NOTICE OF ADOPTED AMENDMENT

09/20/2011

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

FROM: Plan Amendment Program Specialist

SUBJECT: City of Tualatin Plan Amendment
DLCD File Number 007-11

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Thursday, October 06, 2011

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

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

*NOTE: The Acknowledgment or Appeal Deadline is based upon the date the decision was mailed by local government. A decision may have been mailed to you on a different date than it was mailed to DLCD. As a result, your appeal deadline may be earlier than the above date specified. NO LUBA Notification to the jurisdiction of an appeal by the deadline, this Plan Amendment is acknowledged.

Cc: Colin Cortes, City of Tualatin
Angela Lazarean, DLCD Urban Planning Specialist
Jennifer Donnelly, DLCD Regional Representative

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Notice of Adoption

Jurisdiction: City of Tualatin
Date of Adoption: 9/12/2011
Local file number: PTA-11-05
Date Mailed: 09/16/2011

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? Yes ☑ No ☐ Date: 07/06/2011
☐ Comprehensive Plan Text Amendment ☐ Comprehensive Plan Map Amendment
☐ Land Use Regulation Amendment ☐ Zoning Map Amendment
☐ New Land Use Regulation ☐ Other:

Summarize the adopted amendment. Do not use technical terms. Do not write “See Attached”.
Amend Tualatin Development Code (TDC) to increase site dev review (Architectural Review) and conditional use approval periods from 1 to 2 yrs and increase AR ext period from 6 mos. to 1 yr; and, change AR and partition/subdiv ext. process. Because the TDC incorporates the Tualatin comp plan, this change is both plan text and LU reg amendment.

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

Plan Map Changed from: n/a to:
Zone Map Changed from: n/a to:
Location: n/a Acres Involved: 0
Specify Density: Previous: n/a New:

Applicable statewide planning goals:

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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. 007-11 (188889) [16764]
DLCD file No.

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

Clean Water Services (CWS)

Local Contact: Colin Cortes, Assistant Planner
Phone: (503) 691-3024 Extension:
Address: 18876 SW Martinazzi Ave
Fax Number: 503-692-147
City: Tualatin  Zip: 97062-7092
E-mail Address: ccortes@ci.tualatin.or.us

ADOPTION SUBMITTAL REQUIREMENTS

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

1. This Form 2 must be submitted by local jurisdictions only (not by applicant).
2. When submitting the adopted amendment, please print a completed copy of Form 2 on light green paper if available.
3. Send this Form 2 and one complete paper copy (documents and maps) of the adopted amendment to the address below.
4. Submittal of this Notice of Adoption must include the final signed ordinance(s), all supporting finding(s), exhibit(s) and any other supplementary information (ORS 197.615).
5. Deadline to appeals to LUBA is calculated twenty-one (21) days from the receipt (postmark date) by DLCD of the adoption (ORS 197.830 to 197.845).
6. In addition to sending the Form 2 - Notice of Adoption to DLCD, please also remember to notify persons who participated in the local hearing and requested notice of the final decision. (ORS 197.615).
7. Submit one complete paper copy via United States Postal Service, Common Carrier or Hand Carried to the DLCD Salem Office and stamped with the incoming date stamp.
8. Please mail the adopted amendment packet to:

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

9. Need More Copies? Please print forms on 8½ -1/2x11 green paper only if available. If you have any questions or would like assistance, please contact your DLCD regional representative or contact the DLCD Salem Office at (503) 373-0050 x238 or e-mail plan.amendments@state.or.us.

http://www.oregon.gov/LCD/forms.shtml

Updated April 22, 2011
ORDINANCE NO. 1333-11

AN ORDINANCE RELATING TO LAND USE APPROVAL PERIODS; AND AMENDING TDC 32.080, 32.090, 36.160, 36.240, AND 73.056 (PTA-11-05)

WHEREAS upon the application of the Community Development Department, a public hearing was held before the City Council of the City of Tualatin on August 22, 2011, related to a Plan Text Amendment of the TDC; and amending TDC 32.080, 32.090, 36.160, 36.240, AND 73.056 (PTA-11-05); and

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

WHEREAS the Council conducted a public hearing on August 22, 2011, and heard and considered the testimony and evidence presented by the City staff and those appearing at the public hearing; and

WHEREAS after the conclusion of the public hearing, the Council vote resulted in approval of the application by a vote of [7-0],

WHEREAS based upon the evidence and testimony heard and considered by the Council and especially the City staff report dated August 22, 2011, the Council makes and adopts as its Findings of Fact the findings and analysis in the staff report attached as "Exhibit B," which are incorporated by this reference; and

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

THE CITY OF TUALATIN ORDAINS AS FOLLOWS:

Section 1. TDC 32.080 is amended to read as follows:

(1) Any previously granted conditional use permit may be revoked by the City Council, after a hearing conducted in the manner required for approval of a conditional use permit initially, upon the following grounds:

(a) Failure to comply with the conditions of approval.

