted use that's called "temporary uses" from our Development Code. That's currently allowed within the business park, industrial park, general commercial and central business zoning districts. And some additional land uses would also be affected within the BPI, IP districts -- I'll get to that shortly.

For just a little history behind RLUIPA, it was signed into law by President Clinton back in 2000. The bill was sponsored by Republican Orin Hatch and Democrat Ted Kennedy. The bill itself is really brief but really potentially very broad an application, initially sort of ambiguous. We weren't sure how it would affect local government land use regulations. But there's been some case law since it was originally signed into law that has kind of cleared that up.

One important federal case that provided an interpretation of the equal protection clauses of RLUIPA was this case called CLUB Versus the City of Chicago, I believe that CLUB stands for Civil Liberties for Urban Believers. It was an association of churches in Chicago. The federal court initially found the Chicago zoning ordinance violated RLUIPA and the 14th Amendment because uses such as clubs, lodges, meeting halls, recreation buildings and community centers were permitted by right in certain zoning districts and churches were not permitted by right. I believe they were conditional use permit in those zoning districts. Chicago subsequently amended its zoning ordinance and the District Court later found that the amendments brought the ordinance into compliance with the 14th Amendment and with RLUIPA. A lot of the work we've done has been kind of modeled after what Chicago did with theirs, since they have been back to the court and were found to be in compliance. A more local example where the decision was just issued, I believe three weeks ago today, on December 23, 2008, there was a LUBA case, Young versus Jackson County, where the Oregon Land Use Board of Appeals found that a State administrative rule violates the equal protection clause of RLUIPA. That State rule prohibits churches from locating on EFU land that is located within three miles of an urban growth boundary. But at the same time, it allows a number of similar of similar public assembly uses on said land. Some that were called out were parks, community centers, golf courses and museums. One of the difficult things on our part is to determine exactly what is meant by a public assembly use and what uses are similar to churches, to where we couldn't discriminate. In that case the petitioner cited statements in the RLUIPA legislative record as evidence that Congress intended non-religious assemblies and institutions to encompass a very broad scope, and include specific references to health clubs, gyms, recreation centers, libraries and museums.

I'm going to start talking about some of the impacts that this would have within our City, in our jurisdiction, within the commercial zone, and really within all zones where they are not permitted, temporary uses would be deleted from the Development Code altogether. I said earlier they are currently listed as permitted within the GC, CBD, BP, I and IP zoning districts. Our Code, although it allows temporary uses, does not define exactly what they are. The only place you really see the words "temporary use" is in Schedule 12-2 where they are listed as a permitted use. There are no standards or approval procedures for temporary uses. Presumably you would have to go through the same process and have to apply the same standards as you would do for any use that you would have to do for a permanent use. There are not currently any temporary uses operating in Grants Pass that we're aware of. We know that none have been approved at least within the last 5 years. So, presumably, if something was approved before that then it would no longer be in operation if, it was truly temporary, and deletion of this would not affect other sorts of temporary kinds of uses that are allowed such as itinerant uses; which is something you'll see like on Valentines day where someone is selling flowers from a tent in a parking lot, or something like that. Those will continue to be permitted uses. And just as a note, for people that are here that own general commercial or central business district property, temporary uses are the only uses that are being removed in those zones that are being affected. So that's really the only impact you'll see. In general commercial and CBD, which are the vast majority of the notices... over

2000 notices that we sent out a few weeks ago.

Within the industrial zones there's a little more going on. There are three different types of industrial zones: business park, industrial, and industrial park. Within the business park, we're actually adding churches, or religious assembly uses as a permitted use. Currently they are not permitted. The only zones that they are not permitted currently are BP, I and IP, so that would be an addition -- an additional zone where they would be allowed. Again, temporary uses would be eliminated. Within the industrial zone and industrial park zone, we're looking at -- rather than adding churches, eliminating other uses that would be potentially looked at as public assembly, or in that realm; such as athletic clubs, museums and libraries, which are currently listed under a use called minor public. We're going to make them their own separate use and eliminate them from those two zones, and then the temporary uses also.

Additionally, eating and drinking establishments, restaurants, are permitted within the industrial zone. We would put a stipulation that those would continue to be permitted but would have a maximum size of 4,000 square feet and no accessory meeting or banquet space would be permitted. The purpose of that really is we see that restaurants could potentially serve a very critical service in the industrial zone for serving lunches and what not for workers. However, a lot of times with restaurants you'll see; for example maybe, with the Wild River Pub where you have a banquet room or similar sorts of things -- here we're going to try and keep those to actually providing the service, but not having that extra potential public assembly space.

As to justification for what we're doing... With the business park zone, it's intended to provide for mixed use commercial and light industrial sorts of uses which are more compatible with public assemblies, like churches and athletic clubs, whereas with the industrial and industrial park zones, the Development Code specifically says that they should be preserved for industrial uses and the deletion of the non-industrial uses from the list of permitted uses, rather than adding churches, is more consistent with this purpose.

The additional amendments to Articles 20, 25 and 30, are basically housekeeping; trying to keep consistency throughout the Code and provide clarity. They are not expected to directly impact any individual property owners, so I'm not going to go through those all individually as part of this presentation.

Just a note about public outreach -- State measure 56 required us to send individual hearing notices to all the property owners who would potentially be affected by this; like I said before, there were over 2000 of those and we have fielded a lot of calls and answered a lot of questions since those were sent out. The information has been posted on the City's website since before Christmas, when we sent the notices out, and we did hold a public open house on January 6th that was advertised in the newspaper, on the website, and on the radio. We had pretty light turnout for that but it was fun anyway. Please take note, you will be considering a Director's interpretation of the term "temporary uses" at your next hearing. As you may or not be aware, per Development Code, Section 1.090, "...approval or denial of an application shall be based upon the standards and criteria that were applicable at the time the application was first submitted." Just so you are aware, any temporary use application that is made prior to formal adoption of any text amendment by City Council would be processed under current regulations. I just want to make sure you're comfortable with the fact that even if you do make a recommendation tonight you're not going to be necessarily adversely affecting the applicant in the next hearing. So as to a conclusion and recommendation, the Staff recommends that the Planning Commission recommend to the City Council that the proposed text amendment be approved. Just a clarification, this is a type 4 hearing where Planning Commission makes a recommendation, not a formal decision. The formal decision will be made by City Council at a subsequent hearing. I can take any questions at this time.

Commissioner Arthur asked what effect this would have on the Bear Hotel.

Associate Planner Voice stated, the Bear Hotel is currently approved as a warehouse, essentially, in the industrial zone. They have been operating as -- Principal Planner Angeli-Paladino probably can talk more about this, but it is under something called a Special Occurrence Permit, that is issued for temporary events by the building department and we have been contacting them

regarding finding a different location for those specific special events that they have there, because they're not consistent with the zone with what's permitted in the zone currently. This would have really no impact on that. That's the story behind it.

Commissioner Kellenbeck stated to Associate Planner Voice, I had a specific question, it's in part of the housekeeping matters that deals with parking and it's Item 4, Public Assembly Uses, subsection (a), changing the language from church to religious assembly and then striking the language in the main auditorium or cultural hall whichever is greater -- related to how parking is going to be calculated for religious assembly, and I was wondering if you could talk about that a little bit. I'm confused in terms of the language that was left versus the language that's being stricken, whether or not it will be in entire square footage of the whole building to count parking spaces for religious assembly or if we're still talking about the main auditorium?

Chair Berlant asked which page she's referencing.

Commissioner Kellenbeck stated, on page 42 of the packet. It's also listed as Exhibit 3.

Associate Planner Voice stated, first of all, the reason for striking that is to insure that it's consistent with the standard. If you look under item (g) "for other auditoriums, meeting rooms, or theatre," where it's almost the same language, but not quite the same language, and we need to make sure that we're not treating the religious assembly uses different than those other auditorium public assembly uses. As far as the administration of that, I would speculate that we would look at the entire square footage of the building, subtracting like you can for any other uses, hallways, restroom, storerooms, and things like that.

Commissioner Kellenbeck stated, now in the case of "fixed seats or bench length," you would be counting, based on the fixed seats and the benches but if they chose to use chairs instead of fixed seats or benches then the entire building would be subject to parking.

Associate Planner Voice stated, unless there was a different sort of use, I guess, attached with that, say a portion of the building was specifically for office or for residence, or for a school, or something like that.

Commissioner Arthur stated, then under (a), under what you just said -- if you had a building with a church auditorium and a Sunday school for children under driving age, you wouldn't be counting those chairs I assume?

Associate Planner Voice asked if she meant the chairs in the school.

Commissioner Arthur stated, in a school occupied by children too young to drive.

Associate Planner Voice stated, if we were in a unique situation, the parking standards give the Director some leeway but we're kind of locked in with how we apply our standards.

Commissioner Arthur stated, I think it's a unique situation for a church to have a main meeting area and a Sunday school separate from it. It's not unusual.

Associate Planner Voice stated, I haven't looked at one since I've been here so I guess I'm not...

Principal Planner Angeli-Paladino stated that the square footage would be counted for parking regardless of if it is people that can't drive. So we would have to put them into a category and calculate parking based on what the use is.

Associate Planner Voice stated I believe this Commission has seen variances for parking before when, one example was fairly recently with, maybe they didn't go for a variance but it was the gymnastic school. They didn't actually apply for a variance, okay, never mind then. Sorry.

Commissioner Wickham asked, have we had a problem in the past with these other uses in the industrial zone?

Associate Planner Voice asked if he meant with the public assemblies sorts of uses. He then asked if it was a problem as in... a multitude of them being put in the zone. And then asked Commissioner Wickham what problems he was referring to.

Commissioner Wickham stated, any problem -- you could pull one out. Is there any?

Associate Planner Voice stated we haven't had a problem. We haven't had anyone that I'm aware of threaten a lawsuit or anything like that because we were discriminating, up to this point, no. I guess we're looking at it as we have to not discriminate between those uses for the churches and we can either add churches to the list of uses or we can eliminate the other uses and in looking at the purpose of those zones, we are recommending that you eliminate the other uses.

Commissioner Wickham stated, it just seems a bit backwards. We've operated all these years with those uses permitted in those zones on those pieces of property owned by taxpaying citizens. We've never had a problem. Now all of a sudden it would be easier to eliminate those uses so the churches couldn't benefit from using those same properties that other people have used for years. It just seems backwards.

Commissioner Fedosky asked if there was a relationship between temporary uses and the RLUIPA case and the intent to eliminate the non-discriminatory nature of the text in our Code. Is there a relationship to the temporary uses? Or is that just an area that you are kind of cleaning up to make more consistent, as a kind of a separate issue?

Associate Planner Voice stated when we did this, our City Attorney, myself, and the Community Development Director essentially went through each use that were permitted in those zones where churches weren't permitted and looked at those individually to determine if there might be potentially a link to the RLUIPA requirements. When we got to temporary uses, you see they're not defined and it really leaves kind of a gaping hole and leaves us susceptible, in our opinion. Some of the questions that came up were "Does this allow uses not otherwise permitted in the zone as long as they are temporary?" Whatever temporary may be. So even if we, for example, weren't going to allow churches, would that allow them? Or if we weren't going to allow the other public assembly uses, would having this thing called temporary uses allow those to go in? How long is temporary? Is that three days or three months or three years, or ten years? Again, that's not going to affect other sorts of temporary uses that are permitted and defined. But deleting them will basically ensure that we're not really susceptible. That that's not going to be construed to allow a use that would conflict with RLUIPA requirements.

Commissioner Fedosky asked if it's broad and undefined whether it could be discriminatory in nature.

Associate Planner Voice stated, I can't really tell you.

Commissioner Fedosky asked if it was the interpretation that could lead to discriminatory issues.

Associate Planner Voice asked if he meant the Director's interpretation.

Commissioner Fedosky stated, I guess so, yeah. I mean how has it been handled in the past? Has it been producing non-conforming use at times or has the stuff that falls under that temporary use always have to be defined permitted?

Associate Planner Voice stated, within that last 5 years we had not had an application submitted that I'm aware of for a temporary use to be approved. After we submitted this proposal, about 3 weeks later we had a request for a Director's interpretation of it and it was to a specific property and a specific proposed use, I'm not sure how much I want to start talking about it since you'll actually be considering that at your next hearing. But yeah, we haven't had any formal applications for it.

Commissioner Wickham asked what the City's reasoning was behind not allowing churches in these properties. As I mentioned earlier, over the past number of years, many, many, years that

this Code has been in place we've allowed all these other uses. Why is it that churches in the City Staff's mind should not be allowed? Why is that? There must be some type of logic in order for you to generate this. Maybe Director Huber can elaborate?

Associate Planner Voice stated, historically I'm not sure why churches aren't allowed in zones. If you look at the purpose statements in your packet -- I'm trying to find the page where those are located, each of the specific zones -- I guess it starts on page 29 at the bottom, you'll see a purpose statement for the business park district and continuing to page 30 a purpose statement for the industrial park district and for the industrial district. If you read those for the industrial park and the industrial, you'll see very specifically the purpose of the IP district is to provide for light industrial uses in a campus like setting and the purpose of the industrial district is to provide for industrial uses with heavier impacts upon their surroundings and the need for outdoor functions. That is essentially the reason as to why we're going about it the way we are. Whereas when you look at the BP, it talks about a mixed use zone for light industrial and commercial uses which is more appropriate for those public assembly sorts of uses. That's the reason for our recommendation to you.

Commissioner Wickham stated, right now those uses aren't permitted in the industrial zone, correct?

Associate Planner Voice stated, churches are not currently permitted within the I, IP, or BP.

Commissioner Wickham stated, I understand churches aren't but other open meetings and functions of that sort are allowed, correct?

Associate Planner Voice answered, currently uses that are permitted in the industrial and the IP that would be not permitted are athletic clubs, in both of those, and those were actually added to the list of permitted uses. I'm not sure exactly the year, probably 10 years ago or so. I believe that one property owner submitted an application to get that added and it was approved; obviously, prior to this for RLUIPA being implemented. Museums and libraries are currently listed under the definition of "minor public," which are permitted in all zones and we're proposing to remove those from that definition and make them their own category and permit them in all the zones where they're currently permitted except for those two zones, to make sure we're consistent. Those are the three that are being affected in addition to the restaurants with the size limitation.

Commissioner Fitzgerald asked, how much of this comes out of things like -- wasn't the original Club Northwest, wasn't that an industrial site at one time when it was Duralast Roofing? Wasn't it an industrial zone at one time and then it was changed? Then they went from athletic club to allowing meetings and conferences and that got this assembly use and I think that it ran afoul of RLUIPA because if you are allowing one kind of assemblage you must therefore be equal handed and make sure you have religious assembly also in the industrial zones permit. So this is more housekeeping than anything else, this is to get them all in line.

Commissioner Wickham stated, I understand it Commissioner Fitzgerald, that's not a problem but it ...

Commissioner Fitzgerald continued, the idea also is the fact that we have a limited amount of industrial land and we're now struggling on moving the Urban Growth Boundary (UGB) to find even some adequate land to put into the inventory of lands, and so one of the things we can do is to make sure only industrial functions can go into those zones so we don't use it up for things that could be used elsewhere where industrial cannot be put into other zones. So I think that's part of what's driving it too Commissioner Wickham.

Commissioner Fedosky asked Associate Planner Voice, I noticed on the slideshow it said there was some call volume on it. What kind of feedback did you get in the calls that came in?

Associate Planner Voice stated, primarily people, I guess, people didn't really care why we were doing it. They wanted to know how it was going to affect their property. The measure 56 noticing requires very specific language to be put on the notice. On the top of it in bold face, it has to say, I

don't know exactly -- but it talks about potentially, about affecting the zoning and potentially affecting the property values. I think that gets peoples attention. So mostly they wanted to know how their property would be impacted. Most people, once I explained it to them, didn't seem to care that much but they were alarmed, I guess, based on the language.

Principal Planner Angeli-Paladino stated I have the specific language if you would like to hear it.

Commissioner Wickham stated, we should have had that in our package. I see the only language we have in here is a letter from Mr. Dahl which was a hypocritical letter based upon the fact that we just took 15 acres of industrial land and rezoned it to business park here recently. That was the only documentation in here and it was a support letter from our own City, which seems a little strange. I did have one other question and that is about the Director's interpretation that you had alluded to that was coming before the City Council. People need to be aware that those interpretations are appealable, is that correct?

Associate Planner Voice stated this is an appeal of the Director's interpretation and it is coming to the Planning Commission at the next hearing; January 28th, I believe is the date. Two weeks from tonight.

Commissioner Wickham asked if the City was worried at all that maybe by this action of basically saying that "gee, just to keep churches out, we're going to take everybody else out so that we don't have to deal with that". Is the City at all concerned about the ramifications of a piece of property or property owner taking the City to court?

Associate Planner Voice stated, at this point we're more concerned with going to court based on the findings of the RLUIPA and the associated case law.

Commissioner Wickham stated, I don't think that'll be a problem. We merely have to change the fact that churches are allowed where everybody else is, but you want to take everybody else out and restrict these properties so that churches can't come in. So I'd be more concerned about the City finding itself in a lawsuit for just the action that they're doing here tonight, or recommending doing tonight.

Commissioner Fitzgerald stated as part of the efficiency measures in moving the UGB, these things are allowable under state law. So, you can do it in specific zones where you have specific constraints and you have a limited amount of inventory, and you do not have the possibility of enlarging that inventory due to the constraints, either geographic or any other thing, and you can then, therefore, take efficiency measures to make sure that the land you do have in that category stays for the purpose they were meant to be and they were zoned for -- and this would part of it. So it's under State law as far as moving the UGB out, you can put in as an efficiency measure. So yes, it is legal.

Commissioner Wickham stated It'll be interesting to find out. Well we can't keep saying "all things will change when we have our big UGB expansion," when, in fact, we can have an expansion much smaller than we would like to have, intermittently, so that we can accommodate those types of uses Commissioner Fitzgerald. We can't just keep saying, "well gosh, gee, when we get around to it, we're going to have it all taken care of." We can do those things intermittently, as you well know. I mean you're well aware of the things that can be done, and just like when we say that "Oh, we don't have enough industrial land," well we don't have to wait for this big long drawn out process. We can work with the County and look outside of the UGB and bring in those pieces a little bit at a time so that we don't end up without those.

Chair Berlant asked if there were anymore questions for Associate Planner Voice.

Commissioner Arthur stated, I'm a little concerned about (a) again, going back to this church thing -- you removed the qualifier about in the main auditorium, or cultural hall, which as you explained to me a minute ago means it applies to the whole building except the bathrooms and the closets maybe. Is this the same measure that we applied to the 70,000 square foot River Valley Community Church up at the north entrance? We require parking for every inch of every room and use in that space? I mean it's huge.

Principal Planner Angeli-Paladino stated, I don't have that specific file in front of me at this point so I don't know where the breakdown came. I think there were other office uses and things as part of that church that we may have segregated, but the main auditorium and things we would have looked at under this church parking requirement – yes.

