



City of Tigard  
**Tigard Business Meeting – Agenda**

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**TIGARD CITY COUNCIL & LOCAL CONTRACT REVIEW BOARD**

**MEETING DATE AND TIME:** September 27, 2016 - 6:30 p.m. Study Session; 7:30 p.m. Business Meeting

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

**PUBLIC NOTICE:**

Anyone wishing to speak on an agenda item should sign on the appropriate sign-up sheet(s). If no sheet is available, ask to be recognized by the Mayor at the beginning of that agenda item. Citizen Communication items are asked to be two minutes or less. Longer matters can be set for a future Agenda by contacting either the Mayor or the City Manager.

Times noted are *estimated*; it is recommended that persons interested in testifying be present by 7:15 p.m. to sign in on the testimony sign-in sheet. *Business agenda items can be heard in any order after 7:30 p.m.*

Assistive Listening Devices are available for persons with impaired hearing and should be scheduled for Council meetings by noon on the Monday prior to the Council meeting. Please call 503-718-2419, (voice) or 503-684-2772 (TDD - Telecommunications Devices for the Deaf).

Upon request, the City will also endeavor to arrange for the following services:

- Qualified sign language interpreters for persons with speech or hearing impairments; and
- Qualified bilingual interpreters.

Since these services must be scheduled with outside service providers, it is important to allow as much lead time as possible. Please notify the City of your need by 5:00 p.m. on the Thursday preceding the meeting by calling: 503-718-2410 (voice) or 503-684-2772 (TDD - Telecommunications Devices for the Deaf).

SEE ATTACHED AGENDA

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**VIEW LIVE VIDEO STREAMING ONLINE:**

<http://live.tigard-or.gov>

**CABLE VIEWERS:** The regular City Council meeting is shown live on Channel 28 at 7:30 p.m. The meeting will be rebroadcast at the following times on Channel 28:

Thursday	6:00 p.m.	Sunday	11:00 a.m.
Friday	10:00 p.m.	Monday	6:00 a.m.



City of Tigard

## Tigard Business Meeting – Agenda

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### TIGARD CITY COUNCIL & LOCAL CONTRACT REVIEW BOARD

**MEETING DATE AND TIME:** September 27, 2016 - 6:30 p.m. Study Session; 7:30 p.m. Business Meeting

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

6:30 PM

- STUDY SESSION

- A. COUNCIL LIAISON REPORTS **6:30 p.m. estimated time**

- B. COMMUNITY DEVELOPMENT CODE PROCESS AND PROCEDURES PROJECT UPDATE **6:45 p.m. estimated time**

- EXECUTIVE SESSION: The Tigard City Council may go into Executive Session. If an Executive Session is called to order, the appropriate ORS citation will be announced identifying the applicable statute. All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions, as provided by ORS 192.660(4), but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.

7:30 PM

- 1. BUSINESS MEETING

- A. Call to Order

- B. Roll Call

- C. Pledge of Allegiance

- D. Call to Council and Staff for Non-Agenda Items

- 2. CITIZEN COMMUNICATION (Two Minutes or Less, Please)

- A. Follow-up to Previous Citizen Communication

- B. Citizen Communication – Sign Up Sheet

3. CONSENT AGENDA: (Tigard City Council, Local Contract Review Board) These items are considered routine and may be enacted in one motion without separate discussion. Anyone may request that an item be removed by motion for discussion and separate action. Motion to:
  - A. APPROVE CITY COUNCIL MINUTES:
    - July 12, 2016
    - July 26, 2016
  - B. CONSIDER AUTHORIZING THE CITY MANAGER TO SIGN AN IGA WITH ODOT FOR DESIGN AND CONSTRUCTION OF NEW SECTIONS OF THE FANNO CREEK TRAIL
  - C. CONSIDERATION OF CITYWIDE COLLECTION SERVICES CONTRACT AWARD
  - D. CONSIDERATION OF JANITORIAL SERVICES CONTRACT AWARD
  - E. CONSIDERATION OF CONTRACT AWARD FOR DESIGN OF THE TIEDEMAN RE-ALIGNMENT OF FANNO CREEK TRAIL
  - F. PROCLAIM DISTRACTION FREE DRIVING AWARENESS DAY
  - G. PROCLAIM WILLAMETTE WEST HABITAT FOR HUMANITY HABITAT DAY
- *Consent Agenda - Items Removed for Separate Discussion: Any items requested to be removed from the Consent Agenda for separate discussion will be considered immediately after the Council/ City Center Development Agency has voted on those items which do not need discussion.*
4. LEGISLATIVE PUBLIC HEARING - DEVELOPMENT CODE AMENDMENT DCA2016-00002 REQUIRED REGULATORY CHANGES AND FEMA FIRM MAP UPDATE **7:40 p.m. estimated time**
5. CONSIDER APPROVAL OF A RESOLUTION OF NECESSITY FOR HUNZIKER INFRASTRUCTURE RIGHT OF WAY **8:25 p.m. estimated time**
6. CONSIDER AUTHORIZING A COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) APPLICATION FOR BAGAN PARK **8:40 p.m. estimated time**
7. LOCAL CONTRACT REVIEW BOARD DISCUSSION ON UPCOMING CONTRACT **8:50 p.m. estimated time**
8. NON AGENDA ITEMS