(b) Discontinuance of the use for a period in excess of two years.

Ordinance No. 1333-11 Page 1 of 7
(c) Failure to comply with other applicable provisions of the Tualatin Community Plan regarding design, dimensional or use requirements.

(d) A change in the Tualatin Community Plan or Planning District Standards of the planning district within which the use is located that have the effect of no longer allowing a new conditional use permit application to be considered in such planning district.

(2) Revocations initiated under TDC 32.080(1)(a) or (b) above shall not be initiated for at least 6 months after approval of the conditional use permit. Revocations initiated under TDC 32.080(1)(a), (b) and (c) above shall have the effect of making the previously granted conditional use permit void until a new application is submitted and granted. Revocations initiated under TDC 32.080(d) above shall have the effect of making the previously granted conditional use a nonconforming use.

Section 2. TDC 32.090 is amended to read as follows:

(1) Unless otherwise provided by the Council in the resolution granting approval of the conditional use permit, a conditional use permit shall automatically become null and void two years after the effective date upon which it was granted unless one of the following events occur:

(a) The applicant or his successor in interest has secured a building permit within said two-year period, if a building permit is required, and has actually commenced construction of the building or structure authorized by the permit within said two-year period.

(b) The applicant or his successor in interest has commenced the activity or installation of the facility or structure authorized by the conditional use permit within said two-year period.

(2) The applicant may submit a written request to the City Council for an extension of time on the conditional use permit to avoid the permit’s becoming null and void. The request for extension must be filed with the City Recorder prior to the expiration of the times established by Subsection (1) above. The City Council may, in the resolution granting such conditional use permit, provide for an extension of time beyond two years.

Section 3. TDC 36.160 is amended to read as follows:
(1) A subdivision application shall not be approved unless the City Engineer first finds that adequate public improvements are, or will be, made available to serve the proposed subdivision.

(2) The City Engineer may approve, approve with conditions, or deny the application based upon demonstrated compliance with applicable City regulations. The City Engineer’s decision shall be supported by written findings and reasons for the decision. Findings and reasons may consist of references to the applicable Tualatin Development Code (TDC) or Tualatin Municipal Code (TMC) ordinance provisions, or special studies. The decision shall also include an explanation of the rights of each party to request a review of the decision.

(3) One copy of the subdivision plan and decision shall be filed with both the City Recorder and the City Engineer.

(4) The decision of the City Engineer on a subdivision shall become final 14 calendar days after the date the notice of the decision is given, unless the applicant submits a written request for review is sought.

(5) The approval for the subdivision shall expire 24 months (two years) from the date the decision becomes final is issued unless the applicant requests an extension and the City Engineer approves it pursuant to Subsection (6).

(6) Before approving an extension of a subdivision approval, the City Engineer shall find the request meets these criteria.

(a) There have been no significant changes in any conditions, ordinances, regulations, or other standards of the City or applicable agencies that affect the previously approved subdivision so as to warrant its resubmittal.

(b) If the applicant neglected site maintenance and allowed the site to become blighted, the City Engineer shall factor this into the decision.

(c) The City Engineer shall grant no more than a single one-year extension.

(67) A subdivision plan approval may include restrictions and conditions. These restrictions and conditions shall be reasonably conceived to:

(a) protect the public from the potentially deleterious effects of the proposal;

(b) fulfill the need for public facilities and services created by the proposal, or increased or in part attributable to the impacts of the proposal; or
Section 4. TDC 36.240 is amended to read as follows:

(1) The City Engineer shall render a final decision for a partition or an Expedited Partition Application.

(2) The City Engineer shall approve no partition or expedited partition application shall be approved by the City Engineer unless adequate public facilities are available to serve the proposed partition.

(3) The City Engineer's decision may be to approve, approve with conditions or deny the partition or expedited partition application based upon demonstrated compliance with applicable City regulations. The City Engineer's decision shall be supported by written findings and reasons for the decision. Findings and reasons may consist of references to the applicable Tualatin Development Code (TDC) or Tualatin Municipal (TMC) ordinance provisions.