Commissioner Arthur stated, but what you just said a minute ago was now this applies to everything in the building. Are you saying that you actually calculated the office spaces and other things at different rates on that one?

Principal Planner Angeli-Paladino stated, again, without having that file in front of me I can't confirm that but I would imagine that we did. All I was saying before is that there was a separate use, and that use would need to calculate some kind of parking and we would have to assign it to something, we wouldn't just let it go because the user was underage for driving. That was my comment before. So, basically yes, every square inch has some level of parking assigned to it. And whether that is broken out into a separate category or not, it's assigned to something. She asks Commissioner Arthur if that answered her question.

Associate Planner Voice stated if the Commission is concerned about striking that language, another way to go about it would be to add that language to item (g) in that same public assembly uses list. We just want to make sure that there's not a difference between the two. If that's your concern, we wouldn't object to adding that language rather than deleting it from Item (a).

Commissioner Arthur stated, I'm sure that that language still exists in the funeral homes special section, and it's applied only to the area where the funerals are held, not to the rest of the building, and I don't see that included in here.

Commissioner Fitzgerald stated the other uses have a generator as far as the matrix goes for parking spaces too, so it's just a different matrix. But they are all allocated parking spaces on the square footage -- so a funeral home or a church. A guy just did the funeral home a few years back and got the Code changed because of the fact that it had the same parking requirement as a grocery store. But the matrix that was used separated out the main assembly hall and then that was one set of figures, and then office space requirements, and so forth as you went through the building and then you added them up. That would apply the same as a church.

Commissioner Wickham stated, I have one little tiny question and then I'll let everybody else speak. How many people constitutes a public meeting according to a Community Development Director?

Associate Planner Voice stated it's two Commissioners, then it's two.

Commissioner Wickham asked again, how many people constitute a public meeting according to the Community Development Director?

Principal Planner Angeli-Paladino stated, I don't think that that's something appropriate for Associate Planner Voice to answer. He's not the Community Development Director. I'm not sure what your question is getting at. Can you clarify please?

Commissioner Wickham asked how many people constitute a public meeting? He then stated he just needs to know that and will wait while he listens to everybody else and can take the answer later on.

Principal Planner Angeli-Paladino asked if he meant a public meeting in this setting or for something – are you talking about a public meeting like this evening? Can you define what he meant by that. She asked what page number he was referring to.

Commissioner Kellenbeck stated, you know Commissioner Wickham maybe it's three people because, according to the parking section for other auditoriums, churches currently listed, parking starts being calculated at one space per three seats.

Commissioner Wickham stated, I'm going to have to assume that but that's the only thing that's tangible in this packet. I just thought there might be an answer or a definite number. I like numbers, I don't like to guess or have somebody else guess. I thought maybe there would be a definite number that would constitute a public meeting in the eyes of the City of Grants Pass. I'll take the answer later on if you have to call the Community Development Director up and ask him.

Chair Berlant asked if there were any other questions for Associate Planner Voice.

Commissioner Fowler asks Associate Planner Voice what other cities were doing, are they making similar moves like this?

Associate Planner Voice asked if he meant other cities in Southern Oregon?

Commissioner Fowler states, yes, anything in Oregon that you would know about.

Associate Planner Voice stated, I'm not specifically sure what other cities are doing. I would imagine Jackson County will be doing something shortly and that the State will be doing something shortly based on that RLUIPA case but I didn't research it.

Commissioner Fowler stated, because it seems like this type of move is a way and try circumvent the intention of that Federal law which is to allow churches to be put anywhere, and by making a move in this direction it limits churches instead of expands their ability to acquire property, and so I don't understand why the City would head in that direction.

Associate Planner Voice states, just a clarification, something I didn't include in my slide show because I wasn't necessarily sure it would come up, but if you read the RLUIPA language which is attached to your Staff Report it talks about "the government can't put a substantial burden on the free exercise of religion." It doesn't define exactly what a substantial burden is but it also talks about, if you are going to regulate it, it has to be the least regulation possible to, I guess, further your legitimate interest. This CLUB versus the City of Chicago case, another important part of that other than equal protection was that Chicago was challenged because they didn't allow churches in their industrial zone similar to us. The allegation was that other land was too expensive, and that because the other land was too expensive that constituted a substantial burden on the exercise of religion. The court found that is not the case, that the City was allowed to regulate that and limit them in certain zones when there is an interest like preserving your industrial land. So that's the reason why we're doing what we're doing. This is our recommendation again.

Commissioner Fowler stated that's a carefully chosen case to make your point. I'm sure there are more cases that could help the other side if chosen. So, like I said, it looks like the cities are trying to stack against the church when they should be welcoming them.

Associate Planner Voice stated, but we are adding churches to a zone that they're not currently allowed in. Currently they're not allowed in three different types of zones, so we're actually expanding that. I guess if the Commission wants to expand that further and include that in your recommendation. Our recommendation to you is to preserve the industrial zones for industrial uses.

Commissioner Arthur stated, I don't see anything in this wording that says that you're supposed to let a church be anywhere it wants to be. It just says that you can't exclude it if you allow other groups and organizations to be there. You have to treat it equally. It doesn't say you have to allow them in every zone that you have at all.

Commissioner Sackett asked if that was the intent of this then, to try to make it so that it's black and white, sort of -- so that churches know where they can go and the clubs can know where they can go, and this way it's put there where everybody knows where they can be and where they can't be? That's basically what we're trying to do here right?

Associate Planner Voice stated, it's pretty black and white now. I mean, it says under the zoning what's permitted in what zone but we're trying to make it equal among the different public

assembly uses as we see them.

Commissioner Sackett stated, also if a church wanted to go into an industrial park zone, industrial park property is a lot more expensive than any of that other property right? The property price goes up in those different properties right, basically?

Associate Planner Voice stated, I'm not sure how the zone affects the property value.

Chair Berlant asked if that was it for questions for Associate Planner Voice. Can we move on? Okay, that concludes the Staff presentation. Chair Berlant open the meeting for public comment for those in favor of the proposed text amendment.

Ben Freudenberg, lawyer, 600 NW 5th Street, Grants Pass. I'm not sure I'm in favor, but I'll take the opportunity to go first. I'm here representing Real West Property LLC and Jim Williams, and Associate Planner Voice mentioned a matter that you're going to hear on January 28th. That is a quasi judicial matter and so Associate Planner Voice wasn't being evasive but I think he was being careful so as to not taint that record, so I want to be careful and not do that as well. A point, however, is that we are apparently the only one who chose to make an application for a temporary use over an extended period of time. Not that there probably aren't others out there making temporary uses, and we're feeling a little picked on that, coincidentally, along comes this effort to eliminate temporary uses altogether. I'm not suggesting there's any poor or ill motive behind that. I do applaud, and my client applauds, the effort of the City to bring the RLUIPA matter before you, because other jurisdictions have not been proactive in that regard and so then they find themselves either in the Court of Appeals or the Supreme Court or at LUBA defending something that typically turns out to be non-defensible. So I applaud the City Staff for bringing this to you for work. Obviously it's a difficult issue to wrestle with but, again, they should be applauded for bringing it to you. What we ask is that the elimination of the "temporary use" category be separated from the RLUIPA proposed amendments. They are really, in our view, two separate matters and whether or not there should be temporary uses in the Code should be dealt with separately. Obviously, a prior City Council adopted the Development Code that contained temporary uses and there must have been a reason for that, and we will be looking into that so we can articulate that at a further hearing, but to sweep the elimination of temporary use into the RLUIPA analysis and ordinance amendment, we think is inappropriate. So we're asking this Commission then as it makes its recommendation on the RLUIPA matter, to recommend to the Council that the temporary use remain in the code and be dealt with separately. That's our request.

Chair Berlant asks Ben Freudenberg for clarification of the timing. He then asked, I know Associate Planner Voice had mentioned, and I know we're not really dealing with that application, but was your application submitted prior to anything being done with this or after?

Mr. Freudenberg answered, let me check my file to make sure I'm accurate.

Chair Berlant stated, maybe that is my question back to Associate Planner Voice if he knows but I know you made some comment about that.

Mr. Freudenberg stated, and again being careful regarding the quasi judicial aspect of the next hearing, we asked for a Director's interpretation on December 5, 2008. And then filed an appeal from that Director's interpretation on December 18, 2008, and I don't believe we became aware that the RLUIPA amendment contained the temporary use subject until I think maybe somewhere around Christmas, or between Christmas and New Years. I don't doubt that the motivation was that in looking at RLUIPA, the Staff felt it was important to deal with the temporary use issue but we believe there's a better way to do that, which is to do it separately and, frankly, we may be writing our own text amendment too, if there are issues with temporary use will bolster that and provide more detail rather than eliminating the concept.

Commissioner Wickham asked, did the Director's interpretation have anything to do with a permanent structure or something of that nature that would constitute not being a temporary use?

Chair Berlant stated, I think it probably is not appropriate not to get into too much of the details of

that.

Mr. Freudenberg stated, Commissioner Wickham, in two weeks I'll be glad to give you all the detail that you want, and more, but I don't want to, with all due respect Commissioner, I don't want to set us up for some sort of appeal or some sort of problem. So that's why.

Chair Berlant asked if there was anyone else who would like to speak generally in favor.

Gary White, 1158 Gulls Creek Road, Gold Hill. I do have some business property here in Grants Pass. Chair Berlant and Planning Commission, I'm glad you're taking the time to do this, and Staff. I believe this does need to be aligned with things that are going on outside of this City and outside of this State to keep from having some sort of a battle in the court system. I'm glad we're doing it. I think what's at hand is that churches are only allowed in residential and in commercial. Both of those are very expensive pieces of property, by far way more expensive than Business Park or any of the Industrial zonings. I think the question that is at hand is when you have churches here as the River Valley Church a 70,000 square foot building and possibly 5000, 6000, 8000, or 10,000 members, where do you want them at? Do you want them in residential? Do you want them in commercial? Do you want to give them an opportunity to buy land and align ourselves with RLUIPA, or however you pronounce the case that went down. I do believe the business park is where they should be allowed to go because it's a wider industrial use. By taking out the other uses, I'm not necessarily for it, but I do believe you have to align yourself otherwise we're going to have lawsuits, and, at that point you're asking whether or not City, because we have certain uses that have gotten by in the past, are we going to allow a 10,000 member church in an industrial zoning, with that many people and you've got heavy truck traffic and other issues going on, or do you stop and align it now. I don't know, it's a surprise to me the language is taking that out but I understand the issue – so I'm for the business park, I'm not necessarily for or against the industrial removal, but I do understand you have to align it one way or the other. I do not see churches in industrial. I have both types of property and it would be a circus to have a very large church in any of the industrial properties that I have, with the types of traffic and the workers who come and go, and all that kind of stuff. So I really commend – again, we're using the word church rather broadly, and I believe we're adding "religious assembly" and I think we should probably strike the word churches from our language, I would assume, from what's going on here. So we're allowing the people who have a need or a want or a desire to get together whether it be a small church which can't afford the expensive property, larger churches are more able to buy in commercial and residential but do you want the churches in those zones? Give them an opportunity to be where they're supposed to be. Line up with what has already been case law now and not get sued, and how you do all of that is not going to be easy, so I appreciate it and thank the Staff and everybody for bringing this up here in Grants Pass.

Chair Berlant asked if there was anyone else who wished to speak in favor, seeing none he opened it up to anybody who wished to speak for or against.

Ed Bowers, 1104 Luzon, Grants Pass. There are several problems. This is crazy. First of all, I don't think we should have – they're not linked. We've got religious assembly and there's not a question that has to be reworked but the fact that you are not going to allow any kind of temporary use is absolutely ridiculous. It's beyond belief. There are companies in town – again, I'm not going to get into it because it will be got into in two weeks, but they have come forward and they are still trying to survive, offering good paying manufacturing jobs, and they need additional temporary space to park trucks on. I'm not going to go any further than that except, in some cases modules like shipping vats. You're going to eliminate that in industrial areas? You've got additional buildings already put in like the Bear Hotel that has got a full service kitchen. One of it's features is the fact that it's used by non-profits, built for meetings and to raise money to help the City of Grants Pass. This is nuts. If we want to build a fourth bridge, it might take three years to construct and we've got to have the space for the construction, the modules, the building sites, and the steel. Somebody has got too much time in the Planning Department. Too much effort is being put forth to try and micromanage everything. Possibly they should go find another line of work and see if they can even get a job. Did you look in the paper tonight? The majority of our ad sections are foreclosures – page after page of foreclosures. There's got to be some reality setting in here. We need to support the community, especially our limited manufacturing base, totally.

Again, I haven't got any problems with the Amendment as far as the "religious assembly." I think Ben did a good job explaining his position, but in the last year – let's see, we've had before the City Council and the Planning Commission – oh, we had a couple of gym programs that moved into some vacant property up near the freeway that's where the Fly Shop is the Bentwood Furniture company is, and that hasn't done any serious damage to our community. Anyway, at this particular time, this shouldn't even be coming up, let alone in front of an important body like the Planning Commission or the City Council. I totally agree with Commissioner Arthur on the situation. If we're not going to allow things like the Bear Hotel then there's something wrong. Frankly, I don't think the Planning Department should even be getting into this issue at this time. It's going to have negative effects all the way from the Police Levy to the general public relations of the City. Thank you.

Tom Lumpkin, 1550 Rogue River Highway, Grants Pass. I own real estate on Rogue River Highway and I don't know if you guys have been out that way lately and seen what's going on out there but there are between 10 and 12 empty buildings, right in that area you're talking about. That area out there is dying. They need some help, not people turned away.

Chuck Atkins, 116 NE Evelyn, Grants Pass. I'm with Sunbelt Business Brokers, the largest business brokerage in the world and we are seeing the economy fall, business fall, and you want to eliminate temporary use, which you can't even really define. I agree, someone has too much time on their hands. It's crazy. You've got to allow businesses or you're going to be sitting in this building alone, without a paycheck. Now, I've been a business broker for a lot of yours and I don't just do small businesses, I do mergers and acquisitions of multimillion dollar companies. I've seen city after city and town after town just come along and make all these rules and regulations and the next thing, nobody can really do anything – unless it's such a big corporation, like all the big ones you see falling right now. Citi Group, Merrill Lynch, Bank of America, they are merging trying to save each other and they all have their hands out to the Federal Government. The small businessman has nowhere to go. He can't reach out and get that money. Try to get a loan in the market today, can't be done. I've got a client that wants to buy a commercial building. He's got an 8+ credit score but he only wants to put 20% down because he wants to keep operating capital and I can't get him a loan without putting 40% down. That's insane. That takes his operating capital away. That puts him out of business effectively. You guys better drive around and see how many empty buildings there are. You're not going to have a shortage of industrial land, or any other land here the way it's going. Temporary uses, you can't define them? It doesn't make any difference, leave them alone and leave the opening there to get other business in, in areas where it might not have been allowed. If you need to put a 5 year or 10 year or some kind of stipulation, fine but you just better get with it because things are a lot worse than anybody thinks they are. You know, I'm a real positive guy but I'm also a realist and I can see what's happening. We have a huge network throughout the United States and beyond, and we're seeing it everywhere. My thing is, somebody has too much time on their hands, way too much.

Chair Berlant stated, I would appreciate it if we stop those kinds of negative comments. They don't help us in any way. This measure was meant to address some court rulings that came down that mandate certain action to be taken, and whether or not they are the appropriate ones or whether they should be modified – but making disparaging remarks about City Staff related to it, I think has no appropriate place in this hearing.

Councilor Wickham stated, I disagree, I think we need to feel the real pain.

Fred Schmidt, 1640 Redwood Avenue, Grants Pass. I am Pastor at Redwood Country Church. I think the wording is unnecessary and this change is unnecessary, and I would be against it. When you think about the example you gave of Chicago, that was a national incident and the wording that was up there on the screen even gave indication to that. They would allow a Moose Lodge or a gathering of any other sort and really, what is a church? What is a religious gathering? The same thing as a Moose Lodge, a bunch of people getting together and they are in agreement about one thing, and the only difference in a church is they don't have a bar. You have to admit that churches add and compliment the community. They build people up and help them do what's right. For example, right across the street from our church is United Rental. They're packing up and moving to Medford. They are consolidating. To the right of them as you're looking at United Rental, there is a huge acreage that's empty. It's for industrial and they can't get anyone to move

in. Wouldn't it be great if a church moved in there and beautified that place and made it look really nice? You know what's on there now? A dumpy shouldn't be there caravan looking thing that somebody parked there because no one knows how to haul it off. Anyway, I think there should be some discretion in this and more thought. Before it's approved, maybe it should be either reworded or totally canceled.

Commissioner Arthur asked, are you saying you are opposed to giving churches the same status as all those other organizations?

Pastor Schmidt stated, I think that churches already have the same status as these other organizations and I am opposed to – it looks like craftiness trying to reword something here that's not necessary.

Gary Steiner, 787 _____ Road. I do not live in the City but I'm a trustee of College Heights Baptist Church. The aspect that Commissioner Arthur brought up on parking spaces and how they are figured, since we have been annexed into the City we have incurred many expenses that we never experienced before and I look at maybe another one coming up when we allocate parking spaces or demand parking spaces or because we have about 10,000 square feet of total space that is used at different times. Our congregation meets for the church service in the main auditorium but then they move away from that and go into another building for their Sunday school and things like that. If we took that ten thousand square foot it would say we have to have three hundred and fifty seven parking spaces. And we don't have that many people there at any one time. And so the change in wording for that parking space and I agree commissioner Arthur said once before; I think we need to look back at that, maybe leave it the way it was. Rather than just base the parking spaces we are required to have on total square footage of all space. Thank you.

Dan Vest, 2660 NW Vine St., Grants pass. We are in the county, but the only thing that separates us from the county is a creek. Next to the freeway, north Grants Pass -- it used to be a heliport. Bill Menu used property up there, and it's zoned industrial. He has since the 1960's he had Inland Equipment for sale; helicopters, rock crushers, heavy equipment, trucking and a host of other activities on that piece of property. Bill Menu passed a few years back and I acquired the property with a lease and option. I don't mean to go into a lot of history but when I acquired the property the City told me that I could have two auction sales a month there and all I needed was an itinerant Use Permit, but it was industrial property and so we had good luck there for two or three years. Last year, I applied for an itinerant use permit and the City told me that I would not get an itinerant use permit and that I was not allowed to sell anything – "No sales of any kind whatsoever." I asked the girl in the upstairs, "what gives you the right to flip the switch and put me out of business?" I have to have some type of sales. Either that or rob banks. I don't know of any business in the world that is successful that doesn't sell something. I do not know of any business. Now, having said that, it's very, very important that you know that I'm an auctioneer and a realtor, a real estate broker, and there's some real estate brokers on your panel I understand, and United Rentals has called me to auction their property, their chattel property, that is. The reason for their auction is that they cannot produce enough revenue to survive in the economy that is going on. There are such limits on construction. There are limits, yes there are financial, but there are also an impossible gambit of requirements in order to do business in Josephine County. Folks, I don't have an answer for you, I come in, this issue kind of at a last date, at a last minute, but I can tell you that you're decision as far as temporary uses for property in Josephine County is a very serious decision. We need to have the ability to spread our wings in this down time. I say don't kick us in the crotch when we're down. This is a serious thing and I didn't intend to be funny. There are people that have called me to auction properties that, I mean, hundreds of them, and when I go and look, and that Real Estate Broker there can tell you the same thing, when they want to list a property, they owe more than it's worth. They owe more than you're ever going to get out of it in this market condition. These are extraordinary times. Our President Obama said so, he's going to spread the wealth to the tune of trillions and we're facing extraordinary times here. To lock in a situation whereby we do not have the capacity to survive without mandatory criminalization -- okay, and by that I mean, we're going to survive somehow. I don't want to rob your house, you don't want to rob mine, but when way or another we're going to survive when it all comes down to the end of it. And how far we go, the answer is yet to be seen. If you have any questions, I'll try to answer them.