9. EXECUTIVE SESSION: The Tigard City Council will go into Executive Session under 192.660(2) (i) to review and evaluate, pursuant to standards, criteria, and policy directives adopted by the governing body, the employment-related performance of the chief executive officer. All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions, as provided by ORS 192.660(4), but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. **8:55 p.m. estimated time**
  
10. ADJOURNMENT **9:15 p.m. estimated time**

**AIS-2811**

**B.**

**Business Meeting**

**Meeting Date:** 09/27/2016

**Length (in minutes):** 30 Minutes

**Agenda Title:** Community Development Code Process and Procedures Project Update

**Submitted By:** Agnes Kowacz, Community Development

**Item Type:** Update, Discussion, Direct Staff

**Meeting Type:** Council Business Mtg - Study Sess.

**Public Hearing:** No

**Publication Date:**

**Information**

**ISSUE**

Staff will provide an update to City Council on the Community Development Code Process and Procedures code amendment project. The update will include a timeline for project completion and identify how the project advances the City's Strategic Plan vision of becoming the most walkable community in the Pacific Northwest.

**STAFF RECOMMENDATION / ACTION REQUEST**

None, discussion only.

**KEY FACTS AND INFORMATION SUMMARY**

The Title 18 Administration and Procedures Project began the fall of 2015. The project is intended to address terminology, processes, administration, reorganization as well as advance Goal 2 of the Strategic Plan. A consolidated list of items was created from the following sources: state/federal mandatory changes, staff's improvement database, director's interpretations and Strategic Plan Code Implementation Audit.

The approach for adoption is to divide the project into two parts:

Part 1 Mandatory changes. This includes: FEMA Flood Insurance Rate Maps, required floodplain regulation updates based on the audit and additional comments from FEMA, and regulatory changes to marijuana facilities.

Part 2 Process and Procedures. This part is a two-step process. The first step will be the re-organization, followed by content changes.

Part 1 Mandatory changes will be heard by Council on September 27, 2016. The first (reorganization) portion of Part 2 will come before Council in December/January. The

second (content) portion of Part 2 will contain a variety of changes relating to administrative procedures including new appeal procedures, process for amending conditions of approval, correcting consistency of naming review types, etc. The other major component of the content portion includes items identified in the Strategic Plan Code Implementation Audit that focus on advancing the City's vision. Examples of these include classification of trails/pedestrian facilities, allowing trails without a conditional use permit, adding walkability approval criteria to land use reviews and clarifying when and where trails are required by referencing of the City's adopted trail plans. Other items also part of this package include developing standards for detached accessory dwelling units, creating a measurements chapter, and a general adjustment process. The content portion will be more intensive with public open houses next June and July and adoption by Council in January/February of 2018.

## **OTHER ALTERNATIVES**

### **COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS**

The project advances the City's Strategic Plan Goal 2: Ensure development advances the vision.

### **DATES OF PREVIOUS COUNCIL CONSIDERATION**

N/A

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### **Attachments**

Project Schedule

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**AIS-2842**

**3. A.**

**Business Meeting**

**Meeting Date:** 09/27/2016

**Length (in minutes):** Consent Item

**Agenda Title:** Approve City Council Meeting Minutes

**Submitted By:** Carol Krager, Central Services

**Item Type:** Motion Requested

**Meeting Type:** Consent  
Agenda

**Public Hearing:**

**Publication Date:**

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**Information**

**ISSUE**

Approve City Council meeting minutes.

**STAFF RECOMMENDATION / ACTION REQUEST**

Approve minutes as submitted.