(4) The final decision shall be written, and at a minimum shall identify:

- (a) the applicant;
- (b) the date of the decision;
- (c) the decision;
- (d) any time frame and conditions to which the decision is subject;
- (e) a brief statement that explains the criteria and standards considered relevant to the decision, states the facts relied upon in the rendering the decision, explains the justification for the decision based on the criteria, standards and facts set forth; and
- (f) an explanation of the rights to request a review of the decision.

(5) Notice of the decision shall be provided to the applicant, property owner, and any party who submitted comments within the 14 calendar-day comment period. Notice of the decision shall include a description of rights to request a review of the decision.

(6) The decision of the City Engineer shall become final 14 calendar days after the date the notice of the decision is given unless a written request to review the decision has been received by the City in accordance with applicable procedures provided in TDC 36.161. If a request for City Council review is timely and properly filed,
the decision on the partition application shall not be final until a final determination is made by the City Council.

(7) The final decision of the City Engineer, or approval by the City Council, shall expire 24 months (two years) from the date the City Engineer issues the final decision or the City Council is issued, or adopts the resolution(s) adopted, unless the applicant requests an extension and the City Engineer approves it pursuant to Subsection (8).

(8) Before approving an extension of a partition approval, the City Engineer shall find that the request meets these criteria:

(a) There have been no significant changes in any conditions, ordinances, regulations, or other standards of the City or applicable agencies that affect the previously approved subdivision so as to warrant its resubmittal.

(b) If the applicant neglected site maintenance and allowed the site to become blighted, the City Engineer shall factor this into the decision.

(c) The City Engineer shall grant no more than a single one-year extension.

(9) A partition plan approval may include restrictions and conditions. These restrictions and conditions shall be reasonably conceived to:

(a) protect the public from the potentially deleterious effects of the proposal;

(b) fulfill the need for public facilities and services created by the proposal, or increased or in part attributable to the impacts of the proposal;

(c) further the implementation of the requirements of the Tualatin Development Code TDC.

(10) The final decision of the City Council on a partition associated with an Industrial Master Plan (TDC 37) shall be subject to all requirements of TDC 36.240.

Section 5. TDC 73.056 is amended to read as follows:

Architectural Review approvals shall be void expire after one-two years unless:

(1) A building, or grading permit submitted in conjunction with a building permit application, has been issued and substantial construction pursuant thereto has taken place and an inspection performed by a member of the Building Division; or
(2) An extension is requested by the applicant of the Architectural Review and approved by the applicant of the Architectural Review and approved by the Community Development Director and City Engineer. Before approving an extension the Community Development Director and the City Engineer shall find that there have been no significant changes in any ordinances, standards, regulations or other conditions affecting the previously approved project so as to warrant its resubmittal. The following conditions shall apply: The Architectural Review (AR) applicant requests in writing an extension and the City approves it. If the Community Development Director and City Engineer or their designees approved the AR, then the Community Development Director and City Engineer shall decide upon the extension request. If the Architectural Review Board (ARB) approved the AR, then the ARB shall decide upon the extension request. The applicant shall provide notice of extension request to past recipients of the AR notice of application and post a sign pursuant to TDC 31.064. Before approving an extension, the deciding party shall find the request meets these criteria:

(a) An extension request shall be submitted prior to the initial one year expiration, and the applicant submitted a written extension request prior to the original expiration date.

(b) No more than one 6 month extension shall be granted for a project receiving Architectural Review approval. There have been no significant changes in any conditions, ordinances, regulations or other standards of the City or applicable agencies that affect the previously approved project so as to warrant its resubmittal for AR.

(c) If the previously approved application included a special environmental or transportation study, the applicant provided with the extension a status report that shows no significant changes on the site or within the vicinity of the site. A letter from a recognized professional also would satisfy this criterion if it states that conditions have not changed after the original approval and that no new study is warranted.

(d) If the AR applicant neglected site maintenance and allowed the site to become blighted, the deciding party shall factor this into its decision.

(e) The deciding party shall grant no more than a single one-year extension for an AR approval.

(f) If the Community Development Director and City Engineer or their designees are the deciding party, then they shall decide within thirty (30) days of receipt of the request. If the ARB is the deciding party, then the ARB shall decide within sixty (60) days of receipt of the request. If the deciding party fails to decide within the applicable time period, the decision shall default to approval.
(3) The Architectural review approval was granted on or after January 1, 2007 through September 30, 2009. In those cases approval shall be extended to December 31, 2012. Such approval shall not be eligible for extension under TDC 73.056(2). This subsection (3) shall terminate on January 2, 2013, without further action of the City Council.