Commissioner Wickham stated, I have one fine sir, and that would be when was it you were turned down for your temporary use permit?

Mr. Dan Vest replied, I'm going to say it was about three months ago. We had numerous auctions. The Fire Marshall came and inspected the property. I put in a big professional closing door, two ways. The building is 5000 square feet. It was a helicopter hanger. A public building, I mean, put fire extinguishers, exit signs, everything was fine and dandy. All at once, bingo, and the answer, I said "What gives you the right?" and all the lady could tell me was that, "Sir, you have a problem," was the answer she gave me. So I have a problem. You got a problem too.

Commissioner Wickham stated she didn't have an answer or course.

Dan Vest stated, no her answer was "Sir, you have a problem." That was the only answer I got out of her. And I have a whole stack of those itinerant use permits. They told me I could have two auctions a month when I moved in there. We cleaned up the property. The estate spent, for your information, almost \$500,000.00 in order to clean up the environmental hazard on that property. Bill Menu was a ruthless man with complete disrespect for environment, you, and anybody else. It was greed that drove him, but the important thing to remember about Bill Menu, he chose to be greedy. We don't have a choice today. We have to survive somehow. That's an enormously important decision that you folks are facing. Please give it some, perhaps a lot of thought.

My name is Craig Reed, 1331 SE Priscilla Lane, Grants Pass. I feel a little strange because what I'm going to do is I'm going to state the obvious, at least from my perspective, and that is that you're trying to square this thing. You're trying to level the playing field. It seems to me that can be done two ways. It can be done by either becoming more permissive or becoming more restrictive. It appears that the planning folks are recommending to you that in most cases you become more restrictive. I haven't really heard a clear explanation for why that's the direction that you should move, is toward more restrictive. They say that, in part, it's because the industrial areas were meant to be industrial. Well, would they have been here before you were moving all of these uses had RLUIPA not come along? That's essentially Commissioner Wickham's question "were they causing any problem?" Is there a reason to remove these? Is there a reason not to just add one more group to this? As I listen to other people, and again I know next to nothing, I just hear things but they talk about remarkably large congregations. Do you have to say that there can be no religious gatherings in order to see that Saddleback doesn't come in? Can you not set, just like they did with the restaurant, can't you just say "above this level, it would be inappropriate?" So we're going to say that churches, just like any other organization cannot take up some incredible amount of space. Anyway, here we are.

Commissioner Wickham states it was very well put.

Glenn Arnett, 1950 Demaray Drive stated one of your Councilman, I suppose it was Commissioner Fitzgerald who made the statement that the law allows this and I'm wondering if perhaps that's the reason that you were shut down, because they allowed this. My advice would be, my opinion I should say, is that we shouldn't do things just because the law allows it, we should make our decisions on things that are beneficial to all the people that are concerned and not just because we can. So that's a simple statement, but I think it's wisdom.

Chair Berlant asked if there was anyone else who wished to comment. Seeing none, he asked for comments from Staff.

Principal Planner Angeli-Paladino stated, I would just like to speak to Mr. Vest, if that's correct, and his question about the itinerate versus temporary uses. (She sets up equipment).

Commissioner Arthur asked Principal Planner Angeli-Paladino if she could address the whole topic, while she's there, of the kinds of special uses and so on that the building department permits as to some of the examples that we're that we're given like bridge construction and so on. There have always been accommodations for short-term, temporary uses. They just weren't called temporary uses in this category. The other kinds of accommodations that are made for, as you said, special events and special uses, and so on. Maybe all of that needs to be addressed because there's a lot of misapprehension going on here I think.

Principal Planner Angeli-Paladino stated, okay as to Commissioner Arthur's question, my understanding of the special use permit is that it's for buildings, not a construction site or trailer use for constructing a permanent building. You would come in and you would apply through the building department. They would make sure that you have the right ingress and egress, that you're occupancy load isn't exceeded, and it's something special that basically allows you to do, maybe a special occurrence. Maybe you want to have an event at the facility or something like that. That's what our Special Occurrence Permit would allow. In terms of construction trailers and stockpiling, and those kind of things for maybe construction projects, that is considered temporary and it doesn't fall under specific to temporary uses provision. It's something that is just accessory to either building a building or will be there as that construction project happens and then it will go away. I guess we've never had a permit that comes in for stockpiling construction material on a site for a road project, and given a permit for that -- that I'm aware of.

Associate Planner Voice stated, I'm aware that engineering has something called a Stockpiling Permit and I'm not specifically sure what it covers but it's for materials on the site.

Chair Berlant stated to Mr. Vest, sir, I have to tell you, we didn't open this up for more discussion at this point.

Mr. Vest stated, oh, I thought she (Carla) said she had questions for me.

Principal Planner Angeli-Paladino stated, I just wanted to clarify your point about itinerant versus temporary, and I just wanted to make sure the Commission knows that for the record. She asks if his name is Mr. Vest. He replies "yes". She states Mr. Vest applied for an Itinerant Use Permit, the is not something that we are discussing this evening, we are talking about something in the Development Code that talks about temporary uses. I'm going to show you that page. So this is our list of land use types that are basically broken down by category and broken down by use, and itinerant use, this is 3(d). It's specifically allowed in general commercial, and central business district zones. Mr. Vest's property that is within the city limits is not within general, commercial, or central business; those are within industrial zones. He did apply for an Itinerant Use Permit, and I don't know the history going back to several years ago when he was issued an Itinerant Use Permit, but when he re-applied this summer, we looked up the Code and the Itinerant Use are not allowed in BP, industrial or IP. Yes?

Commissioner Wickham asked if he would be eligible for a temporary use permit, would that fall in the same category? Was it just a wording thing?

Principal Planner Angeli-Paladino stated, he didn't apply for a temporary use under...

Commissioner Wickham asked, okay, could he have applied for a temporary would he have achieved what he was after?

Principal Planner Angeli-Paladino stated, that's kind of the problem with temporary use. It's not defined. So, why would we allow a temporary use in a zone that we normally wouldn't permit an Itinerant Use Permit. I think that's kind of Staff's thought on that. So if you applied for a temporary use we'd have to make that determination and he did not apply for a temporary use.

Commissioner Wickham stated, but there again, maybe he could have been told "well maybe what you need is a Temporary Use Permit," instead of "you have a problem." It's typical, I mean when you try to help somebody and that is what the...

Principal Planner Angeli-Paladino stated, well we don't know the other side of the story. The person that helped Mr. Vest is not here tonight so I'd like to leave that out of the situation, because one quote out of an entire conversation can be misconstrued.

Commissioner Wickham stated, but I think it's only fair.

Principal Planner Angeli-Paladino stated, I'm just trying to clarify for the Planning Commission the difference between the Itinerant and the Temporary Use that you're being asked to look at this

evening.

Commissioner Wickham stated, you haven't given us anything. All you're telling us is that he applied for an Itinerant Use and not a Temporary Use. You haven't given us the correlation or anything.

Principal Planner Angeli-Paladino stated, my only comment to the Commission is to clarify that Mr. Vest did not request a Temporary Use. He requested an Itinerant Use. That was my only point. I'd be happy to answer your questions.

Commissioner Wickham stated, but you just said you wanted to clarify the difference between a Temporary Use Permit and an Itinerant Permit, and now you can't tell us the difference. So I apologize, when you said that, that's what I assumed you were actually going to give us -- the difference, but I'm sorry. I understand, he applied for an Itinerant and we're talking about Temporary Use.

Principal Planner Angeli-Paladino stated, that was the only thing that I wanted to clarify. I'm sorry if I misspoke on that.

Chair Berlant asked if there were any more questions for Principal Planner Angeli-Paladino.

Associate Planner Voice stated, I just wanted to sum it up. I appreciate Mr. Reid's comment when he basically said that there's two ways you can go about doing this. One is, the way he phrased it was to become more restrictive and the other is to become less restrictive. We've given you our recommendation. It's not really about what Staff wants, it's your decision at this point.

Chair Berlant states he is closing the Public Hearing portion.

Commissioner Fedosky stated, well on that very subject of more permissive versus more restrictive, my understanding of the changes in the text being proposed to us is that with industrial we're being more restrictive, and with BP we're being more permissive. I understand that to be, the reason for that, to be so that we become fair and consistent with the intent of these zoning definitions, the purpose statement, and the intent of the particular zoning designation -- for example, in the industrial purpose statement talks about on page 30, the intent of limiting commercial uses within the zone to those accessory to industrial development. So it seems to me that we're not bent one way to be more restrictive or more permissive, but rather we're doing both, one and one zoning designation and the other in BP. We want to include and add churches where appropriate with the purpose statement of the zone and the other to exclude several uses that, although not religious gatherings, they're not consistent with the purpose statement of the industrial zone. So I'm in favor of that, the changes in those two zone designations and it seems to be in line with the basis of the intent of this. The primary purpose of the proposed text amendment in relationship to not having discriminatory language and upholding what the 14th Amendment and equal protection intent is. However, with the deletion of the temporary uses, I don't see the relationship yet to the court case, or discrimination in the 14th Amendment. I guess, my basis for saying that is, if you have a broad and undefined definition, I struggle to see how that is, or can be discriminatory. Not to say that isn't an area of the code that needs to be addressed, but I would agree that it's an issue that's separate. Again, I don't see the relationship to the intent of this particular Code text amendment proposal we have in front of us. So, in that area, I just don't feel I have enough information in front of me to be comfortable with to be for or against the position. I'd like to learn more about the historical application of that particular designation we have. To just get more information and essentially, I think it's reasonable to understand any unintended consequences it might have in deleting that, so my position would be in favor of the proposed changes excluding that section.

Chair Berlant verifies he meant temporary uses.

Fedosky replied, the temporary uses.

Commissioner Fitzgerald asked if he wants to make that a motion.

Fedosky replied, if there's not a lot of other discussion to be had first.

Commissioner Wickham stated, first up, I think it was just about 4 weeks ago Director Huber explained that we all have an opportunity to speak how we feel about this and I find it inappropriate that you would just jump in Commissioner Fitzgerald and say, "Let's make a motion and go on with this." You know what, let's all have a chance.

Chair Berlant stated, let me clarify something on that issue. Any Commissioner is free to make a motion anytime they want. As for leaving it open and allowing discussion on all of the issues and aspects is something I'm certainly going to allow to continue to happen regardless of the timing of the motion that's made.

Commissioner Fitzgerald stated, I would suggest that Commissioner Fedosky's position is clear to me too. I think the temporary uses is something that needs to be taken up by itself. I don't think it should be lumped in with this particular housekeeping. I'm in support of the addition to the business park, it's appropriate, and I think it should be removed from the other two classifications in the industrial, but I would like to see this tonight, the recommendation go to the City Council to leave out the language temporary uses and would strike from that, at all. I want it to be a completely separate issue. I would be a second to it if you want.

Chair Berlant asked if there was a motion and a second. He asked Fedosky if he made a motion.

Commissioner Fedosky stated he did not make a motion in my comments.

Chair Berlant asked if Commissioner Fitzgerald made a motion.

Commissioner Fitzgerald motions that tonight adopt the language to include that religious assembly in the business park, the change for this to be the fact that we would strike out any reference to the temporary uses. Leave that to be a completely separate issue brought to this body. We'll have to study and some considerable deliberation.

Chair Berlant stated, so that was a motion?

Commissioner Arthur stated, I would assume that we're including the deletions of the two, the athletic and the other, okay.

Commissioner Sackett stated, hopefully we don't lose the temporary uses in the dust somewhere. If we leave it in here, hopefully it doesn't get lost. It sounds like we're going to learn more as we go forward on that.

Commissioner Kellenbeck stated as per point of discussion, I am actually not in favor of the motion. I see a few other things and one of them is that specifically dealing with the conformance with the Applicable Criteria. On page 30 of your packet under Criterion 1, we're talking about the purpose statements of the different districts and I've definitely heard what the people have come here tonight to say, and I appreciate their time and the broad spectrum of people that we've had show up tonight. I think that it speaks across our community from all different areas of town and I think that they have good points in possibly leaning towards the permissive use direction that this could potentially go. No doubt we need a resolution to be in line with Federal regulations, but what I would say is that, in keeping consistent with our existing purpose statements, as we have not purposed any text amendments to the purpose statements per this application. I think there could be made a point that in the IP zone, potentially, religious assembly could be compatible. There is nothing in that purpose statement to me that specifically excludes it. However, in the Industrial zone, I would lean towards the restrictive, and I would say that those other uses, if they conflict with Federal regulation, we should exclude those other uses and churches from the Industrial zone. It's very clear, it states that it is the express intent of the Industrial District to maintain lands for industrial use. There's no waiver or doubt in my mind that is specifically intended for industrial purposes. IP is also somewhat of a transition zone and it maintains a "campus like" setting is the language it uses. It has high performance development standards to assure compatibility and I think that that leaves open that door to say maybe some other uses might end up in IP as well as BP. I completely agree that the temporary use issue is contentious and it should be brought back.

Definitely not forgotten, perhaps we need a separate motion at the end of the night, tonight, to specifically request Staff bring back temporary uses to us as an important issue. Going back to the original topic that I brought up of the calculation of parking, I think it was per Commissioner Fitzgerald's comment, there was language under mortuaries for how parking is calculated there and it specifically quotes "in assembly areas", and I think that that language would be fitting for all of the different public assembly uses that reference either bench or fixed seat area versus no permanent seats. So if look to strike the language that says "in the main auditorium or cultural hall," my recommendation would be to add the language "where no permanent seats or benches in the assembly area" and that would also apply to subsection (g) which is other auditoriums, meeting rooms, or theatres. One other concern that I have is in the IP zone. I think I made my point clear that I believe industrial is for industrial purposes only, but the amendment before up tonight is requesting that we take out athletic clubs, cultural exhibits, and libraries from the IP zone and my concern there is that, I don't foresee an influx or large problem with cultural exhibits and libraries coming to our community and ruining our industrial lands. I think that those happen on a very rare basis and as they are currently classified under minor public use, they're public buildings. They're not a private corporation coming in and building museums for profit on industrial lands. We're talking about a very special occurrence and I think those uses need equal protection in our Code and by excluding them from IP land, I think that we're potentially pricing them out of our community because you're looking at non-profits or government agencies that are going to have to build those structures, so I would like to see that left open in as many places as possible. In this case, leaving that availability in the IP zone. As for athletic clubs, they're for profit, they are not a minor public, non-profit type of use, but it was, since I have been participating in city government, so within the last 10 years that athletic clubs from my recollection have been added and I think that there was an extensive Planning spent on that when it came through and I wouldn't look to remove that specific use tonight because I think that the Planning Commission and City Council at time had their own set of findings and criteria that they decided were appropriate.

Chair Berlant asked if both IP and I, was that comment related to?

Commissioner Kellenbeck answered, just IP. I think the industrial district is for industrial uses only.

Commissioner Fedosky stated, I would just have to say I agree with you on that. When you read the IP definition, there seems to be some kind of positive correlation, and maybe Staff would even have an opinion on that, between it and BP in the sense that IP seems to be pretty compatible with commercial and residential uses and allows light industrial as does BP allow light industrial so I don't know that it's a full collation but there's some kind of correlation there and maybe excluding those things from that particular zoning might be a consideration. You're suggesting which one specifically be left there?

Commissioner Kellenbeck stated, I'll make a motion to save time and ...

Chair Berlant stated, first there is currently a motion on the floor. There has not been a second, so that died from lack of a second.

Commissioner Arthur asked Commissioner Kellenbeck why she was only picking those two. Why are you excluding the Moose Lodge and everything else that were assembly gatherings? What's the criterion for deciding which ones you allow in and which ones you don't?

Commissioner Kellenbeck stated, no, I'm sorry I think I meant -- I'm looking at Exhibit 5 in our packet, which is page 45, and it's the table that gives the zoning designation, the new land uses permitted and the recommendation for land uses not permitted. So what I'm saying is then is, per this table, I agree with the new land use regulation of religious assembly being permitted in BP. I also agree that athletic clubs, culture exhibits, libraries, and any type of assembly uses should be excluded from the industrial zone. I disagree on IP, I think that athletic clubs, cultural exhibits, libraries and then in that case any other religious or assembly uses should be permitted. Then in all cases temporary uses should be withdrawn from this particular application.

(Conversation off microphone.)

Commissioner Kellenbeck stated, in effect yes. Because currently athletic clubs, cultural exhibits, and libraries are allowed and in order to comply with federal regulations we would have to allow religious assembly in that case and, in that case all assemblies are allowed. Is that right?

Commissioner Fowler stated, for my two cents. I like the wording that was stricken of the main auditorium when we're talking about parking calculation, that it should be based on the main auditorium or the cultural hall, whichever is greater. I like the wording keeping the parking relative to how many are actually used.

Commissioner Arthur stated, to the assembly area.

Commissioner Fowler, yeah, it should be the assembly area, exactly. But I disagree with Commissioner Kellenbeck that industrial use should be allowed to do a lot of the things that we can, that are permitted now and have churches. Churches are very low impact in an industrial zone. You have an assembly on a Sunday morning or a Saturday, and you have a Wednesday, very intensive times when an industrial area is not busy. So I don't think there is interruption of traffic by mixing uses. The intention to me, as I stated before, was that the churches would be allowed to go where the assemblies of public were allowed and we're going the wrong direction. We're taking the public assembly areas and restricting them back, and I don't like the direction that's headed. As far as the economy, as was mentioned, there need to be less restrictions to invite business. I mean it says we allow daycares in industrial, we allow the mortuaries, we allow so many things already, I'd hate to see us start restricting that and going the wrong direction. I understand there is an industrial inventory we need to have and it's great we're redoing the Urban Growth Boundary to include new industrial land, but whether hard to find or not, let that be the problem. Let the industrial land, the need for it, be what it is but not restrict it as far as inviting businesses in or inviting churches to assemble there. The only other thing I would add is the temporary use. I do agree with Commissioners Fedosky and Kellenbeck on the temporary use should be a separate issue and should have a definition somewhere what that means, so that we're not debating a ghost. We need to know what we're talking about.