**KEY FACTS AND INFORMATION SUMMARY**

Attached council minutes are submitted for City Council approval:

- July 12, 2016
- July 26, 2016

**OTHER ALTERNATIVES**

N/A

**COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS**

N/A

**DATES OF PREVIOUS COUNCIL CONSIDERATION**

N/A

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**Attachments**

[July 12, 2016 Meeting Minutes](#)

[July 26, 2016 Meeting Minutes](#)

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**City of Tigard**  
**Tigard City Council Meeting Minutes**  
**July 12, 2016**

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**STUDY SESSION**

Council Present: Mayor Cook, Councilor Woodard and Councilor Henderson. Council Absent: Council President Snider and Councilor Goodhouse

Staff Present: Assistant City Manager Newton, Assistant Public Works Director Rager, Acting Risk Manager Curran, Utility Manager Goodrich, City Attorney Rihala, City Recorder Krager, Deputy City Recorder Burgoyne

**A. COUNCIL LIAISON REPORTS**

Councilor Henderson reported on a Clear Alliance (Children Learning through Education and Research) conference. Clear Alliance's goals are to reduce substance abuse and impaired driving among youth and to collaborate and improve public health and safety in Oregon. Materials from the conference have been added to the council meeting packet in Laserfiche. He commented that there are costs to society from legalizing marijuana that cannot be made up by taxing it. He suggested sending a councilor to the conference next year.

Mayor Cook reported on the US Council of Mayors conference. He is on two committees (Transportation and Communication and Parks, Sports and Recreation) and was appointed to the Mayor's Water Task Force. He heard many speakers including Orlando Mayor Buddy Dyer, former mayor of Charleston, SC, Joseph Riley; Hillary Clinton and the Dalai Lama.

**B. RECEIVE BRIEFING ON PROPOSED SANITARY SEWER ADMINISTRATIVE RULE**

Utility Manager Goodrich informed council on proposed administrative rules related to sanitary sewer waste water collection system responsibilities, practices and procedures. He said years ago when Unified Sewerage Agency (now called Clean Water Services) became the sewer permittee the rules and regulations regarding sewers were removed from Tigard's Municipal Code. There is a need for some clarification. The proposed administrative rules mimic the CWS rules and regulations. Staff desires to add these rules to help avoid confusion and address citizen misperceptions on public vs. private responsibilities. This is much easier to understand when looking at the water utility. People seem to understand that the city is responsible for water issues up to the point of the meter and the property owner is responsible for issues beyond it. But the sanitary sewer waste water collection system is complex and people do not comprehend who is responsible for what. Sewer laterals are owned by private property owners and they are responsible for their flow and private laterals. Councilor Woodard suggested using the definition "point of

**TIGARD CITY COUNCIL MINUTES – JULY 12, 2016**

connection” to make it more understandable. Council agreed to move these administrative rules forward for the public notice and comment period.

C. BRIEFING ON A NEW FRANCHISE AGREEMENT WITH ZAYO GROUP

Public Works Director Rager gave a briefing on a franchise agreement with Zayo Group (which bought out Metromedia) that council will be asked to approve at a future meeting. Zayo owns buried assets (underground fiber optic conduit) in Tigard and will be assessing the conduit installed by Metromedia and installing new fiber optic cable into existing conduits in the northern part of Tigard. A franchise agreement will be considered by council on August 9.

1. BUSINESS MEETING – July 12, 2016

A. At 7:33 p.m. Mayor Cook called the Tigard City Council to order.

B. City Recorder Krager called the roll:

	Present	Absent
Mayor Cook	✓	
Councilor Goodhouse		✓
Councilor Henderson	✓	
Council President Snider		✓
Councilor Woodard	✓	

C. Mayor Cook asked everyone to stand and join him in the Pledge of Allegiance.

D. Mayor Cook asked council and staff if there were any non-agenda items. None.

2. CITIZEN COMMUNICATION

A. Follow-up to Previous Citizen Communication – Assistant City Manager Newton reported on her conversations with Tom Cole in response to his request for better sidewalk connections on Hall Boulevard. She said he will gather signatures for a petition explaining the needs of Bonaventure residents and give it to Senator Burdick, Representative Doherty, the City of Tigard and ODOT. ODOT has jurisdiction of Hall Boulevard. Mayor Cook asked if there was a sidewalk going all around Tigard Christian Church to the Senior Center and Ms. Newton said she would check on that.