INTRODUCED AND ADOPTED this 12th Day of September, 2011.

CITY OF TUALATIN, OREGON
BY ____________________________
Mayor

ATTEST:
BY ____________________________
City Recorder

APPROVED AS TO LEGAL FORM

______________________________
CITY ATTORNEY
AFFIDAVIT OF PUBLICATION

State of Oregon, County of Washington, SS

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

City of Tualatin Notice of Hearing/PTA 11-05
TT11593

A copy of which is hereto annexed, was published in the entire issue of said newspaper for 1 week in the following issue:

August 4, 2011

Charlotte Allsop (Accounting Manager)

Subscribed and sworn to before me this August 4, 2011.

NOTARY PUBLIC FOR OREGON

Acct #108462

Attn: Heidi Blaine
City of Tualatin
Community Development Department
18880 SW Martinazzi Ave
Tualatin, OR 97062

Size: 2 x 8”
Amount Due: $144.80 *
*Please remit to the address above.
PTA-11-05 ATTACHMENT B:

ANALYSIS AND FINDINGS

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

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

   The two blanket extensions of Architectural Review (AR) approvals through PTA-09-06 and PTA-11-03 were awkward legislative short-term solutions to an on-going problem caused by the compound effect of the national recession and a one-year AR approval period that is short compared with the five neighboring cities of Lake Oswego, Sherwood, Tigard, West Linn, and Wilsonville. Since 2008, there has been one Conditional Use Permit (CUP) that expired and that the City renewed in 2009 (CUP-08-02; CUP-09-03). Together, these circumstances suggest a more durable and strategic action to lessen the need for and frequency of extension requests for ARs and CUPs.

   The amendment would give building projects approved through AR— as well as CUPs—a more reasonable amount of time to begin construction by providing a two-year rather than one-year period and lessen the need for and frequency of extension requests.

   Additionally, by providing Partitions and Subdivisions allowance for extension requests, the amendment would make the approval period uniform for the major Tualatin land use applications most closely associated with building—AR, CUP, Partition, and Subdivision—by making the approval period of each application two (2) years and by allowing each a single one-year extension with the exception of CUP because the City Council renews a lapsed CUP through re-approval instead of extension. This would ease administration.

   Together, these changes will lessen the need for City Council, TPAC, and staff to spend time reviewing extension requests. This change benefits applicants by allowing more time and enhancing the quality of the City’s customer service. The time-limited approval and extension periods retain the City ability to review projects and their benefit to the public interest.

   Granting the amendment is in the public interest. Criterion “A” is met.

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

   Attachment B

   Analysis and Findings
As examined for Criterion A, the purpose of the amendment is to lessen the need for and frequency of extension requests, and in recent years the need for and frequency of extension requests has consumed an undue amount of time from the City Council, TPAC, and staff, making the amendment timely.

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

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

The amendment neither directly relates to nor interferes with comprehensive plan objectives.

Criterion "C" is met.

4. The following factors were consciously considered:

   The various characteristics of the areas in the City.
   The factor is not relevant to the proposed amendment because it does not affect any planning district designation or related regulation.

   The suitability of the areas for particular land uses and improvements in the areas.
   The factor is not relevant to the proposed amendment because it does not affect any planning district designation or related regulation.

   Trends in land improvement and development.
   The factor is not relevant to the proposed amendment because it does not relate to trends in land improvement and development.

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

   The National Bureau of Economic Research dated the beginning of the national recession December 2007. While the agency officially has declared that the recession ended in June 2009, recessionary effects on local real estate continue. For this reason, at this time the needs of economic enterprises and the future development of commercial and industrial areas of Tualatin need additional time, primarily to maintain or obtain bank financing of building projects. The amendment directly addresses this need.

   Needed right-of-way and access for and to particular sites in the area.
The factor is not relevant to the proposed amendment because it does not relate to needed right-of-way and access for and to particular sites in the area.

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

The factor is not relevant to the proposed amendment because it does not relate to natural resources of the City and the protection and conservation of said resources.

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

The consideration of the previous factor applies here also.

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

The amendment establishes an additional criterion for review of an AR extension request: If an applicant neglected site maintenance (i.e. allowed blight), the deciding party may factor this into its decision. The amendment consciously considers the factor of public need for healthful, safe, aesthetic surroundings and conditions.

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

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

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

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

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

Of the 19 statewide planning goals, the applicable ones are Goals 2 "Land Use Planning" and 9 "Economic Development."