Commissioner Fedosky stated, I think listening to Commissioner Kellenbeck and yourself, Commissioner Fowler, that maybe that's a valid point but in this particular case, staying in the scope of what we're looking at this evening, the primary purpose of the text amendment is to address the 14th amendment and the equal protection clause of RLUIPA. So changing the intent or the purpose statement of that zoning could be a separate issue but I don't see that as tonight's primary purpose and, in this case, if we look at the basis for deleting those athletic clubs, structural exhibits, and libraries from industrial it's because it clearly isn't consistent with the purpose statement. Maybe the purpose statement needs to be changed, maybe it needs to include churches and those other things, but that's not really – I guess what I understood from Commissioner Kellenbeck is that is not really part of this text or primary purpose as far as trying to shore up the equality issue and the non-discriminatory basis of it.

Chair Berlant asked Commissioner Kellenbeck if her motion included those issues about parking. I didn't catch that.

Commissioner Kellenbeck stated, I don't know if it turned into an official motion but I can do that now.

Chair Berlant stated, I know there were some comments on it but I didn't hear that as part of your motion so I am just checking.

Commissioner Kellenbeck stated, if I had made a motion, it would have included revision of the language on parking to say assembly area.

Chair Berlant verifies that she had not made a motion and Commissioner Kellenbeck confirms it was not. He stated, so there is no motion on the floor yet. We're still in discussion so I'll at least weigh in on my impression. I'm in agreement that we should not do anything, at least at this point in time, with the temporary use. I know we have an issue coming before us in two weeks and I think that will help clarify what all of that means. I understand why it was put in there because

without any standards to apply or any definitions, you run the risk of granting a temporary use that would then all of a sudden be discriminatory, because it would allow one use that you wouldn't be allowing in some other arbitrary decision making process, because you don't know how to apply it. But I think we need more information and background and examples, etcetera, to really know whether just taking it out is the best way or to create definitions for it. It was thrown in more as a housekeeping and maybe could be a problem. I think we can always bring it back when we understand it more, and how it may or may not apply. So I'm in agreement with that. I'm really torn on those issues. The practical issue of whether to fix the problem by making it more permissive as opposed to more restrictive, and I do agree with Commissioner Kellenbeck's comments about the interpretation of the purpose statement in the IP district to say that all of those should be allowed there, they are consistent. But if we're going to act consistent with the criteria, one of which is whether it meets the purpose in the Code, we seem obligated to restrict it from the industrial lands – but I'm not sure whether that, practically speaking, is the best way to approach the use of industrial lands. I think we're constrained by the language that's presently there and if we act consistent with that and in accordance with that, we're somewhat obligated to remove those as a permitted use. On the other hand, I don't know that we've necessarily followed that in individual decisions in other applications, or what's being used in some of those areas. But I don't think we fix that problem by ignoring the purpose statement in the Code in looking at this text amendment.

Commissioner Sackett stated, okay I'm going along a little bit with the way Commissioner Kellenbeck has it, with leaving it out of industrial area and the way she had it for the industrial park area. Then the parking part she had in there, I think her proposals would probably work. The temporary use, again, hopefully doesn't get lost in the dust somewhere and somehow we can find out what temporary use is. I probably found out more tonight than I've known before anyway. That's kind of how I feel.

Commissioner Arthur stated, I can understand the wish to push us towards more permissive but you know the ultimate of the permissive is the group that advocates we should be able to do anything we want with our land anytime we want to, up until the time I decide to build an asphalt plant next door to you. Obviously, zoning is there for a purpose and I think that the highest industrial zoning level, and maybe what we're struggling with her is that we don't really have much real heavy duty industrial activity here where we could envision the church with the parsonage and the kids from the Sunday school and the daycare running around in the yard amidst the trucks and the other heavy industrial uses surrounding them. It's hard to imagine because we don't have it, but it could happen, and I think it's legitimate not to include the heavy industrial zone into this. If it's true that our IP zone is campus like, it becomes a little more appropriate to have churches and assemblies in that kind of area. I definitely agree with separating out the discussion of temporary use, and I think maybe at the time we do that, we should have an overview of all of the ways that temporary – the kinds of things Principal Planner Angeli-Paladino explained to us – all of those various things are covered and provided for the community. I am still concerned about where something like the Bear Hotel falls in this. I do want to point out that it does not have a full-service kitchen. They specifically do not have a cooking facility, so food cannot be prepared there, but it does provide a large meeting hall to the non-profits that have nowhere else to go now that Options facility is mostly unavailable to us for a large meeting room. I would not like to see that this makes them move someplace else when they are perfectly well set up and functioning at almost fully booked level there now and it seems to be working well. It seems to be a popular meeting and attendance place. I guess that's all. I think when we next take up the temporary use thing that we should discuss the kinds of things that we've heard about tonight, including these sale kinds of things because it's clear there have been car and equipment sales up there on the old driving range a couple to three times a year. There have been lots of those things go on at the Fairgrounds and other places. I'm thinking of – when was it when everybody could bring in all their junk washers and dryers and everything out of their yards and dump them... it was not at a building, it was outdoors, but I'm not acquainted with how those things operate and I think that's maybe an overview we should have. But again, the temporary use isn't specifically related to the religious equity use here.

Chair Berlant wishes to clarify that Bear Hotel is in IP zone. So at least where we've been talking about leaving that into the IP they would still be able to continue.

Principal Planner Angeli-Paladino stated that it is in the industrial zone.

Commissioner Wickham stated, we're definitely going about this with the wrong approach, in my opinion. We don't take something that works and get rid of it so that we don't have to have something that maybe a few elect people don't want. That's what it appears to be to me. It's worked fine all these years. Bear Hotel is an industrial property. There are other large office buildings and things that operate in there. I could build a house right in the middle of an industrial piece of property if I wanted to. I can't build an industrial operation in the middle of a residential neighborhood – that's how things are controlled. When it comes to what I can and can't do on my property. If I want to build a church, or religious assembly, in the middle of an industrial piece of property then I ought to be allowed to do that. Is it likely to happen? Probably not, but still, we're allowed to build a house in the middle of that property and I think we are just going about it backwards instead of just simply saying that those assemblies and those operations that relate to church activities are allowed anywhere, anyplace that meeting type of events can happen. That was the intent of this ruling from Washington. That was the intent, it wasn't "gosh, let's find a way to circumvent that and get around it and find a way out of it." That's not what it was about. As far as the temporary use, that's just ridiculous that would even be considered in this particular text amendment. That's somebody trying to sneak something in and get rid of it so they don't have to deal with it, and find out they've been making mistakes over the years. That's just absurd. The County has operated under temporary use permits for years, and there are a lot of reasons and places where they are used. You have a golf course, okay it's a golf course but alcohol isn't permitted. Well, how many golf courses do you go to don't have a little pub for after you've hit nine holes – that's a temporary use. We're going to allow you to operate a bar on that piece of property in that clubhouse so that the members who enjoy golf can use it. That's what temporary use is for, those types of things. Mr. Vest wants to see a couple pieces of equipment so he can keep his business open and a couple times a year he gathers up some equipment and he comes down and he follows all the rules and he gets a temporary use permit. I'm sorry that he asked for something that wasn't allowed in that neck of the woods, but it would have been simpler for Staff to say "let me look into that for you" and let's help Mr. Vest find a way that we can help you and make a business. Let's help you, instead of saying "you've got a problem, and laugh." How many times have we heard that from our Community Development Department because they can't help the people of the community. They find it easier to find stumbling blocks and laugh about how they can't do the things that they want to do. They don't help. So the temporary use in this, just take it out. It doesn't even belong in here. That's how I feel about it so everybody else just hack away.

Commissioner Kellenbeck stated, I'm going to make a motion that we recommend the City Council adopt the proposed amendments with the following changes: Continue to allow athletic clubs, cultural exhibits, and libraries in the IP zone and revise that permitted uses table in the IP zone to be consistent with RLUIPA requirements for all gathering types and; specifically related to Criterion 1, the purpose section of the districts, excluding as recommended, athletic clubs, cultural exhibits, libraries, and religious assemblies from the industrial district for the preservation of lands for industrial uses; will also revise the public assembly uses table (#4) in the parking section of Article 25 to use the language "in assembly areas" referencing where and how we are calculating the number of parking spaces when there are no fixed seats or benches, and; leaving the definition of cultural exhibits and libraries but my motion also includes to not strike the language libraries and museums from *minor public use* and continue to allow minor public uses in all the areas where they have previously been permitted in order to help facilitate the public ability to create museums and libraries, and; to exclude "temporary uses" from this entire amendment.

Commissioner Fitzgerald seconded the motion.

Chair Berlant notes the motion has been moved and seconded, and asked for further discussion.

Associate Planner Voice stated, I need clarification on that point where you're talking about adding public assembly uses, I believe you're referring to the IP, and you're referring to, in addition to the uses that we discussed, but other public assembly uses that maybe the courts have called out as public assemblies such as schools, lodges, and things like, that to make sure they're consistent with the IP and the BP?

Commissioner Kellenbeck answered, what I'm saying on IP and BP is that you allow whatever uses ... Let me start over. All assembly uses that are required in order to comply with RLUIPA so if RLUIPA requires that schools also be permitted if a religious assembly, if an athletic club is permitted then. It's just supposed to be consistent with RLUIPA. Is that still not clarifying enough?

Associate Planner Voice stated, I can understand what you're saying, I'm just not sure. It's kind of a reverse RLUIPA. If a school is going to sue you because you allowed a church, but not a school.

Commissioner Wickham stated all those uses are allowed now. What we're saying is that they will remain, will be able to operate.

Associate Planner Voice stated, just for clarification for example, schools are not currently permitted in the IP.

Commissioner Kellenbeck asked if schools are considered public assembly.

Associate Planner Voice stated, I believe it's pretty clear that, I guess I'm not sure, in considering it reverse from that...

Commissioner Kellenbeck stated, okay so I guess I'm not adding that, I'm saying to allow the existing permitted uses and add religious assembly and public assembly as it relates to RLUIPA and not to go as far as to add schools, because I don't believe those are by definition public assembly. I think they have their own definition.

Commissioner Wickham stated, you could make it real easy and go with what I'm saying, just let it all happen. He asked Commissioner Kellenbeck if that was a religious school or just one of those government schools.

Commissioner Kellenbeck stated, okay this is my last clarification. I'm adding religious assembly to the existing permitted uses in the IP zone.

Commissioner Wickham stated, but not the industrial zone.

Commissioner Kellenbeck stated no.

Chair Berlant stated, it has been moved and seconded. Is there further discussion?

Commissioner Arthur asked, out of curiosity, what is the zoning where those alternative schools are over there, Gladiola and the other one?

Commissioner Wickham stated, it's industrial -- everything north of that irrigation ditch is industrial.

Commissioner Fowler asked, so the athletic clubs are allowed in the industrial now or did we just bring that back to IP? So the things that were assembly related, public assembly related that were in industrial are to be brought back into IP and anything below will be moved up to IP?

Commissioner Wickham stated, nothing is being moved up. We're just including religious in those same categories. The only problem is we're not addressing the right to... (Discussion off microphone.)

Berlant asked if everyone was clear on what the motion is. He then stated everyone's clear on what the motion is.

Commissioner Kellenbeck stated, items on page 42 that would be included in IP are any of those that are currently permitted in IP and adding religious assembly.

Commissioner Wickham stated, except that you're taking out uses that were currently allowed in industrial and you're taking those out. But that's the bad part. In my opinion, it's the bad part Commissioner Fitzgerald.

Chair Berlant stated, which we will have a vote on soon. Let's keep in mind, all we're doing is making a recommendation to the City Council, alright? My comments before were, I think we are somewhat constrained to that by the wording that's in the purpose statement. The recommendation could be that we recommend they do a text change to the purpose of the industrial which would allow all of those uses that we're allowing in the business park, or some of them to be allowed in the industrial. That could also be the recommendation. Or we could do a separate motion recommending City Council undertake a process to initiate a text amendment to the purpose statement of industrial if we believe they should ultimately be allowed.

Principal Planner Angeli-Paladino shows Commissioner Arthur on the City Zoning Map that the schools she had asked about are allowed in the BP zone. One of the schools she points out is Gladiola. Commissioner Arthur asks about Insight, over on J Street across from the Williams property and it is pointed out it is also BP on the map.

Chair Berlant again stated there is a motion and a second, now I don't see any further discussion. He calls for the vote.

MOTION

Commissioner Kellenbeck moved and Commissioner Fitzgerald seconded a motion to recommend the City Council adopt the proposed amendments with the changes noted. AYES: Fitzgerald, Fedosky, Kellenbeck, and Sackett. NAYES: Arthur, Fowler, and Wickham. Chair Berlant notes the motion carries.

5. CITIZEN INVOLVEMENT COMMITTEE

There are no items from the public.

6. ITEMS FROM STAFF

Principal Planner Angeli-Paladino stated, I just want to welcome you guys into the new year. Just to clarify one of the statements that Commissioner Wickham made about houses being allowed in industrials. Just for the record, new detached single family homes are not allowed in any of the industrial zones. So anyway residential is not allowed. I just wanted to clarify that point.

Commissioner Wickham asked if she was sure.

Principal Planner Angeli-Paladino stated, I'll show you the Code section if you'd like. Existing ones can remain, but you can't build a new one.

Commissioner Wickham repeated, existing can remain but you can't build a new one.

Principal Planner Angeli-Paladino stated, correct.

7. ITEMS FROM COMMISSIONERS:

Chair Berlant called for items from Commissioners.

Commissioner Fowler stated, I can appreciate the chair reprimanding the statements that were

made on emotion from the crowd and from some of the Commissioners towards Staff. That is way improper. You can talk about the facts and you can talk about the Code, but let's not make it personal.

Commissioner Kellenbeck stated thank you for that, because I'll just completely second that.

Commissioner Wickham stated, well I'll never call it the last chance. I'll probably have a word or two to say while they're throwing dirt on my grave but... Tonight is my last night, I'm moving on. I've got other issues against the City, as you know, I've been fighting the City in a legal battle for almost 4 years now and I hope to ramp that up a little bit. I'm also going to be after the County and I'd like to mention that I was appointed by the County Commissioners to represent those people in the Urban Growth Boundary that they really don't have any representation. We really need to watch out for those people and I would challenge the other three Commissioners and the new one that are appointed by the County Commissioners to please watch out for those in the UGB, that don't have any fair representation. Their lives are at the hands of the City, and they're not allowed any vote, or any say in the matter about the people that seem to have the most control over them, or regulate them, and I haven't seen a very good representation even on this Commission by those appointed by the County Commissioners in making sure that they're not being taken advantage of. Unfortunately the City has become accustomed, and the Staff, and I'm sorry if you feel offended, but I will mention that there has been some inappropriate actions by staff members. They're not gods, they're not perfect, just because they work for the City doesn't make them good or decent people. They should be. They should watch out for those that they're appointed to watch out for, but they don't necessarily do that. It seems that most of them, not most of them, but there are some of them that only care about themselves. Only care about their jobs, and their buddies' jobs and their pensions and their PERS. They don't really take their job seriously and look out for the people that they're supposed to watch out for. That's their job. I mean look it up. It's real simple, the Oregon Revised Statute says these members and the municipalities are there to protect the health, welfare and safety of the people. It didn't say that they were there to make sure that they charge exorbitant fees so that they had good cushy jobs and that their buddies had jobs. It wasn't ORS that said that they're supposed to impose restrictive rights, so many rights on their private property that they didn't have a right to use them. So I ask people who are appointed by the County to watch out for those people. I think it's only fair, because what representation do they have? I wish I could say it's been enjoyable sitting up here and helping most people, but I find it very frustrating when I have members like Commissioner Fitzgerald who sticks his nose up every time I open my mouth because he thinks he's a god. I find that just offensive as all get out, and I'm not going to miss that one bit. I'm not going to miss the fact that there are people that approach this bench that they're influential in this community and maybe have some money and maybe they could offer something to somebody that sits up here. Maybe they have something that one of us might want and our decisions are based upon what we can do for them, not for what do for the people that are out here. I find that offensive as well and I've watched a lot of that, so I'm not going to miss that at all. I hope that some day that there is some equality on this Commission and that people can do the right thing, and I challenge you to do it, and I hope it's happening. I saw what happened on the City Council and I commend those people that stepped forward and said they had enough. They're sick and tired of this. My Grandfather used to sit up here on the City Council back in the 1970's. He said the same thing. There are a few people in this community that get what they want and everybody else is kicked to the curb and they're called lunatics. Well there are certain individuals in this community that label you a lunatic. Well I put those calculations together Mr. Freudenberg, and I take those and I run around, I love numbers, and I crunch them all up and say, well if that equals lunatic then if I used those same calculations and turn them around that must mean that those others are spineless. So, with that, Mr. Renaissance man and Commissioner Sackett, I thank you, you've been great, take care.

Commissioner Sackett stated, I'm really going to miss you, you know, you put up with me for years and a couple years in school, and I guess I taught you all those things.

Chair Berlant stated, thank you for your work and your dedication Commissioner Wickham (Perry). You certainly added another element to our discussions. I do think that I'm kind of concerned about where we are, where we're not allowing industrial and wonder whether there should be some more flexibility on some of this. I think I would like it if we look at as we move

forward. I don't know whether that's really with a text amendment, but, you know some of these uses that we're looking at and I don't know that they're inappropriate to go in those locations but I think what we did was right in terms of the language we had to work with. So, anyway, that's it. We are adjourned

9. ADJOURNMENT

Chair Berlant adjourned the meeting at 9:17 pm.



Gary Berlant, Chair
Urban Area Planning Commission

1/28/09

Date

These minutes were prepared by contract minute taker, Wendy Hain.

RLUIPA
(Religious Land Use and Institutionalized Persons Act)

**Development Code
Text Amendment**

January 14, 2009 UAPC Meeting
Presented By: Jared Voice

Proposal summary:

- Amendments to Articles 12, 20, 25 and 30.
 - Intended to ensure Development Code consistency with federal RLUIPA and associated case law.
 - Per RLUIPA, if any public assembly use (i.e. lodge, meeting hall, etc.) is permitted in a given zone, then religious assembly uses must also be permitted.
- Amendments would delete "Temporary Uses" from Development Code (currently permitted within BP, I, IP, GC and CBD zoning districts.)
- Additional land uses would be affected within the BP, I and IP districts

What is RLUIPA?

- Signed into law by President Clinton on September 25, 2000.
- Sponsored by Republican Orrin Hatch and Democrat Ted Kennedy.
- Brief but potentially very broad in application.
- When initially signed into law, was difficult to foresee how it would impact local government land use regulations.