B. Citizen Communication – No one signed up to speak.

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C. Chamber of Commerce CEO Mollahan updated council on summer activities and upcoming events. She noted that they are still accepting applications for the Leadership Program. She said the Tigard Farmers Market accepts Oregon Trail EBT and SNAP cards. Through a grant program at the Farmers Market Fund (State of Oregon) card users can take advantage of a double-up food program so when they swipe their card they can receive up to \$10 in additional produce. She reminded parents and children that planted vegetables in the Sprouts Community Garden that their radishes and peas are ready to harvest. She said the vendors have sold \$70,000 in the first 11 weeks of the market. The Tigard Downtown Alliance wants to remind everyone that the Street Fair is September 10 and will be an expanded event partnered with the City of Tigard, Tigard Tour de Parks bike ride, and a Latin fest event. Councilor Henderson asked about the format of the Leadership Program. Ms. Mollahan said a team building exercise will be held the first day and each day has a theme such as the local economy or tips for running for the school board, etc. She noted that one day's theme is city government and City Manager Wine will be participating. Councilor Henderson commented that he was pleased this program has returned.

3. CONSENT AGENDA:

A. RECEIVE AND FILE:

1. Council Calendar
2. Council Tentative Agenda for Future Meeting Topics

C. APPROVE CITY COUNCIL MEETING MINUTES

- April 19, 2016
- April 26, 2016

Councilor Henderson moved to approve the consent agenda. Councilor Woodard seconded the motion and it passed unanimously.

	Yes	No
Mayor Cook	✓	
Councilor Goodhouse (absent)		
Councilor Henderson	✓	
Council President Snider (absent)		
Councilor Woodard	✓	

4. QUASI-JUDICIAL PUBLIC HEARING – ZEIDER ANNEXATION (ZCA2016-00002).

- a. Mayor Cook opened the public hearing.
- b. City Attorney Rihala read the hearing procedures. A copy of the procedures was at the front of the room and is included in the packet for this meeting.

**TIGARD CITY COUNCIL MINUTES – JULY 12, 2016**

- c. Mayor Cook asked Council if any member had a conflict of interest or any ex parte contact. Councilors said they did not.
- d. Mayor Cook asked if anyone in the audience challenged the participation of a Council member. There was no challenge.
- e. Mayor Cook read a statement about conduct for the public hearing.
- f. Assistant Planner Smith gave the staff report. She presented a slide showing the area being annexed. This map has been added to the packet for this meeting. She said this property was proposed in 2015 as part of the Summit Ridge annexation, a 29-home development to the south but the property owner and neighbor chose to be excluded. The city required annexation within four years. The owners are requesting annexation in order to connect with City of Tigard sewer service and this is consistent with the city's Comprehensive Plan policies. The property is currently served with City of Tigard water. The proposed annexation meets the requirements of the Comprehensive Plan, the Metro Code and applicable State statutes. The ordinance refers to removing the property from the Tigard Water District, Washington County Enhanced Sheriff's Patrol District, and Washington County Urban Road Maintenance District. Ms. Smith said staff recommends approval of the proposed Zeider annexation.  
  
Councilor Henderson asked if this annexation creates an island. Assistant Planner Smith said a temporary island is created east of the property but that is one of the properties with a recorded annexation contract which must be completed by 2019. Mayor Cook said when Summit Ridge was annexed the city wanted this piece to come into the city too. They negotiated an agreement with property owners that within four years they would annex. It does create a temporary island but it will resolve itself by 2019. Ms. Smith added that the neighbors were invited to join in on this annexation but they declined at this time.
- g. The applicant will testify. Applicant was not present.
- h. Public Testimony: Mayor Cook will call upon those who have signed up to testify on the sign-in sheet. There was no public testimony.
- i. Response to testimony by staff. None; there was no testimony.
- j. Applicant rebuttal to testimony. None.
- k. Mayor Cook closed the public hearing.
- l. Council Discussion and Consideration: Ordinance No. 16-13

## **TIGARD CITY COUNCIL MINUTES – JULY 12, 2016**

Councilor Woodard moved to approve Ordinance No. 16-13. Councilor Henderson seconded the motion. City Recorder Krager read the number and title of the ordinance

**ORDINANCE NO. 16-13 – AN ORDINANCE ANNEXING ONE (1) PARCEL OF LAND TOTTALLING APPROXIMATELY 1.23 ACRES, APPROVING THE ZEIDER ANNEXATION (ZCA2016-00002), AND WITHDRAWING PROPERTY FROM THE TIGARD WATER DISTRICT, WASHINGTON COUNTY ENHANCED SHERIFF’S PATROL DISTRICT, AND WASHINGTON COUNTY URBAN ROAD MAINTENANCE DISTRICT.**

City Recorder Krager conducted a roll call vote.

	Yes	No
Mayor Cook	✓	
Councilor Goodhouse (absent)		
Councilor Henderson	✓	
Council President Snider (absent)		
Councilor Woodard	✓	

Mayor Cook announced that Ordinance No. 16-13 was adopted unanimously by all council present.