C.L.U.B. v. City of Chicago

- Important federal court case that provided interpretation of equal protection clause of RLUIPA.
- Federal court initially found that Chicago's zoning ordinance violated RLUIPA and the 14th Amendment because uses such as clubs, lodges, meeting halls, recreation buildings and community centers were permitted by right in certain districts while churches were not.
- Chicago subsequently amended its ordinance and the District Court found that the amendments brought the ordinance into compliance with the 14th Amendment and RLUIPA.

Young v. Jackson County (12/23/2008)

- Oregon Land Use Board of Appeals found that a state administrative rule violates the equal protection clause of RLUIPA (Final Opinion published 12/23/08)
- The state rule:
 - Prohibits churches from locating on EFU land that is located within three miles of an Urban Growth Boundary.
 - Allows a number of similar public assembly uses on said land, including parks, community centers, golf courses, and museums.
- Petitioners cited statements in the RLUIPA legislative record as evidence that Congress intended non-religious assemblies and institutions to encompass a broad scope, including "health clubs", "gyms", "recreation centers", "libraries" and "museums."

Commercial Zone Impacts

- "Temporary Uses" to be deleted from Development Code Schedule 12-2
 - Currently listed as permitted use within GC, CBD, BP, I and IP zoning districts
 - No definition, standards, or approval procedure for "Temporary Uses"
 - No approved "Temporary Uses" operating in GP
 - Deletion would not affect "Itinerant Uses"
- "Temporary Uses" are the only uses being removed from the GC and CBD zones

EXHIBIT F ¹
to UAPC FOF

Industrial Zone Impacts

Zoning Designation	New Uses Permitted	Uses Not Permitted
BP (Business Park)	Religious Assembly	Temporary Uses
I (Industrial)		Athletic Clubs, Museums, Libraries, Temporary Uses
IP (Industrial Park)		Athletic Clubs, Museums, Libraries, Temporary Uses

Industrial Zone Impacts (cont'd)

- Additionally, "Eating/Drinking Establishments" within the "I" (Industrial) zone would be limited to a maximum size of 4,000 square feet.
 - No accessory meeting / banquet space permitted
- The "BP" zone is intended to provide a mixed-use commercial and light industrial zone that is compatible with public assembly uses like churches and athletic clubs.
- The "I" and "IP" zones should be preserved for industrial uses.
 - Deletion of non-industrial uses from list of permitted uses is consistent with this purpose.

Additional Amendments

- Amendments to Articles 20, 25 and 30 are primarily housekeeping in nature, intended to ensure clarity and consistency.
- Housekeeping amendments are not expected to directly impact individual property owners.

Public Outreach

- Per State Measure 56 noticing requirements, individual hearing notices were sent to all property owners within the BP, I, IP, GC and CBD zoning districts.
 - Heavy call volume since notices were mailed.
- Information has been posted on the City's website.
- Public open house held January 6, 2009.

Director's Interpretation

- UAPC will consider an appeal of a Director's Interpretation of the term "Temporary Uses" at its next meeting.
- Per DC Section 1.090, "approval or denial of an application shall be based upon the standards and criteria that were applicable at the time the application was first submitted."
- Any "Temporary Use" application made prior to formal adoption of the text amendment would be processed under current regulations.

Conclusion & Recommendation

- Planning Commission recommend that City Council approve the proposed Development Code text amendment.

Questions?

Why delete "Temporary Uses"?

- Not defined in Code; no standards for approval
 - Allows uses not otherwise permitted in the zone, as long as they are "temporary"?
 - How long is "temporary"?
 - 3 days? 3 months? 3 years?
 - No approved "Temporary Uses" currently operating within Grants Pass
- Deletion would not affect "Itinerant Uses" or other uses permitted within a zone.
- Deletion would ensure that the undefined term is not construed to allow a use that would conflict with RLUIPA requirements.
 - Temporary allowance of public assembly use

Why delete "Temporary Uses"? (cont'd)

- Alternative to deleting "Temporary Uses" is to define the term and set standards under which one could be approved
- Staff has considered potential scenarios under which having an approval process for "Temporary Uses" would be useful.
- Staff does not recommend allowing "Temporary Uses" other than what is already permitted by the Code.

Timeline

- 9/24/08- Director submits original RLUIPA text amendment application.
 - Original amendment, which considered only churches and athletic clubs, was put on hold so additional uses could be considered
- 11/14/08- Director submits amended RLUIPA text amendment application. Notice of amendment mailed to DLCD.
- 12/5/08- Request for Director's Interpretation of "Temporary Use"
- 12/12/08- Director's Interpretation issued
- 12/19/08- Appeal of Director's Interpretation

4.103 Criteria for Amendment

The text of this Code may be recommended for amendment and amended provided that all the following criteria are met:

- (1) The proposed amendment is consistent with the purpose of the subject section and article.
- (2) The proposed amendment is consistent with other provisions of this Code.
- (3) The proposed amendment is consistent with the goals and policies of the Comprehensive Plan, and most effectively carries out those goals and policies of all alternatives considered.
- (4) The proposed amendment is consistent with the functions, capacities and performance standards of transportation facilities identified in the Master Transportation Plan.

City of Grants Pass



March 3, 2009

RE: RLUIPA Development Code Text Amendment

Dear Concerned Citizen:

The City is proposing the Development Code text amendment to address issues related to the federal Religious Land Use and Institutionalized Persons Act (RLUIPA). RLUIPA requires that zoning regulations treat churches and other religious institutions equally to similar public assembly uses such as clubs and lodges, recreation buildings or meeting halls. The primary purpose of the proposed text amendment is to ensure that religious assembly uses are treated equally to similar public assembly uses within the Grants Pass Development Code.

Content of Proposed Text Amendment Submitted by Director

The bulk of the proposal (as submitted by the Director) consisted of amendments to Articles 12 (Zoning Districts) and 30 (Definitions) of the Development Code. Housekeeping amendments to Article 20 and 25 were also included within the submitted proposal.

The amendment to Article 12 would have affected certain land uses within specific commercial and industrial zoning districts. The following table summarizes which land uses would have been impacted within each zone under the Director's proposal.

Zoning Designation	New Land Uses Permitted	Land Uses Not Permitted*
BP (Business Park)	Religious Assembly	Temporary Uses
I (Industrial)		Athletic Clubs, Cultural Exhibits and Libraries, Temporary Uses
IP (Industrial Park)		Athletic Clubs, Cultural Exhibits and Libraries, Temporary Uses
GC (General Commercial)		Temporary Uses
CBD (Central Business District)		Temporary Uses

*Column depicts land uses that are currently permitted within each zoning district but would not be permitted upon approval of the Director's proposal. If said uses exist upon approval of the amendment, they would be allowed to remain as non-conforming uses, but would be subject to the provisions of Development Code Article 15.

NOTE: In addition to the above uses, "Eating / Drinking Establishments" within the "I" (Industrial) zone would be limited to a maximum size of 4,000 square feet.

The amendments to Article 30 (Development Code Definitions) were being proposed primarily for clarification purposes. These amendments are not expected to impact individual property owners.

EXHIBIT 9
to CC Staff Report

Planning Commission Recommendation

After considering the application and public testimony at a hearing held on January 14, 2009, the Urban Area Planning Commission recommended approval of the proposed text amendment, with modifications to some of the content. Primarily, the Planning Commission specified that "Temporary Uses" should not be deleted from the Development Code as part of the text amendment, as was originally proposed. Additionally, the Planning Commission found that certain public assembly uses, including religious assembly, athletic clubs, cultural exhibits and libraries, are an appropriate permitted use within the IP zone. The following table summarizes which specific land uses would be impacted under the proposal as recommended by the Planning Commission.

Zoning Designation	New Land Uses Permitted	Land Uses Not Permitted*
BP (Business Park)	Religious Assembly	
I (Industrial)		Athletic Clubs, Cultural Exhibits and Libraries
IP (Industrial Park)	Religious Assembly	

*Column depicts land uses that are currently permitted within the "I" zoning district but would not be permitted upon approval of the proposal recommended by the Planning Commission. If said uses exist upon approval of the amendment, they would be allowed to remain as non-conforming uses, but would be subject to the provisions of Development Code Article 15.

NOTE: In addition to the above uses, "Eating / Drinking Establishments" within the "I" (Industrial) zone would be limited to a maximum size of 4,000 square feet.

Note that by retaining "Athletic Clubs" as a permitted use within the IP zone, the housecleaning amendment to Article 20 that was part of the original proposal is no longer necessary to retain consistency within the Code. Therefore, the Article 20 amendment is not included under the Planning Commission's recommended proposal.

RLUIPA Summary

The Religious Land Use and Institutionalized Persons Act was signed into law by President Bill Clinton on September 25, 2000. The bill, sponsored by Republican Senator Orrin Hatch and Democratic Senator Ted Kennedy, allows a government to regulate religious land uses as long as applying a regulation does not "substantially burden" the free exercise of religion. A substantial burden is defined as regulations that are "oppressive to a significantly great extent" or those that render a proposed religious land use "effectively impracticable." A government must also demonstrate that the imposition of any burden on religious exercise is in furtherance of a compelling governmental interest, and that the burden is the least restrictive means of furthering that compelling governmental interest.

Additionally, RLUIPA requires that "no government shall impose or implement a land use regulation that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution." For example, if any public assembly use is permitted in a given zone, a religious assembly use (church) must also be allowed in that zone. Determining which uses listed in the Grants Pass Development Code could be construed as "public assembly", and therefore similar to religious assembly, is a significant aspect of this proposed text amendment.

RLUIPA as a statute is brief but potentially very broad in application. When initially signed into law in 2000, it was difficult to foresee exactly how it would impact local government land use regulations. Subsequent case law has more explicitly interpreted how the act applies to local land use regulations.

Federal Court Case: Civil Liberties for Urban Believers v. City of Chicago

Since its enactment, there have been numerous court cases related to RLUIPA. Perhaps the most important of these, in terms of clarifying the meaning of “substantial burden on religious exercise” and interpreting the equal protection clause of RLUIPA, is *Civil Liberties for Urban Believers (CLUB) v. City of Chicago*. CLUB is an association of churches that filed a lawsuit against the City of Chicago, challenging the constitutionality of the city’s zoning ordinance and challenging it under RLUIPA. The plaintiffs had previously attempted to locate religious facilities in various city zoning districts and obtain necessary permits. The permit requirements and approval criteria varied by zone. Each of the organizations involved experienced permit delays and denials and the associated monetary costs, although each was ultimately able to get approval for an acceptable site. The plaintiffs argued that the process was too costly for smaller churches and sought repayment of the costs associated with the delays. The following are key findings of this case:

- Administrative and other costs associated with siting a facility are not substantial burdens under RLUIPA.
- The Federal court initially found that Chicago was violating the Equal Protection Clause of the 14th Amendment (and RLUIPA) because clubs and lodges, meeting halls, recreation buildings and community centers were permitted by right in certain zoning districts, while churches were required to obtain a special use permit. The Court found that these were similar uses that should be treated similarly. **IMPORTANT NOTE:** Chicago subsequently amended its zoning ordinance to address this issue, and the District Court later found that the zoning amendments brought the ordinance into compliance with the 14th Amendment and RLUIPA.

Relationship Between RLUIPA and Grants Pass Development Code Amendment

The primary purpose of the proposed text amendment is to address the 14th Amendment and equal protection clause of RLUIPA. For example, the Grants Pass Development Code currently does not allow churches within the “BP” Business Park, “I” Industrial or “IP” Industrial Park zones, but does allow similar public assembly uses such as athletic clubs, museums and libraries. This is similar to the scenario under which the Federal Court found Chicago in violation of the 14th Amendment and RLUIPA. By amending the list of permitted uses within these zones, the City is taking steps to ensure that its Development Code is consistent with RLUIPA and the findings of the Chicago case.

Within the “I” Industrial zoning district, “Athletic Clubs” and cultural exhibits (museums)/libraries would be deleted from the list of permitted uses. The intent of the amendment is to preserve the “I” Industrial district for industrial uses, consistent with the Development Code purpose statement for the zone.

Within the “BP” and “IP” zoning districts, “Religious Assembly” (churches) would be added to the list of permitted uses. The “BP” district is intended to provide a mixed-use commercial and light industrial zone. The “IP” district is intended to “provide for light industrial uses in a campus-like setting. High Performance Development Standards assure compatibility with adjacent commercial and residential uses.” The Planning Commission found the purpose of the “BP” and “IP” zones to be compatible with public assembly uses like churches and athletic clubs.

“Temporary Uses”

The original proposal considered by the Planning Commission included the deletion of “Temporary Uses” from the Development Code. However, the Planning Commission recommended that “Temporary Uses” not be deleted as part of the text amendment.

“Temporary Uses” are currently listed as permitted within the BP, I, IP, GC and CBD zoning districts. However, the Code does not provide a definition for “Temporary Uses”, nor does it allow them any special exception to standards that apply to regular uses. The deletion of “Temporary Uses” would not affect other defined permitted uses that are temporary in nature, such as “Itinerant Uses.” The intention behind deleting “Temporary Uses” was to ensure that the undefined term is not construed to allow a use that would conflict with RLUIPA requirements.

Conclusion

Hopefully this letter helps to understand the issue at hand. If you have comments regarding the proposal, they may be put on the record orally or in writing at either the Planning Commission or City Council hearing, or submitted in writing to me to be attached to the record.

If you have any further questions, please feel free to contact me by telephone at (541) 474-6355, ex. 6317, or by email at jvoice@grantspassoregon.gov.

Sincerely,



Jared Voice
Associate Planner

Cc: Carl RJ Sniffen, c/f

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 SCOTT YOUNG and ROBIN JAMES,
5 *Petitioners,*

6
7 vs.

8
9 JACKSON COUNTY,
10 *Respondent.*

11
12 LUBA No. 2008-076

13
14 FINAL OPINION
15 AND ORDER

16
17 Appeal from Jackson County.

18
19 Ross Day, Tigard, filed the petition for review and argued on behalf of petitioners.
20 With him on the brief was Oregonians in Action Legal Center.

21
22 Gregory S. Hathaway, filed the response brief and argued on behalf of respondent.
23 With him on the brief were Davis Wright Tremaine LLP, G. Frank Hammond and Allie
24 O'Connor.

25
26 BASSHAM, Board Chair; HOLSTUN, Board Member, participated in the decision.

27
28 RYAN, Board Member, did not participate in the decision.

29
30 REMANDED

12/23/2008

31
32 You are entitled to judicial review of this Order. Judicial review is governed by the
33 provisions of ORS 197.850.

2 **NATURE OF THE DECISION**

3 Petitioners appeal a county decision denying their application to operate a church in
4 an existing dwelling on land zoned for exclusive farm use, located within three miles of an
5 urban growth boundary.

6 **FACTS**

7 The subject property is a 96.30-acre parcel zoned exclusive farm use (EFU), but
8 which is not “high-value farmland” as that term is defined at ORS 215.710. The property is
9 located approximately 2.2 miles from the City of Ashland’s urban growth boundary (UGB),
10 and on or near Squaw Mountain, a place of religious significance for the Native Americans
11 in the Rogue Valley. Petitioners own an additional 1,700 acres surrounding the subject
12 property, that are also zoned EFU. Some of petitioners’ acreage is located more than three
13 miles from the City of Ashland UGB.

14 In 1999, petitioners sought and obtained county approval for an 11,000-square foot
15 single-family residence on the subject property. The dwelling has 10 bedrooms and nine
16 baths with individual entrances, a separate master bedroom and bath, two kitchens, and a
17 large prayer room. The dwelling was constructed in 2002. Petitioners currently use the
18 dwelling as their primary residence, and also as a religious retreat with extended overnight
19 stays and other religious uses.¹

¹ The county’s decision describes petitioners’ religious beliefs and how petitioners chose the site for the dwelling/church as follows:

“The Applicants adhere to the world’s largest and oldest belief system, Animism. More specifically, the Applicants subscribe to Native American Animism known as Huichol Shamanism. This belief system and the rituals utilized are based on practices of the Huichol Indians of the Sierra Madre Mountains near Ixtian in Central Mexico. Huichol Shamanism honors all of creation and maintains that everything has a spirit. This practice focuses on healing and empowerment through personal transformation and direct experiences. Members of this practice participate in rituals and ceremonies that last over a period of several days. Overnight stay is important in the ceremonies to maintain sacred space. The practice of Huichol Shamanism recognizes that power inhabits certain places and the relationship

1 In 2003, petitioners applied for county approval to use the dwelling as a church or
2 religious retreat center with overnight accommodations.² In 2004, a county hearings officer
3 denied the application, based on OAR 660-033-00130(2), which prohibits churches within
4 three miles of a UGB, unless an exception is approved pursuant to ORS 197.732 and OAR
5 chapter 660, division 4. Petitioners appealed the hearings officer's decision to LUBA,
6 arguing that denial of the proposed religious use violated the Religious Land Use and
7 Institutionalized Persons Act of 2000, 42 USC 2000cc (RLUIPA). LUBA upheld the
8 county's decision, however, concluding that petitioners had not exhausted their available
9 remedies because they had not sought an exception to the administrative rule under ORS
10 197.732 and OAR chapter 660, division 4. *Young v. Jackson County*, 49 Or LUBA 327
11 (2005).

12 Petitioners subsequently applied for a "reasons" exception under ORS 197.732 and
13 OAR chapter 660, division 4. The county board of commissioners held a public hearing on
14 the application and, on April 30, 2008, issued a decision denying the requested exception.
15 The county found that petitioners had failed to satisfy the ORS 197.732(2)(c)(B) and OAR
16 660-004-0020(2) requirement for a reasons exception, to demonstrate that "[a]reas which do
17 not require a new exception cannot reasonably accommodate the use." Specifically, the
18 county concluded that petitioners had not demonstrated that the proposed church could not

between the location of the ritual or ceremony and the location of these 'places of power' is an essential component of Applicant's belief system.

"In this matter, the Applicants have generally identified a 'place of power' for the practice of Huichol Shamanism for themselves and others to include the location of their existing home at 3300 Butler Road and surrounding land. The Applicants refer to this area as the 'Circle of Teran.' Applicants believe that the Circle of Teran has been sited at its current location by divine spiritual guidance. The Applicants represented that the proposed church at their existing residence is not located in the center of the 'place of power' but is located in the perfect place based on its proximity to the center of the 'place of power.' The Applicants have represented that the site of the existing residence is uniquely and exclusively where the church must be located." Record 4.

² If the church is approved, petitioners plan to move to a different dwelling under construction on a different parcel they own in the vicinity. After that move, the existing structure would be used exclusively for religious purposes.

1 be located elsewhere on petitioners' lands, on sites that are beyond the three-mile boundary.
2 With respect to RLUIPA, the county found that denial of the proposed church did not impose
3 a "substantial burden" on petitioners' religious exercise and, to the extent it did burden
4 religious exercise, the three-mile rule furthers a compelling governmental interest and is the
5 least restrictive means of furthering that compelling government interest.

6 This appeal followed.

7 **ASSIGNMENT OF ERROR**

8 The "general rule" of RLUIPA, codified at 42 USC 2000cc-(a), prohibits local and
9 state governments from applying a land use regulation in a manner that imposes a
10 "substantial burden" on the religious exercise of a person, religious assembly or institution,
11 unless the government demonstrates that the burden is in furtherance of a compelling
12 governmental interest, and is the least restrictive means of furthering that compelling
13 governmental interest.

14 A separate section of RLUIPA, the so-called "equal terms" provision at 42 USC
15 2000cc-(b)(1), provides that:

16 "No government shall impose or implement a land use regulation in a manner
17 that treats a religious assembly or institution on less than equal terms with a
18 nonreligious assembly or institution."

19 Petitioners argue in relevant part that the county's application of the three-mile rule to
20 deny the proposed church violates both the "general rule" of RLUIPA and the "equal terms"
21 prohibition. Because we agree with petitioners that application of the three-mile rule at
22 OAR 660-033-00130(2) to deny the proposed church violates the "equal terms" provision of
23 RLUIPA, we do not address petitioners' challenges under the general rule.³

³ A claim under the equal terms provision does not require petitioners to also demonstrate that the county has imposed a substantial burden on their religious exercise, as under the general rule. *Digrugilliers v. Consolidated City of Indianapolis*, 506 F3d 612, 616 (7th Cir 2007). Similarly, under the equal terms provision it is irrelevant that there are zones or alternative locations where the proposed religious use is allowed. *Id.* Thus, for purposes of the equal terms provision, the county's main rationale for denying the application—that petitioners could locate the church on other land they own outside the three-mile boundary—is not relevant.

1 **A. Waiver and Law of the Case**

2 The county argues, initially, that petitioners failed to raise any issue below regarding
3 the equal terms provision, and therefore the issue is waived under ORS 197.763(1).⁴ In
4 addition, the county argues petitioners raised a similar equal terms challenge in *Young v.*
5 *Jackson County*, LUBA correctly rejected the argument, and petitioners have offered no
6 reason to reach a different conclusion.

7 With respect to ORS 197.763(1), at oral argument petitioners cited to testimony
8 below in which their attorney argued that singling out churches to comply with the three-mile
9 rule is unequal and discriminatory, given that the administrative rule permits a number of
10 other uses that have similar impacts on agricultural lands. Record 61, 605-08. We agree
11 with petitioners that that testimony is sufficient to raise the issue of whether application of
12 the three-mile rule violates the equal terms provision.

13 The county is correct that in *Young v. Jackson County* we addressed an argument that
14 we understood was based on the equal terms provision. After agreeing with the county that
15 requiring petitioners to seek a reasons exception to the three-mile rule is not in itself a
16 substantial burden on their religious exercise, we addressed miscellaneous other arguments,
17 including the following:

18 “Petitioners argue generally that applying the three-mile rule to churches but
19 not to other uses with similar impacts is arbitrary and suggests an animus
20 towards religion. While petitioners do not specifically couch it as such, this is
21 an argument under RLUIPA’s equal terms and discrimination provisions at 42
22 USC § 2000cc-(b)(1) and (2). * * * The thrust of petitioners’ argument is that
23 to allow certain other uses within three miles of a UGB, but not religious uses

⁴ ORS 197.763(1) provides:

“An issue which may be the basis for an appeal to the Land Use Board of Appeals shall be raised not later than the close of the record at or following the final evidentiary hearing on the proposal before the local government. Such issues shall be raised and accompanied by statements or evidence sufficient to afford the governing body, planning commission, hearings body or hearings officer, and the parties an adequate opportunity to respond to each issue.”

1 violates RLUIPA. In *1000 Friends of Oregon v. Clackamas County* [46 Or
2 LUBA 375 (2004)], we addressed a more comprehensive argument on this
3 precise issue. We do not repeat our analysis here, but only add that we found
4 that the three-mile rule does not violate the equal terms and discrimination
5 provisions of RLUIPA and that nothing in this petition for review convinces
6 us to change our opinion. See 46 Or LUBA at 391-401.” *Young*, 49 Or LUBA
7 at 342.

8 As discussed below, the above-quoted characterization of our holding in *1000*
9 *Friends of Oregon* is overstated; our analysis in that case was limited to the circumstances
10 presented and in fact suggested that, in other circumstances, application of the three-mile rule
11 would violate the RLUIPA equal terms provision. Further, our resolution of what we
12 understood to be petitioners’ equal terms argument is *dicta*, because we had already
13 concluded that petitioners’ RLUIPA claims were premature, until petitioners filed an
14 application for a reasons exception and the county denied that application. For that reason,
15 petitioners are not precluded from advancing a new equal terms challenge, in an appeal of the
16 county’s denial of that subsequent application for a reasons exception. See *Kingsley v. City*
17 *of Portland*, 55 Or LUBA 256, 263-64 (2007), *aff’d* 218 Or App 229, 179 P3d 752 (2008)
18 (*dicta* in earlier unappealed denial does not preclude the city from reaching a different
19 conclusion in a subsequent related decision based on a new application).

20 **B. State Law Governing Churches on EFU land.**

21 Resolution of petitioners’ equal terms argument requires some review of the land use
22 scheme governing EFU-zoned lands within three miles of a UGB. ORS 215.283(1)(b)
23 generally permits in any area zoned for exclusive farm use “[c]hurches and cemeteries in
24 conjunction with churches.” However, OAR 660-033-0120, part of the administrative rule
25 implementing Statewide Planning Goal 3 (Agricultural Land), restricts where and under what
26 circumstances new churches may be located on EFU land.

27 OAR 660-033-0120, Table 1, sets out the uses that are prohibited, permitted, or
28 permitted with restrictions in EFU zones. Table 1 imposes two relevant sets of restrictions,
29 for present purposes. The first is a generally widespread prohibition on establishment of new

1 non-farm uses on high-value farm soils, including churches, golf courses, and private parks.
2 The second relevant restriction is a more narrowly focused prohibition on establishment of
3 new churches and schools on EFU-zoned land, without regard to the quality of the
4 agricultural soils, that is within three miles of an urban growth boundary. Table 1 makes
5 churches and schools—and only churches and schools—subject to OAR 660-033-0130(2),
6 which provides that:

7 “The use shall not be approved within three miles of an urban growth
8 boundary unless an exception is approved pursuant to ORS 197.732 and OAR
9 chapter 660, division 4. Existing facilities wholly within a farm use zone may
10 be maintained, enhanced or expanded on the same tract, subject to other
11 requirements of law.”

12 In contrast, Table 1 permits a number of other non-farm uses to be established on EFU-zoned
13 land within three miles of UGB, including (1) public and private parks and playgrounds, (2)
14 community centers operated by and for residents of rural areas, (3) golf courses, and (4)
15 living history museums.⁵

⁵ Table 1 is difficult to summarize. The table divides up various uses into related categories. Under the category of “Parks/Public/Quasi-Public” it lists the following uses, with symbols (omitted here) indicating whether the use is allowed, permitted with certain restrictions, or prohibited on high-value farmland and non-high-value farmland. For present purposes, it is important to note that of all the listed uses, the three-mile rule at OAR 660-033-0130(2) applies only to churches and schools, the first two uses listed. All other listed uses are allowed, some with restrictions, on non-high value farmland within three miles of a UGB.

(1) Public or private schools, including all buildings essential to the operation of a school; (2) Churches and cemeteries in conjunction with churches consistent with ORS 215.441; (3) Private parks, playgrounds, hunting and fishing preserves and campgrounds; (4) Parks, and playgrounds; (5) Community centers owned by a governmental agency or a nonprofit organization and operated primarily by and for residents of the local rural community; (6) Golf courses; (7) Living history museum; (8) Firearms training facility as provided in ORS 197.770; (9) Armed forces reserve center as provided for in ORS 215.213(1); (10) Onsite filming and activities accessory to onsite filming for 45 days or less as provided for in ORS 215.306; (11) Onsite filming and activities accessory to onsite filming for more than 45 days as provided for in ORS 215.306; (12) A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary; (13) Expansion of existing county fairgrounds and activities directly relating to county fairgrounds governed by county fair boards established pursuant to ORS 565.210; (14) Operations for the extraction and bottling of water; (15) Land application of reclaimed water, agricultural or industrial process water or biosolids; and (16) A county law enforcement facility that lawfully existed on August 20, 2002, and is used to provide rural law enforcement services primarily in rural areas, including parole and post-prison supervision, but not including a correctional facility as defined under ORS 162.135 as provided for in ORS 215.283(2).

1 In *1000 Friends of Oregon v. Clackamas County*, 46 Or LUBA 375, 398-401, *appeal*
2 *dismissed* 194 Or App 212, 94 P3d 160 (2004), we rejected an argument that OAR 660-033-
3 0120, Table 1, violated RLUIPA's equal terms provision because the rule allows rural
4 community centers, but not the proposed new church, on high-value farmland located within
5 three miles of the City of Molalla UGB.⁶ Because the property at issue in *1000 Friends of*
6 *Oregon* was high-value farmland, almost all new non-farm uses comparable to churches were
7 prohibited, including golf courses and private parks, etc., with the exception of a rural
8 community center, which is permitted on high-value farmland. However, our conclusion that
9 application of OAR 660-033-0130(2) did not violate the equal terms provision was based on
10 a key factual element in that case: the rule permitted only community centers that serve a

⁶ We held in *1000 Friends of Oregon*:

“The county code and rule generally prohibit all ‘churches’ within three miles of a UGB, unless an exception is taken, regardless of whether that church serves an urban or rural congregation, or some combination thereof. If it were the case that the proposed church primarily served ‘residents of the local rural community’ within the meaning of the rule, we would likely agree with the county and intervenor that prohibiting such a church under the county code and rule but allowing a community center on the subject property would fail to treat a religious assembly on ‘equal terms’ as a nonreligious assembly, and would thus violate 42 USC § 2000cc-(b)(1). * * *

“However, those are not the facts. We agree with petitioner that the prohibition on churches within three miles of a UGB, like the identical prohibition on schools, is intended to help preserve the urban-rural boundary protected by Goal 14, by limiting urban uses on rural land close to UGBs. The purpose of those prohibitions seems relatively clear: to support the function of UGBs by discouraging the establishment of religious assemblies and schools on rural lands just outside the UGB. Such lands are often if not invariably less expensive to acquire and develop than lands within the UGB. But for the prohibition, it is reasonable to suppose that at least some religious assemblies and schools that primarily serve an urban population and that would otherwise remain or locate within the UGB would instead choose to locate on EFU-zoned lands just outside the UGB, where schools and churches are otherwise permitted. Indeed, the present case appears to represent the very scenario that the county code and rule prohibition on churches within three miles of the UGB is designed to discourage.

“The rule provision for community centers ‘operated primarily by and for residents of the local rural community’ does not implicate these same policy concerns. Therefore, as applied to the facts of this case, the prohibition on churches within three miles of a UGB does not treat the proposed church on less than ‘equal terms’ with community centers, for purposes of 42 USC § 2000cc-(b)(1). * * * The county erred in concluding otherwise.” 46 Or LUBA at 399-401.

1 rural population, while the proposed church served an urban congregation within the City of
2 Molalla. We commented that if the church instead served a rural congregation we would
3 likely agree with the county that the rule violated RLUIPA's equal terms provision, because
4 there would then be no legally significant distinction between the prohibited religious use
5 and the allowed non-religious use, with respect to the purpose of the three-mile rule. 46 Or
6 LUBA at 399.

7 **C. Federal Cases Interpreting the Equal Terms Provision**

8 Petitioners cite three federal court decisions holding that zoning schemes that prohibit
9 religious assemblies and institutions but allow secular assemblies and institutions violate
10 RLUIPA's equal term provision. *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F3d 1214
11 (11th Cir 2004); *Konikov v. Orange County*, 410 F3d 1317 (11th Cir 2005); *Lighthouse*
12 *Institute for Evangelism v. City of Long Branch*, 510 F3d 253 (3rd Cir 2007), *cert den* 128 S
13 Ct 2503, 171 L Ed 2d 787 (2008).

14 In *Midrash*, the zoning scheme prohibited churches and synagogues within a business
15 district, but permitted "private clubs," among other similar secular uses. The Eleventh
16 Circuit found that private clubs and other non-religious uses allowed in the zone were
17 "assemblies" for purposes of RLUIPA, and that the prohibition on churches and synagogues
18 violated the equal terms provision.

19 In *Konikov*, the city required that "religious institutions" obtain a special permit in a
20 residential zone, and sought to enjoin use of a dwelling for thrice weekly religious meetings.
21 However, the city allowed secular social organizations, such as cub scouts, to assemble in
22 dwellings with the same frequency, and without obtaining a permit. The Eleventh Circuit
23 held that the city's implementation of its zoning code treated religious assemblies differently
24 than secular assemblies that met with similar frequency, and thus violated the equal terms
25 provision.

1 In *Lighthouse*, the zoning ordinance for a downtown commercial district permitted a
2 variety of uses, including an “assembly hall,” but did not permit churches. The Third Circuit
3 first construed 42 USC 2000cc-(b)(1) to require that a person asserting a claim under the
4 equal terms provisions must show (1) it is a religious assembly or institution, (2) subject to a
5 land use regulation, which regulation (3) treats the religious assembly on less than equal
6 terms with (4) nonreligious assembly or institution (5) that causes no lesser harm to the
7 interests the regulation seeks to advance. 510 F3d at 270. The Third Circuit found that “it is
8 not apparent from the allowed uses why a church would cause greater harm to regulatory
9 objectives than an ‘assembly hall’ that could be used for unspecified meetings[,]” and
10 concluded that the zoning code violated the equal terms provision. *Id.* at 272.

11 As petitioners note, the Eleventh Circuit and Third Circuit differ in two particulars in
12 their analyses of equal terms claims. First, the Third Circuit would require a showing under
13 the fifth element listed above, that the zoning scheme permits a nonreligious assembly or
14 institution that “causes no lesser harm to the interests the regulation seeks to advance.” The
15 Eleventh Circuit test does not require that the plaintiff make that comparative showing,
16 although the Eleventh Circuit considers the governmental interest at stake in a subsequent
17 step of the analysis, when applying strict scrutiny. The Third Circuit test rejects strict
18 scrutiny in favor of “strict liability,” that is, if the regulation treats religious assemblies on
19 less than equal terms with nonreligious assemblies that are no less harmful to the regulatory
20 objective, then the regulation fails, without more. 510 F3d at 266. According to the Third
21 Circuit, Congress explicitly required strict scrutiny in evaluating claims under the “general
22 rule” at 42 USC 2000cc-(a), but did not similarly specify that strict scrutiny should be
23 applied to equal terms and discrimination claims under 42 USC 2000cc-(b). *Id.* at 269.⁷

⁷ At least one district court has questioned whether there is a substantive difference between the two tests. *River of Life Kingdom Ministries v. Village of Hazel Crest*, 2008 US Dist LEXIS 53491 (ND Ill, July 14, 2008), n 10:

1 No Oregon state or federal court has, to our knowledge, adopted either approach.
2 The Third Circuit's approach is somewhat more consistent with the approach we followed in
3 *1000 Friends of Oregon*. For the reasons set out below, we conclude that under either
4 approach the county's denial of the proposed church under the three-mile rule violates the
5 equal terms provision.

6 **D. Analysis**

7 As we indicated in *1000 Friends of Oregon*, the apparent purpose of the three mile
8 rule at OAR 660-033-00130(2) is to help preserve the urban-rural boundary that is required
9 by Statewide Planning Goal 14 (Urbanization). The rule seeks to further that purpose by
10 prohibiting certain uses (churches and schools) that often serve an urban or suburban
11 population, but which due to particular land needs and financial constraints, are often drawn
12 to locate on cheaper agricultural land close to urban areas and the urban populations served
13 by those uses. The question, for purposes of the equal terms provision, is whether the rule
14 permits non-religious uses within the three mile boundary that can fairly be characterized as
15 "assemblies or institutions," and if so whether those non-religious assemblies or institutions,
16 as compared to religious assemblies or institutions, cause "no lesser harm to the interests the
17 regulation seeks to advance." *Lighthouse*, 510 F3d at 270.

18 As noted, OAR 660-033-0120, Table 1 allows on EFU-zoned land within three miles
19 of a UGB a number of uses, including public and private parks and playgrounds, golf
20 courses, and living history museums. Petitioners argue that, like churches, these uses serve
21 various social and recreational functions and qualify as secular "assemblies and institutions"

"The court is not certain there is a real difference between the Equal Terms tests used by the Eleventh and Third Circuits. The Third Circuit rejects any strict scrutiny analysis, but in essence adds a strict scrutiny perspective in its analysis of comparability. It looks to the government interest at stake in determining whether religious and non-religious uses are comparable. The Eleventh Circuit applies strict scrutiny after adopting an extremely superficial analysis of comparability. The court questions whether this is a real difference or only an apparent difference emerging from excessive attention to counting and refining 'prongs.'"

1 for purposes of RLUIPA. Petitioners cite to statements in the legislative record of RLUIPA
2 as evidence that Congress intended non-religious assemblies and institutions to encompass a
3 broad scope, including “places of amusement” and “museums.”⁸ In addition, petitioners
4 argue that some federal courts have recognized that golf courses, parks, playgrounds and
5 similar recreational facilities may be non-religious “assemblies or institutions” for purposes
6 of RLUIPA. *Covenant Christian Ministries, Inc. v. City of Marietta*, 2008 US Dist LEXIS
7 54304 (ND Ga, March 31, 2008) (private parks and playgrounds, and neighborhood
8 recreation centers, are assemblies within the meaning of RLUIPA); *River of Life Kingdom*
9 *Ministries*, 2008 US Dist LEXIS 53491, at 26-27 (same); *Congregation Kol Ami v. Abington*
10 *Twp*, 309 F3d 120, 141 (3rd Cir 2002) (suggesting an equal terms violation would exist if a
11 low density residential zone prohibited a synagogue but allowed a “country club” with a
12 full-scale golf course).

13 The county does not dispute that golf courses, parks, playgrounds and living history
14 museums could constitute assemblies or institutions for purposes of RLUIPA. Although it is
15 a debatable question, we agree with petitioners that these uses constitute “assemblies” for
16 purposes of comparison under the RLUIPA equal terms provision.

17 OAR 660-033-0130(20) defines “golf course” and associated facilities to permit not
18 only the golf course itself, but also accessory facilities such as a clubhouse, pro shop and
19 food and beverage services.⁹ OAR 660-033-0130(31) permits “public parks” in EFU zones

⁸ Petitioners quote the following passage from the House Report on the Religious Liberty Protection Act of 1999, which petitioners assert was incorporated into the legislative history of RLUIPA:

“Significantly, non-religious assemblies need not follow the same rules. This survey revealed that uses such as banquet halls, clubs, community centers, funeral parlors, fraternal organizations, health clubs, gyms, **places of amusement**, recreation centers, lodges, libraries, **museums**, municipal buildings, meeting halls, and theatres are often permitted as of right in zones where churches require a special use permit, or permitted on special use permit where churches are wholly excluded.” Petition for Review 11 (emphasis in original).