5. DISCUSS GAS TAX MEASURE FOR NOVEMBER 2016 BALLOT

Finance Director LaFrance and Assistant Finance Director Fitzpatrick gave the staff report. They want direction from council on a proposed increase to the city’s gas tax of five cents. The discussion began a year ago when council reviewed the street maintenance fee and the city’s paving backlog. The current gas tax of three cents a gallon brings in around \$600,000 annually. A five-cent increase will bring in over \$1 million. Projects identified for funding were categorized into the Pavement Management Program (PMP), major capital transportation projects and pedestrian connections. The agenda item summary includes a list of proposed projects.

Ms. Fitzpatrick said staff is asking council to affirm that they wish to put a local gas tax increase of five cents on the ballot this November. If so directed, staff will return in two weeks with ballot language. Proposed ballot language was included in the agenda packet for this item.

Councilor Woodard asked for clarification on how this additional tax relates to the Street Maintenance Fee (SMF). Assistant Finance Director Fitzpatrick said that in a March 2016 business meeting council passed an ordinance stating if the city refers a five-cent increase to the gas tax on the November ballot and it passes, then a scheduled January 2017 increase to the SMF would not go into effect. The SMF increase would gain approximately \$500,000 and a five-cent

**TIGARD CITY COUNCIL MINUTES – JULY 12, 2016**

increase to the gas tax would provide an additional \$1 million and the city would have direct discretion on how to spend this money.

Councilor Woodard asked if the street maintenance fee would increase in 2017. For residential there was a 24 percent increase and for commercial was a 16 percent increase. Councilor Woodard asked if this would be carried forward to 2018. Mayor Cook said if this gas tax passes, then that SMF increase would not go into effect. If it doesn't pass, the street maintenance fee would see a one-time increase starting January 1, 2017, increased in future years by the cost of living index. Finance Director LaFrance said the city uses a blend of two indices that is capped at seven percent with a minimum increase of two percent. A rolling two-year period is considered to avoid large spikes and dips in the cost of living adjustment.

Councilor Henderson asked if the current three-cent tax is still paying for previous projects. Ms. Fitzpatrick confirmed that the current gas tax pays debt service on prior capital transportation projects but \$300,000 is spent on projects at the discretion of the City Council and Tigard Transportation Advisory Committee (TTAC). She said the debt will be paid off in 2020.

Mayor Cook noted that in previous council discussion on the gas tax amount, some councilors wanted to raise it to ten percent and some were reluctant to move off of the current three percent. He asked if five percent was the right number.

Finance Director LaFrance said when looking at the PMP there was council discussion about the backlog. Council requested a proposal and staff came up with a SMF increase that would raise about an additional \$1 million a year. When they presented that option, council backtracked on raising fees by that much and extended the period to about 20 years with \$500,000 budgeted annually. That is what will go into effect on January 1, 2017. Council further agreed to consider putting a gas tax on the ballot in November and if passed, the proposed fee increase would not go into effect. He said council's thought was that the SMF is paid only by Tigard residents and businesses but they are not the only drivers on Tigard roads. By going to a gas tax, the city gets money from all drivers using city streets and buying gas in Tigard. In theory it raises more money and spreads the cost among a larger group of payers. Citizens pay the same price as travelers through Tigard but get more road projects done.

Mayor Cook said he favors going to ten cents but he is not sure it would pass. A few cents more would cover the front-loading of some projects and assist with matching grants for MSTIP projects, etc. It could also be used for additional sidewalk connections. Councilor Woodard said we have a better chance of passing it at five additional cents but he is risk averse and has heard from some citizens that they will buy their gas elsewhere if the tax increases. He said he agrees with the eight cents.

Councilor Henderson there are people who will complain that they are already paying a SMF and now will have an increased gas tax, but if they understand it all, they will realize that this is a good deal. It will take a lot of work to communicate this. He asked if the extra money goes into the SMF category. Mayor Cook asked how we can ensure the city gets the backlog done in the expressed time frame. Ms. Fitzpatrick said it would be too restrictive to spell that out in the ballot language about specific resources. Mayor Cook said council could pass a resolution to

## **TIGARD CITY COUNCIL MINUTES – JULY 12, 2016**

declare the intent to get rid of the backlog and that the first \$500,000 goes towards it and this would give direction to future councils over the next 20 years and explain why this council did what they did.