⁹ OAR 660-033-0130(20) provides, in relevant part:

1 including the uses specified under OAR 660-034-0035 (state parks) or 660-034-0040 (local
2 parks). In turn, the list of uses allowed in state and local parks under OAR chapter 660,
3 division 034 is extensive, potentially including campground and day use areas, recreational

“‘Golf Course’ means an area of land with highly maintained natural turf laid out for the game of golf with a series of 9 or more holes, each including a tee, a fairway, a putting green, and often one or more natural or artificial hazards. A ‘golf course’ for purposes of ORS 215.213(2)(f), 215.283(2)(f) and this division means a 9 or 18 hole regulation golf course or a combination 9 and 18 hole regulation golf course consistent with the following:

- “(a) A regulation 18 hole golf course is generally characterized by a site of about 120 to 150 acres of land, has a playable distance of 5,000 to 7,200 yards, and a par of 64 to 73 strokes;
- “(b) A regulation 9 hole golf course is generally characterized by a site of about 65 to 90 acres of land, has a playable distance of 2,500 to 3,600 yards, and a par of 32 to 36 strokes;

“* * * * *

“(d) Counties shall limit accessory uses provided as part of a golf course consistent with the following standards:

“(A) An accessory use to a golf course is a facility or improvement that is incidental to the operation of the golf course and is either necessary for the operation and maintenance of the golf course or that provides goods or services customarily provided to golfers at a golf course. An accessory use or activity does not serve the needs of the non-golfing public. Accessory uses to a golf course may include: Parking; maintenance buildings; cart storage and repair; practice range or driving range; clubhouse; restrooms; lockers and showers; food and beverage service; pro shop; a practice or beginners course as part of an 18 hole or larger golf course; or golf tournament. Accessory uses to a golf course do not include: Sporting facilities unrelated to golfing such as tennis courts, swimming pools, and weight rooms; wholesale or retail operations oriented to the non-golfing public; or housing.

“(B) Accessory uses shall be limited in size and orientation on the site to serve the needs of persons and their guests who patronize the golf course to golf. An accessory use that provides commercial services (e.g., pro shop, etc.) shall be located in the clubhouse rather than in separate buildings.

“(C) Accessory uses may include one or more food and beverage service facilities in addition to food and beverage service facilities located in a clubhouse. Food and beverage service facilities must be part of and incidental to the operation of the golf course and must be limited in size and orientation on the site to serve only the needs of persons who patronize the golf course and their guests. Accessory food and beverage service facilities shall not be designed for or include structures for banquets, public gatherings or public entertainment.”

1 facilities of various kinds, interpretative centers, natural history and cultural museums and
2 educational facilities, and in certain circumstances, lodging and park retreat facilities.
3 OAR 660-034-0010(12) defines “park retreat” as “an area of a state park designated for
4 organized gatherings” that includes a meeting hall.¹⁰

¹⁰ OAR 660-034-0035(2) provides:

“The park uses listed in subsection (a) through (i) of this section are allowed in a state park subject to the requirements of this division, OAR chapter 736, division 18, and other applicable laws. Although some of the uses listed in these subsections are generally not allowed on agricultural lands or forest lands without exceptions to Statewide Planning Goals 3 or 4, a local government is not required to adopt such exceptions in order to allow these uses on agricultural or forest land within a state park provided the uses, alone or in combination, meet all other applicable requirements of statewide goals and are authorized in a state park master plan adopted by OPRD, including a state park master plan adopted by OPRD prior to July 15, 1998:

- “(a) Campground areas: recreational vehicle sites; tent sites; camper cabins; yurts; teepees; covered wagons; group shelters; campfire program areas; camp stores;
- “(b) Day use areas: picnic shelters, barbecue areas, swimming areas (not swimming pools), open play fields, play structures;
- “(c) Recreational trails: walking, hiking, biking, horse, or motorized off-road vehicle trails; trail staging areas;
- “(d) Boating and fishing facilities: launch ramps and landings, docks, moorage facilities, small boat storage, boating fuel stations, fish cleaning stations, boat sewage pumpout stations;
- “(e) Amenities related to park use intended only for park visitors and employees: laundry facilities; recreation shops; snack shops not exceeding 1500 square feet of floor area;
- “(f) Support facilities serving only the park lands wherein the facility is located: water supply facilities, sewage collection and treatment facilities, storm water management facilities, electrical and communication facilities, restrooms and showers, recycling and trash collection facilities, registration buildings, roads and bridges, parking areas and walkways;
- “(g) Park Maintenance and Management Facilities located within a park: maintenance shops and yards, fuel stations for park vehicles, storage for park equipment and supplies, administrative offices, staff lodging;
- “(h) Natural and cultural resource interpretative, educational and informational facilities in state parks: interpretative centers, information/orientation centers, self-supporting interpretative and informational kiosks, natural history or cultural resource museums, natural history or cultural educational facilities, reconstructed historic structures for cultural resource interpretation, retail stores not exceeding 1500 square

1 There are no comparable administrative rules for *private* parks or playgrounds, and
2 there is some uncertainty over what uses are permitted in a private park. *See Utsey v. Coos*
3 *County*, 176 Or App 524, 573, 32 P3d 933 (2001) (Deits, dissenting) (opining that a
4 proposed motocross racetrack is not a permissible component of a “private park” allowed
5 under ORS 215.283(2)). It is reasonable to presume, however, that at a minimum what is
6 permitted in a public park on EFU land under the applicable statewide planning goals would
7 also be permitted in a private park on EFU land.¹¹

8 OAR 660-033-0130(21) defines a “living history museum” as “a facility designed to
9 depict and interpret everyday life and culture of some specific historic period using authentic
10 buildings, tools, equipment and people to simulate past activities and events.”¹² A living
11 history museum may include limited commercial activities and facilities to be located in a

feet for sale of books and other materials that support park resource interpretation
and education;

“(i) Visitor lodging and retreat facilities in state parks: historic lodges, houses or inns
and the following associated uses in a state park retreat area only:

“(A) Meeting halls not exceeding 2000 square feet of floor area;

“(B) Dining halls (not restaurants).”

OAR 660-034-0040 incorporates by reference the above list of permissible uses, with respect to local
parks.

¹¹ Table 1 permits “campgrounds” as part of a private park. OAR 660-033-0130(19) has a special, limited
version of the three-mile rule that is applicable only to private campgrounds. The rule prohibits private
campgrounds within three miles of a UGB, unless located on a lot or parcel that is contiguous to a lake or
reservoir.

¹² OAR 660-033-0130(21) provides, in relevant part:

“‘Living History Museum’ means a facility designed to depict and interpret everyday life and
culture of some specific historic period using authentic buildings, tools, equipment and
people to simulate past activities and events. As used in this rule, a living history museum
shall be related to resource based activities and shall be owned and operated by a
governmental agency or a local historical society. A living history museum may include
limited commercial activities and facilities that are directly related to the use and enjoyment
of the museum and located within authentic buildings of the depicted historic period or the
museum administration building, if areas other than an exclusive farm use zone cannot
accommodate the museum and related activities or if the museum administration buildings
and parking lot are located within one quarter mile of an urban growth boundary. * * *”

1 museum administrative building if the building and parking lot are located within one-quarter
2 mile of an urban growth boundary.

3 An “assembly” for purposes of the equal terms provision has been defined as places
4 where groups or individuals dedicated to similar purposes, whether social, educational,
5 recreational or otherwise, meet together to pursue their interests. *Midrash Sephardi, Inc.*,
6 366 F3d at 1230-31. In our view, a golf course, a private or public park, and a living history
7 museum permitted under the administrative rule fall into that definition, because they are
8 places or facilities where groups or individuals gather to pursue common social or
9 recreational interests. The county does not contend these uses are not “assemblies” within
10 the meaning of the equal terms provision.

11 While there are obvious functional differences between a religious assembly and a
12 golf course, private or public park, or a living history museum, the focus under the equal
13 terms provision (at least as the Third Circuit construes it) is less on functional similarities or
14 dissimilarities and more on whether the secular assembly “causes no lesser harm to the
15 interests the regulation seeks to advance.” *Lighthouse*, 510 F3d at 270. As we explained in
16 *1000 Friends of Oregon*, a rural community center allowed within three miles of the city’s
17 UGB does not implicate the same policy concerns as the proposed church, because it is
18 expressly limited to serving a rural population and therefore does not harm the primary
19 regulatory purpose behind the three-mile rule: to protect the integrity of the UGB against
20 uses that primarily serve an urban population but which often tend to locate, usually for
21 financial reasons, on less expensive agricultural lands close to UGBs. However, golf
22 courses, private and public parks and living history museums allowed under the rule are not
23 similarly limited to serving rural populations. The rule permits golf courses, private and
24 public parks and living history museums on EFU land within three miles of a UGB, even if
25 those uses primarily attract or are intended to serve the nearby urban population.

1 The county's main response on the merits is an argument that petitioners failed to
2 present any evidence below that golf courses, parks or living history museums create similar
3 adverse impacts as churches. 42 USC 2000cc-2(b) provides that "[i]f the plaintiff produces
4 prima facie evidence to support a claim alleging a violation of [42 USC 2000cc], the
5 government shall bear the burden of persuasion on any element of the claim, except that the
6 plaintiff shall bear the burden of persuasion on whether the law * * * substantially burdens
7 the plaintiff's exercise of religion." We understand the county to argue that petitioners failed
8 to present "prima facie" evidence supporting their claim that the three-mile rule violates the
9 equal terms provision.

10 However, it is not clear what kind of evidence the county believes is necessary with
11 respect to a claim alleging violation of the RLUIPA equal terms provision. In the posture of
12 this case, the issue is primarily a legal one: does the applicable zoning scheme allow
13 religious assemblies on EFU lands within three miles of a UGB on less equal terms than non-
14 religious assemblies? That issue is resolved primarily if not exclusively by examining the
15 text of the relevant statutes, administrative rules and implementing code provisions. The
16 applicable rules allow golf courses, parks and living history museums on EFU lands within
17 three miles of the UGB, while at the same time prohibit churches in the same area. We have
18 determined that those non-religious uses are "assemblies" for purposes of the equal terms
19 provision, and the county does not contend otherwise. The rules do not limit non-religious
20 assemblies on EFU lands within three miles of a UGB to use by residents of rural areas, or
21 include any other limitation that would ensure that those uses cause "no lesser harm to the
22 interests" the three-mile rule seeks to advance. If there is some legally significant factual
23 variable the evidence of which must be present in the record in order to resolve petitioners'
24 equal term claim, the county does not identify what it is.¹³

¹³ The county does not identify what kind of evidence of comparative "adverse impacts" petitioners must submit. If the county is suggesting that petitioners must submit, for example, traffic studies comparing the

1 The county offers no other arguments on the merits. For the above reasons, we
2 conclude that petitioners have adequately demonstrated the elements of an equal terms claim
3 under the Third Circuit approach described in *Lighthouse*. Specifically, petitioners have
4 demonstrated that the administrative rules treat the proposed church on “less than equal
5 terms” with several nonreligious assemblies that cause “no lesser harm to the interests the
6 regulation seeks to advance.” 510 F3d at 270. Under the Third Circuit’s strict liability
7 approach, the result is that the county cannot apply the administrative rule to deny the
8 proposed church.

9 As noted, under the Eleventh Circuit’s approach, there is a subsequent step of the
10 analysis under which the rule may still be applied to prohibit the proposed religious
11 assembly, if the rule survives review under the strict scrutiny standard. Under the strict
12 scrutiny standard, the government must demonstrate that non-equal treatment is in
13 furtherance of a compelling governmental interest, and is the least restrictive means of
14 furthering that compelling governmental interest. 42 USC 2000cc(a). The county argues, in
15 responding to petitioners’ arguments under the “general rule” at 42 USC 2000cc(a), that the
16 county’s findings adequately demonstrate that the three-mile rule furthers a compelling
17 governmental interest and is the least restrictive means of furthering that compelling
18 governmental interest.

19 We assume for purposes of analysis that the state has a compelling interest in
20 preserving agricultural land and the integrity of urban growth boundaries. However, it does
21 not follow that there is a compelling state interest in restricting the location of religious
22 assemblies on agricultural lands within three miles of a UGB, while not similarly restricting

traffic impacts of a golf course on the subject property versus the proposed church, we disagree. The salient issue for purposes of an equal terms analysis is whether the land use regulations treat religious assemblies on less equal terms than non-religious assemblies, with respect to the regulatory objective. The purpose of the three-mile rule is only indirectly related, if related at all, to traffic impacts. As noted, the purpose of the three-mile rule is to help preserve the integrity of the UGB and to preserve agricultural land by preventing urban uses from locating on EFU land near UGBs.

1 comparable non-religious assemblies that, on their face, appear to impact the same state
2 interests to no less degree. *Konikov*, 410 F3d at 1329 (by applying different standards for
3 religious gatherings and non-religious gatherings having the same impact, the county
4 impermissibly targets religious assemblies without compelling justification).

5 Because the county has not established that there is a compelling governmental
6 interest in prohibiting churches but allowing other uses that also impact the state's interest in
7 protecting the function of the UGB, we need not address whether the rule is the "least
8 restrictive" means of furthering that interest.¹⁴ Accordingly, we conclude that even if the
9 strict scrutiny test applies, the county has not demonstrated that the three-mile rule can be
10 permissibly applied as a basis to deny the proposed church.

11 The assignment of error is sustained, in part.

12 CONCLUSION

13 OAR 661-010-0071(1) provides that LUBA shall reverse a land use decision that
14 violates a provision of applicable law and is prohibited as a matter of law. The county's
15 primary basis for denial is the three-mile rule, and that is the exclusive focus of the parties'
16 arguments in their briefs. However, the county argued at oral argument that the county's
17 findings identify several local approval criteria that the proposed church does not comply
18 with. According to the county, those unchallenged findings may constitute independent
19 bases for denial, regardless of whether the three-mile rule violates the equal terms provision.

20 The county is correct that the county's decision addresses various comprehensive
21 plan and land use regulations and found that some of them are not met. However, it appears

¹⁴ However, we note that the three-mile rule could probably be narrowed in a manner that would both treat religious and non-religious assemblies on equal terms and further the state's interest in preserving the function of the UGB from the threat of uses located on rural agricultural lands that serve urban populations. The rule could be amended to treat churches and other uses that constitute "assemblies" in the same manner as it treats community centers, which are allowed on EFU land within three miles of a UGB if they are "operated primarily by and for residents of the local rural community." However problematic such a rule might be in practice, it would not violate the equal terms provision. *1000 Friends of Oregon v. Clackamas County*, 46 Or LUBA at 399-401.

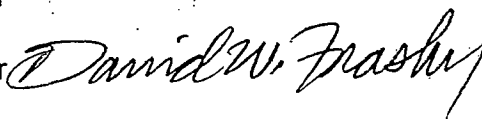
1 to us that most if not all of the findings of noncompliance with local plan and code
2 regulations are based on the county's denial of the reasons exception, or are based on plan
3 and code provisions that apply only if the reasons exception is granted. It is not clear if there
4 is any basis for denial under the county's plan or zoning ordinance that is independent of the
5 reasons exception. The parties' briefs do not address the question. Under these
6 circumstances, we deem it more appropriate to remand the county's decision rather than
7 reverse it, because it is not clear whether or not the county's denial is "prohibited as a matter
8 of law." On remand, the county may consider whether the proposed church fails to comply
9 with any plan or zoning ordinance provision that is independent of the three-mile rule and the
10 reasons exceptions standards, and that applies on equal terms to other uses allowed on EFU-
11 zoned land.

12 The county's decision is remanded.

TO: Mayor Murphy and Members
of the Grants Pass City Council

Council Memorandum No. 030

FROM: David W. Frasher, City Manager



DATE: February 2, 2009

SUBJECT: Parks Advisory Board request

A memo is attached from Chairman John Reinhart of the Parks Advisory Board asking Council to initiate a text change. The text change would allow a dog park on industrial property owned by the State of Oregon Youth Authority. A dog park is not allowed under current zoning.

Should Council desire to initiate the requested action, I recommend our Community Development staff provide Council with pros and cons of implementing the request. I will also have Director Seybold more accurately estimate City development and operation costs, as long-term operations will have budget implications.

My apologies in the delay forwarding this request to Council, we have been caught up in a flurry of other memos and information requests concerning the Public Safety levy, budget, etc.

Please let us know how you want to proceed so we can inform your Parks Board accordingly. Their next meeting is February 18, 2009.

EXHIBIT 11
to CC Staff Report

INTEROFFICE MEMORANDUM

TO: DAVID FRASHER
FROM: MARTIN SEYBOLD *Martin*
SUBJECT: REQUEST TO COUNCIL FROM THEIR PARK ADVISORY BOARD
DATE: JANUARY 7, 2009

David,

A memo is attached from the chair of the Park Advisory Board asking the City Council to initiate action to allow a dog park on property owned by the Oregon State Youth Authority on F Street.

The board would like the City to use the State public property to develop a dog park. As the site is already fenced, it looks like a low cost option to provide a public service (dog park) that is desired by the community.

In my opinion, the use of the site for a dog park would have a negligible impact on our industrial land inventory. It is improbable there will be a flood of request for dog parks in the industrial zone. In addition, the proposed site would be a temporary use until the State develops the land to expand the youth correction facility. The State has no immediate plans to expand the facility so maximizing public use of this vacant public land looks like a positive win-win for the community.

I support the park board recommendation.

City of Grants Pass



January 7, 2009

Mayor and City Council
101 N.W. A Street
Grants Pass, Oregon 97526

Dear Mayor and Members of the City Council:

I am writing on behalf of the Parks Advisory Board regarding a low cost opportunity to create a City dog park adjoining the Oregon Youth Authority on F Street. We are writing to request the Council consider initiating a text amendment to allow a dog park in an industrial zone or revise the definition of minor public uses to include dog parks.

Background

Community dog parks are becoming increasingly popular across the United States. Unfortunately, there are no off-leash dog exercise areas in our city parks. The County is in the process of constructing a small facility at Schroder Park and an even smaller prospective site is planned at the City's Redwood Park. There are no current plans for a dog park on the north side of the river.

One of our board members has investigated an opportunity to maximize the use of public lands by creating a dog park on vacant land owned by and adjacent to the Oregon Youth Authority. The State has indicated they would allow the use on their vacant 10 acres if permitted and administered by the City.

There are a number of positive reasons for creating a dog park on the site including:

- There is public demand and desire for a dog park in Grants Pass.

We regularly hear about interest in a dog park and know there is a desire for such a facility in Grants Pass.

- Public benefit is maximized because the site is already publicly owned.

Creating a dog park would maximize public values by using vacant land the public already owns. Currently, this fenced vacant parcel sits unused. Eventually, the State will use the site to expand the youth correction facility; however, there are no set plans.

Letter to Mayor and City Council

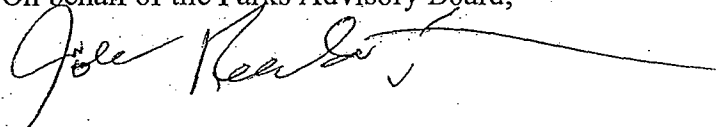
January 7, 2009

Page 2 of 2

- The site can be used without removing it from the industrial land inventory.
The State will retain ownership and use the site when it needs to expand the youth correction facility in the industrial zone. It will still be available for its intended industrial uses.
- The site can be developed and maintained as a dog park with minimal City investment.
There would be no costs for land acquisition, and the site is already fenced. A small adjoining parking area is available. City development costs would include an entrance gate, any cross fencing, and signage. Volunteers could provide any site amenities. The City would be responsible for mowing, general site maintenance and trash removal.

In conclusion, we recommend the Council initiate a process to allow a dog park as either a minor public use or outright use in an industrial zone. The likelihood of this action having a negative impact on industrial land supply is negligible and, in this case, the community will benefit greatly from use of their own public land.

On behalf of the Parks Advisory Board,



John Reinhart, Chairman

Blue Collar, Green Collar

Cities are learning the merits of saving their industrial land.

By Cecily Burt

Six years ago, California Cereal Products CEO Sterling Savely was shopping around for industrial property to expand his thriving dry cereal production business. He found the perfect location, the vacant five-acre Carnation plant just a few blocks from his own factory on the west side of Oakland, California.

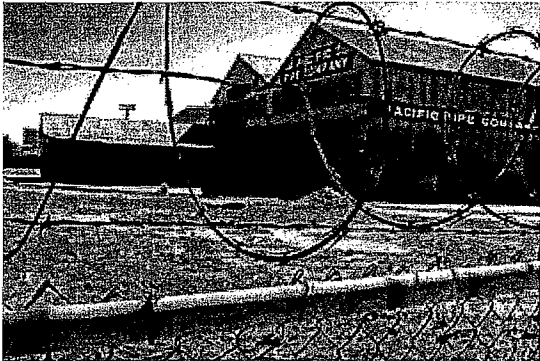
But Savely didn't buy that property, or any other in Oakland for that matter. Rather, in the summer of 2006, he announced that the company was opening a second plant in the former Kellogg-Keebler factory in Macon, Georgia, where an economic development team wooed him with a choice of dedicated industrial zones, reasonably priced land, and plenty of economic incentives. Macon, not Oakland, would get more than 200 new blue-collar jobs.

What happened? As it turns out, the decision came back to the question of who owns vacant industrial land in Oakland. Savely made an offer, but the owner had other plans for the property and wouldn't sell.

Over the past seven years, real estate companies and speculators have snapped up numerous industrial parcels, regularly winning approval to convert properties to housing or other nonindustrial uses. The practice has doubled and tripled the cost for industrial land, putting it out of reach for manufacturers.

And although the housing market has stalled across the country, in West Oakland, where California Cereal Products still churns out several brands of organic cereal ingredients, speculators are content to sit on large deteriorating properties. The sight of empty warehouses and factories adds weight to arguments that blue-collar industries have gone the way of the dodo bird, so why not fill them up with brand new lofts?

Going, going, gone



Oakland is not alone. From New York to California, cities are struggling to redefine their industrial futures: Should they preserve land for blue-collar industries and light manufacturing and the jobs those companies provide? Or should they go along with political and market forces that claim there are higher and better uses for industrial land — namely, converting it to housing, offices, or retail?

More and more, city planners are leaning toward the former, even in the face of some immense opposition. They are learning the hard way that when industries go, so do the good jobs for people of all skill levels, and the healthy tax revenue that pays for city services. And once it's gone, it's gone forever.

"I think that everyone is realizing right now that really, everything starts with a job," Savely says. "People lose track of that until something happens. Nobody buys anything, a car or a house, if they don't have a job."

According to the National Association of Manufacturers, manufacturing jobs pay an average of 25 percent above what the rest of the workforce receives. In its 2007 annual Labor Day Report, the association reported that the average national wage for manufacturing jobs (including benefits) rose to \$68,860, compared to \$53,500 for all other types of jobs. At the same time, the employment sectors with the highest anticipated growth — retail, food services, and cashiers — typically pay less than \$10 per hour.

Industrial businesses also bolster the local and regional economies by supporting and creating jobs in other business sectors such as finance, construction, transportation, and trade, according to the manufacturers association.

So what's a city to do? Many cities recognize that the smokestack factories of 30 and 40 years ago are being replaced by cleaner, greener manufacturing technologies that require fewer workers. And cities that want to retain and grow a solid economic base have to be ready with the land, infrastructure, economic incentives, and other tools to compete for those new modern businesses.

"Don't wait," says Adam Friedman, director of the New York Industrial Retention Network. "It's important to get these tools on the books so when these zoning change

requests occur, the city can respond. It's important to look to the future and set aside space for jobs now."

Think ahead

Unlike Oakland, Los Angeles has already taken measures to preserve its manufacturing jobs, but that doesn't mean it has been immune to market pressures. By December 2006 the thirst for trendy new downtown lofts threatened to unravel a productive industrial district. That's when Gail Goldberg, AICP, the city's planning director, and Cecilia Estolano, CEO of the Community Redevelopment Agency, united to reinforce the intent of the city's general plan and zoning codes, says Jane Blumenfeld, principal planner in Goldberg's agency.

The move was not popular with elected officials, but it stuck, she says. "Preserving the zoning does not necessarily mean freezing in time what is on the ground today, but having the foresight to be sure land is available in the future for all types of jobs as the economy evolves," Blumenfeld says. "In particular, we want to be sure we are properly situated to solicit and accommodate clean technology industries."

Los Angeles is known more for its movie stars and laid-back beach culture, but it also has a thriving industrial base that has been able to reinvent itself to stay competitive, Blumenfeld says. More than 410,000 people — over a quarter of LA's workforce — are employed in light manufacturing, apparel, biomedical, logistics, and creative industries such as set design. The industrial sector contributes \$219 million in annual tax revenues to the city, nearly 13 percent of general fund revenues, helping make Los Angeles County the largest center of manufacturing jobs, Blumenfeld says.

"We found that even with obsolete infrastructure, there was such demand that there were takers for the space everywhere," Blumenfeld explains. "All cities are vying for green tech and clean tech, incubators, start ups, R&D, and later (as those new products come to fruition), manufacturers, so there's always a use for those spaces."

According to a 2006 study by UCLA researchers commissioned by the redevelopment agency, zoning administrators had approved 46 out of 50 residential applications in the downtown industrial district during the previous five years, despite a policy that clearly spelled out the city's intent to preserve industrial land.

"The city council members were swayed by developers, but the cost of (allowing residential) was too high," Blumenfeld says. "We really need the jobs and revenue that comes from industrial jobs. The income from residential development is a net loss for the city because those new developments also need police, fire, schools, and other services, and the city has to build new sidewalks and traffic lights. That [eats up] our meager resources."

In the end, the city found that it didn't have to change its zoning or policies. "We just had to say 'no.' It was unbelievably controversial," Blumenfeld says.

Cold shoulder



In Oakland, political pressure helped to green-light construction of as many as 366 town houses and single-family houses on a 17-acre site in the middle of an industrial corridor near the Oakland International Airport. Until 2003 the land had been home to the Fleischmann's Yeast factory.

The city's economic development team had no chance to find a new business tenant before Pulte Homes bought the property. Council member Larry Reid saw the new development as a way to boost investment in the low-income area and revitalize neighborhoods in the shadow of former industrial factories.

With Reid's support the Arcadia project was approved in 2005, when Oakland was in the throes of its residential building boom. Today, new tree-lined streets bisect the middle of property and the first colorful two-story town houses line those streets. Earth movers grade the new lots for 135 single-family houses whose backyards will abut several industrial businesses. The view to the west, directly behind the town houses, is a towering stack of brick red and blue shipping containers.

"Fleischmann's was the absolute loser for us," says Margot Lederer-Prado, AICP, an Oakland city planner who specializes in industrial business retention and brownfield regulation.

The residential project that replaced Fleischmann's was one in a long string of conversion applications filtering through the planning commission that raised concern and sparked a major effort to reconcile Oakland's outdated zoning codes with its general plan. The business community hoped the outcome would clarify the city's stance regarding industrial preservation or housing, once and for all.

Debate over 17 historic industrial zones generated the most heat, as manufacturers pleaded for preservation and developers argued for change, especially in West Oakland and along the waterfront. When the Oakland city council finally voted in March 2008 to designate which zones would remain blue collar and which would transition to other uses, developers scored another victory.

The vote preserved a good chunk of Oakland's remaining industrial and manufacturing zones. But it changed the zoning to allow new residences in a gritty industrial area along

the central waterfront, home to Hanson Aggregates, Gallagher & Burk construction, and White Brothers Lumber. Trucks line up at dawn to load up with cement and asphalt mix.

Richard Bourdon, president of Design Workshops, a custom woodworking and cabinet manufacturer located next to the new zone, relocated the company from San Francisco when lofts started springing up there and residents' complaints about noise, dust, and trucks multiplied. In Oakland he bought a building and put \$2 million into it. The company employs about 100 people, all in union jobs. Now he's worried that his business will be pushed out again.

Savely says situations like that helped guide his decision to open a plant in Macon. "It's so totally different," he says. "You show up and the chamber gives you a map, and the map has all the industrial zones. People try to change them but they don't allow it. You don't worry about the next day somebody moving in next door and starting to complain."

Industry's welcome

If Macon has a welcome wagon, New York City is perfecting the team concept. The city is home to 7,000 manufacturing companies that employ 100,000 workers. The 1996 closure of the 100-year-old Farberware plant, a large unionized manufacturing company in the South Bronx, spurred labor and community groups to form the New York Industrial Retention Network, a nonprofit organization that receives funding from city, state, and private sources. The network determines which companies are at risk of closure and what policies put those companies at risk.

"We've worked with well over 2,200 companies since then," says the group's director, Adam Friedman. "There's a research component and advocacy component and direct services component; 200 to 400 companies get services, including help finding space and relocation assistance."

That type of assistance is crucial, especially in New York City, where certain manufacturing sectors tend to cluster together and depend on other nearby businesses for their expertise and services to create and market a finished product. Even the workforce is local, says Friedman. If one business or supplier is displaced, it can upset that balance.

New York Mayor Michael Bloomberg convened a task force in 2005 that developed strategies and policies to support the industrial sector. But even with that solid political support, it's an uphill battle to retain the businesses and the jobs, Friedman says.

More than 19 million square feet of industrial space have been rezoned for other uses over the past five years, and another 12 million is in the pipeline, Friedman says. In response to that trend, in April 2006 the city established 16 dedicated industrial manufacturing zones based on historical uses. The zones offer incentives to businesses that relocate to New York, such as tax credits equal to \$1,000 per worker up to a maximum of \$100,000, as well as other services and infrastructure improvements to aid parking and transit for industrial businesses within the zone.

The zones give companies peace of mind because they know they won't be forced out by residential encroachment, but in some areas other uses like hotels and retail stores have replaced former industrial space. "The next step is more enforcement and reinforcement to protect (the zones)," Friedman says.

In late November the San Francisco board of supervisors approved a blueprint to guide future development in four eastern neighborhoods, ending a 10-year conflict caused by the steady encroachment of pricey new lofts into industrial spaces and working class enclaves.

Residential uses will be allowed on about half of the 2,200 acres, but the rest will be preserved for industry, says John Rahaim, San Francisco's planning director. The action was the second step taken by the city last year to preserve its shrinking supply of industrial land. Because San Francisco's industrial zoning code allowed live-work spaces and offices, a new PDR (production, distribution, and repair) zone was created to prohibit those uses. An offshoot, the iPDR, was created to allow new cleaner, greener technology companies. Those could have some office space but no beds.

"(Live-work and pure office space) were driving up land costs and making it hard for businesses to survive," Rahaim says.

The board's action will release a two-year backlog of mostly residential projects that could see the construction of 7,500 to 10,000 new units, Rahaim says. Those units will be allowed in areas that had already given way to such conversions, and planners were careful to make sure industrial businesses were not displaced in the process.

"Where there are industrial uses in place we kept it zoned PDR," Rahaim says. "Some of it is very patchwork, but these are light industrial businesses where people have lived and worked side by side for years."

Taking a stand

Chicago has become a model for doing things right. It reacted early to preserve its historic industrial corridors by creating planned manufacturing districts. A Local Industrial Retention Initiative, a collection of 17 nonprofit organizations that serve as advocates for industry, keeps tabs on businesses and acts as a conduit for city services. Planners are also developing strategies to bring in new businesses and help them flourish.

However, the city is not immune to the challenges posed by changing technology and the loss of traditional manufacturing jobs. Finding a way to court both types of business is the key, says Nora Curry, director of industrial initiatives and policy for the city of Chicago.

"We're doing a lot to combat (the loss of businesses)," Curry says. "There will always be some manufacturing here and we want to be ready for it, help it grow. It's important; having a diverse economy will save you in tough times."

In Chicago, Oakland, and other cities, the challenge is finding money and incentives to modify older, obsolete factories to better meet the needs of newer, cleaner industries or smaller start-ups. Often the land can require environmental remediation, which can be very expensive.

"One of the nice things about the planned manufacturing districts is that they put pressure on the speculators who just buy the buildings and let them fall apart, saying nobody is interested so the zoning should be changed," Curry says. "But the district calls some of those guys out, and tells them it's time to invest or sell it. Sometimes it works and sometimes it doesn't. It's not a cure-all; it's a helpful tool."

At the other end of the spectrum is tiny Berkeley, California, whose west side industrial zones once combined with Oakland, Richmond, Alameda, and Hayward to create a powerhouse blue-belt zone on the eastern shores of San Francisco Bay.

Although Berkeley's economy is largely driven by its world-class university, city leaders have not forsaken industrial roots laid down more than a century ago with dozens of manufacturing companies. What remains today pales in comparison to New York and Los Angeles, but many Berkeley residents remain fiercely protective of the city's industrial land and progressive policies, which encourage jobs for workers of all skill levels.

The West Berkeley Plan defines and preserves two areas along the Eastshore Freeway for manufacturing and industrial uses — a total of 173 acres. The area is also home to several artists who until the recent housing boom could find cheap studio space there.

Since the plan was finalized, however, the tony Fourth Street shopping district has turned streets adjacent to Berkeley's historic manufacturing area into a shopping and dining destination. And longtime businesses have recently closed, such as the 100-year-old Flint Ink plant and the Macauley Foundry. An auto dealership has expressed interest in the Flint Ink site, and the owners of Peerless Lighting have introduced plans to create a residential mixed use development on their property there.

The loss of those blue-collar businesses and jobs, as well as pressure to expand residential and commercial uses in the area, recently prompted city leaders to undertake a revision of the West Berkeley Plan. The battle lines are already drawn, with the proposed revision generating concern that new lofts will force the artisans out, says planning director Dan Marks, AICP.

The revision could allow a greater diversity of uses, such as auto dealerships, while retaining the basic goal of encouraging industry that provides good jobs for blue-collar workers lacking a college education, Marks says.

"It's war, I tell you. Even the minor changes we're talking about are considered destruction of arts and jobs," Marks says. "It's being very carefully fought over right now."

There's a great concern that we're converting to residential, but we're trying to preserve the vast majority of the zone. We're not looking at live-work as a solution."

Green team

What is the solution to creating new manufacturing jobs? Everyone, it seems, is looking to the green movement for answers. The mayors of Berkeley, Oakland, Richmond, and Emeryville, the chancellor of the University of California, Berkeley, and Lawrence Berkeley National Laboratory have formed the Green Technology Corridor Partnership to market the East Bay as a center for environmental innovation and green-collar jobs.

And as those in Oakland were loudly debating the merits of industry versus new market-rate housing, Mayor Ron Dellums was busy partnering with the Oakland Metropolitan Chamber of Commerce and industry leaders to identify five clusters for future growth, including international trade and logistics; green technology; health care and life sciences; and art, design, and digital media.

The nascent effort has also spawned a related green finance network whose 40 banks are trying to identify new green investment opportunities. And local colleges and nonprofit organizations have launched a variety of green job training programs.

Lederer-Prado thinks the things that made Oakland such a great location for manufacturing companies decades ago — its access to air, rail, sea, and freeways — will also attract newer, cleaner, greener industries. Oakland is already becoming a hub for artisan food producers, and the city has to be ready to help them find space. "We get phone calls all the time from artisan food producers, custom design and fabrication companies, furniture makers, scientific device manufacturers, high-end wholesalers," she says.

Landing those companies means cooperation from those who still hold the keys to Oakland's industrial property. During the real estate boom, costs for industrial spaces ballooned from \$15 to \$20 a square foot to the range of \$40 to \$45 a square foot. Semifreddi's wants to relocate its bakery production to West Oakland, but not at \$65 a square foot, a price they were quoted recently, Lederer-Prado says.

Regrouping

In South Florida, the situation is somewhat different but just as complex. For decades, the citrus industry and tourism-related construction were enough to sustain the region's economy. Lands zoned for industrial uses languished as Palm Beach County did little to encourage or grow its manufacturing base, leaving those properties vulnerable to conversion, says David Thatcher, AICP, development services director for Lantana, a small city situated in the middle of the county.

Thatcher says the potential for future job growth vanished with each new condo development or shopping center built on open space previously zoned for industry. After

too many frosts and too many hurricanes, a drop in tourism, and the loss of three large manufacturers — Pratt and Whitney, IBM, and Motorola, the latter's plant converted to shops, housing, and self-storage — planners resolved to find new types of jobs and more stable sources of revenue.

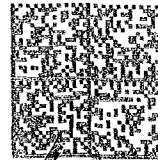
But it wasn't easy. The Intergovernmental Plan Amendment Review Committee, a consortium of planners from throughout the region, reported that since 2002, 36 applications for land-use conversions had been granted, involving 1,248 acres. Of those changes, 55 acres went to public use or community services, and 429 acres were reclassified for some other industrial use.

The cities of Palm Beach County had joined forces to land the Scripps Institute in the city of Jupiter, and they wanted to woo more research and development and high-technology companies but had no space left, says Ernest Swiger, AICP, a planning consultant brought on board to complete a more comprehensive study of the county's land-use policies. The situation there is being mirrored around the country, he says. "People wanted to expand, but couldn't even find an acre or two nearby," Swiger says.

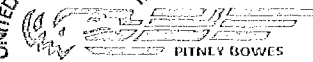
The market pressures haven't completely subsided, but the nation's severe economic slump could give Palm Beach County and cities across the U.S. a little time to regroup and take action to rezone land and develop strategies to retain and grow new jobs, Swiger says.

"The current real estate market, with the downturn in residential, provides an opportunity to assess the situation, see what kind of job base and zoning you have, and find ways to preserve it," Swiger says. "There's some breathing space right now. Now is the time."

Cecily Burt is a journalist in the San Francisco Bay Area.



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