Councilor Henderson said he has been working on the PMP since he was elected to council. In 2008 it was a disaster and by 2010 it was fixed yet there was still a huge backlog. He said the city needs to fix the worst streets because they will be the most expensive to repair if allowed to deteriorate further. He commented that the PMP is not to be used for sidewalks. It is not what we intended to do with it. He sees improved traffic signals and better crossings on the list but the main idea of the PMP is to protect our pavement condition index and raise it to 81 percent. A resolution would make sure that intent is clear. City Attorney Rihala advised against being too restrictive with the uses in the ordinance because the city will be locked in. She said, “Put it in categories but keep it as broad as possible.”

Mayor Cook suggested wording for the ballot title question. He asked that it be changed to read, “Shall Tigard increase their fuel tax by five cents a gallon?” He said eight cents is not what they are voting on. They are voting on five cents; they passed the other three years ago. Councilor Woodard said some people may not know about the existing tax.

Suggestions for the project list from council included being consistent with avenue and street names. City Attorney Rihala said Portland received a ballot title challenge that the example projects were too vague. They prevailed but Portland is in Multnomah County so it is not binding in Washington County. She said the proposed project list is a cross between what the priorities were and the limited number of words allowed on the election forms. There is very little room to add anything. Councilor Henderson recommended going from three project categories to two but Mayor Cook said from a citizen standpoint the projects need to be in similar groups. He said, “Do not pair a new bridge with crosswalk lighting.”

Mayor Cook said Councilors Goodhouse and Snider can watch this council meeting on TCVTC cable access and write to staff by next week if they have comments they want considered. There will also be a public hearing on July 26 where anyone can testify on this matter.

Assistant City Manager Newton asked if council wanted staff to prepare the resolution on keeping the pavement management protection for July 26 or do it later. Mayor Cook said the resolution can be voted on in November or December if the measure passes. Finance Director LaFrance said in the same action council could set the intent and do the legislation to stop the street maintenance.

## 6. DISCUSS MARIJUANA TAX MEASURE FOR NOVEMBER 2016

Assistant City Manager Liz Newton and City Attorney Rihala presented this item. This proposal is to put before Tigard voters a three percent tax on marijuana items by a marijuana retailer within the jurisdiction of the city. House Bill 3400 provides that a city council may adopt such a tax but the ordinance must be approved by voters. If council decides not to refer the ordinance to the voters the next opportunity by state law, is the general election in November 2018. Tigard City

## **TIGARD CITY COUNCIL MINUTES – JULY 12, 2016**

Council adopted an ordinance in September 2014 which established taxes on the sale of marijuana items by a marijuana retailer in advance of Measure 91 going before the voters. Ordinance 14-12 is still in effect but state law precludes cities from taxing medical marijuana.

Councilor Woodard noted that OLCC and OHA will be administering the program and asked if this will be paid back by this tax increase. Assistant City Manager Newton said that comes from the 17 percent state tax. The city can collect three percent for a total of 20 percent. From the state tax, administrative costs will be paid first and then allocated among categories, i.e., mental health. The cities will get what is left. Mayor Cook estimated Tigard's share would be \$50,000-\$60,000 and that check may not arrive until 2018.

In response to a question about collections, City Attorney Rihala said the state authorizes the Department of Revenue (DOR) to collect the tax for cities. The League of Oregon Cities is working with the DOR on a process for cities. State statute lets cities decide whether to establish their own system or enter into an IGA with the state. Tigard clearly sets the process in the proposed ordinance. A lot of responsibility falls to the retailers. Councilor Henderson asked if the City would have to accept the tax payment in cash. City Attorney Rihala said the Department of Revenue requested that the Oregon State Police provide extra security on tax collection days.

Mayor Cook noted that Tigard's tax had been enacted already, so it would be null and void. The Code chapter currently spelling out what we do will be repealed.

City Attorney Rihala added that the LOC has indicated to cities that the state may be interested in raising the rates in response to some cities who are de facto banning marijuana businesses by making them so difficult to site. The state is considering offering a carrot instead of a stick. The tax allowed may range from three to eight percent so she recommends referencing "three percent or the maximum allowed by the state."

Assistant City Manager Newton said staff will return to the next business meeting with a revised ordinance for council consideration. Mayor Cook noted that citizens can send comments within that time or come to the public hearing to testify.

7. NON AGENDA ITEMS None.

8. EXECUTIVE SESSION None.

9. ADJOURNMENT

At 8:53 p.m. Councilor Henderson moved for adjournment and Councilor Woodard seconded his motion. The motion passed unanimously.

## **TIGARD CITY COUNCIL MINUTES – JULY 12, 2016**

	Yes	No
Mayor Cook	✓	
Councilor Goodhouse (absent)		
Councilor Henderson	✓	
Council President Snider (absent)		
Councilor Woodard	✓	

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Carol A. Krager, City Recorder

Attest:

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John L. Cook, Mayor

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Date

**TIGARD CITY COUNCIL MINUTES – JULY 12, 2016**



**City of Tigard**  
**Tigard City Council Meeting Minutes**  
**July 26, 2016**

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Council Present: Mayor Cook, Councilor Woodard, Councilor Henderson, Councilor Goodhouse and Council President Snider

Staff Present: City Manager Wine, Assistant City Manager Newton and City Recorder Krager

#### STUDY SESSION

Councilor Henderson attended a Clear Alliance Children Learning from Education and Research at Eagle Crest. He said speakers were excellent and they He talked about addiction rates for marijuana users and said research has found that the rate is higher for children that begin using marijuana. He said it is legal for anyone over 21 but brains do not stop developing until after the age of 30. He warned that children learn by watching their parents. He said cooking and distilling it makes it many times more potent. He will make the information available to all council.

Councilor Goodhouse attended a JPACT meeting where a majority vote was cast to move ahead with the Environmental Impact Study for the SW Corridor. Commissioner Ludlow voted no and said the money should be put towards highways. Chair Dirksen clarified that there are two “pots” of money, one for transit and one for roads. He also attended the Tigard Triangle citizen meeting. Options A or B were considered and the group recommended the expanded area. He clarified for attendees that urban renewal in the Triangle did not take away from the downtown. He noted that it will important when going to the voters to carefully explain

Mayor Cook reported on the Oregon Mayor’s Conference where communicating with citizens was discussed, including social media and utilizing videos that can also be used for economic development.

#### RECEIVE BRIEFING ON CAPITAL IMPROVEMENT PLAN

Engineer Faha gave her report on Capital Improvement Project (CIP) status for the 4<sup>th</sup> quarter. She showed a PowerPoint. Highlights in Parks Projects include being awarded the State Parks Grant. The city has yet to hear about a grant for the Tigard Street Trail. Engineer Faha said there would be a 1<sup>st</sup> Quarter Supplemental Budget for the Civic Center Vision (formerly known as the Citywide Facilities Plan) which was re-scoped. A concept plan is being completed to find out what it would take to upgrade the police locker room.

City Manager Wine noted that council would hear about 1<sup>st</sup> Quarter Supplemental Budget earlier this year than usual due to some upcoming projects. Ms. Faha said Walnut Street is closed for waterline work. In response to a question from Council President Snider, Ms. Faha said the adaptive

### **TIGARD CITY COUNCIL MEETING MINUTES – July 26, 2016**

signalization is not complete on Durham Road and is still under design. A copy of her PowerPoint highlighting the status of projects in major categories is included in the packet for this meeting.

ADMINISTRATIVE ITEMS:

City Manager Wine said with Councilor Henderson going off council in December there is a need for a Community Development Block Grant representative. The county sets the representation from the city and requires an elected official. Whoever fills that seat is supported by a staff person in the second position. Council President Snider nominated Councilor Woodard. Councilor Henderson said it is time intensive at grant selection time. Councilor Woodard said he will consider it. Councilor Goodhouse said he would also be willing to serve. City Manager said she will verify where they meet, when and how often.

Council President Snider said he will not be able to arrive until 7:15 on August 16 and requested that the photo red light discussion be held later in the meeting so he may participate. City Manager Wine said the agenda will be re-ordered. She said if there are any protests to ballot titles they may be reviewed on August 16 so time is reserved for that . Mayor Cook said Mayor Ogden may come to discuss Blue Zones as well on August 16. Councilor Woodard said he will be gone from August 19 through September 3.

City Manager Wine handed out a schedule for National Night Out on August 2, 2016. Council Outreach for the fall is scheduled for September 27 at Summerfield.

1. BUSINESS MEETING – July 26, 2016

- A. At 7:32 p.m. Mayor Cook called the Tigard City Council meeting to order.
- B. City Recorder Krager called the roll.

	Present	Absent
Councilor Woodard	✓	
Mayor Cook	✓	
Councilor Goodhouse	✓	
Councilor Henderson	✓	
Council President Snider	✓	

- C. Mayor Cook asked everyone to stand and join him in the Pledge of Allegiance.
- D. Mayor Cook called to Council and Staff for Non-Agenda Items.

2. CITIZEN COMMUNICATION

- A. Follow-up to Previous Citizen Communication – None

**TIGARD CITY COUNCIL MEETING MINUTES – July 26, 2016**

- B. Citizen Communication – Sign-up Sheet.  
 Pat Romans, President of Mask & Mirror Community Theater, 13166 SW Broadmore Place, Tigard. She thanked council for their continued generous support of the arts in the community through the community event grant program. She said 1,000 people have had an opportunity to view Mask and Mirror’s exciting live productions. Another 100 people have had the chance to exercise their talent on stage, backstage or behind the scenes. She listed their sixth season offerings and presented council and staff with cookies.

3. CONSENT AGENDA: (Tigard City Council) –

A. CONSIDER RESOLUTION EXTENDING WORKERS’ COMPENSATION COVERAGE TO CITY VOLUNTEERS

C. APPROVE CITY COUNCIL MEETING MINUTES

- May 10, 2016
- May 17, 2016

Councilor Henderson requested that the May 10, 2016 minutes be considered separately and moved to approve the Consent Agenda minus the May 10, 2016 minutes. Council President Snider seconded the motion. The motion passed unanimously.

	Yes	No
Councilor Woodard	✓	
Mayor Cook	✓	
Councilor Goodhouse	✓	
Councilor Henderson	✓	
Council President Snider	✓	

Council President Snider moved to approve the May 10, 2016 minutes and Councilor Woodard seconded the motion. The motion passed with 4 yes and 1 abstention.

	Yes	No	Abstain
Councilor Woodard	✓		
Mayor Cook	✓		
Councilor Goodhouse	✓		
Councilor Henderson			✓
Council President Snider	✓		

**TIGARD CITY COUNCIL MEETING MINUTES – July 26, 2016**

#### 4. DISCUSS NATIONAL WATER TRAIL DESIGNATION FOR THE TUALATIN RIVER

Public Works Director Rager and Tualatin Riverkeepers (TRK) Advocacy Manager & River Keeper Wegener presented this item regarding an effort to gain a National Water Trail designation for the Tualatin River. Benefits to this designation include national promotion and visibility, including use of the National Water Trails System logo, mutual support and knowledge sharing, opportunities to obtain technical assistance and funding for planning and implementing projects. The National Water Trail system is managed by the National Parks Service. Mr. Rager said TRK has been working with jurisdictions from Rood Bridge Park all the way down river to the Willamette. Staff thinks this will be a benefit to Tigard and its Tualatin access point at Cook Park.

Mr. Wegener said the first question he hears from elected officials and staff is what is the obligation in return for the designation. It is a program that recognizes communities for doing a good job of managing their water trail through cooperative processes. Recognition has value. The Tualatin Riverkeepers have gotten a lot of support from the Washington County Visitors Association who provided new signs and paddle trail maps. They are eager to get this recognition because it can be promoted to tourists coming to the area. West Linn adopted a resolution of support and Tualatin will consider it August 8, with Washington County and Hillsboro to follow soon after. Mr. Wegener announced upcoming events along the Tualatin River including the August 6th Political Paddle Race which Councilor Goodhouse has entered to represent Tigard.

Mr. Wegener noted that another advantage to the National Water Trail designation is that it makes a grant applicant stand out and he mentioned some upcoming grant opportunities, particularly as the city adds land near River Terrace. The State Marine Board has been working with paddling groups and vetting a process for non-motorized access facility grants, safety programs and maintenance. A bill will be going to the legislature next session to request collection of a fee for a paddlers permit starting January 1, 2018 making money available for grants such as upgrading or building ramps.



Mayor Cook asked about other grants available through the Marine Board. Mr. Wegener replied that the Marine Board is currently funded through marine fuels so if they pay for a facility it should be accessible to motorized boats. The Tualatin River gets very little motorized traffic; it is a paddling river and receives very little in grants currently. Hillsboro is doing a \$350,000 ramp upgrade to Rood Bridge Park, making a floating dock and handicapped accessible ramp. Grants for their project came from State Parks and Metro.

Mayor Cook commented that he learned at the National Conference of Mayors that there is National Parks money available for grants. He asked about adding a second access point between Cook Park in Tigard and Aloha. Mr. Wegener said Metro is opening a new site at Farmington Road which will go through the wildlife refuge and the wildlife viewing is excellent. He said they are developing a plan for the log jams which are more frequent in the upper river rather than in Tigard. Wood in the river is good for fish and other wildlife so rather than remove it all they are looking at ways to cut through the log jams to allow access.

Council expressed encouragement for the National Water Trail designation and Public Works Director Rager said staff will return on August 9 with a resolution of support for council consideration.

5. **CONSIDER RESOLUTION AUTHORIZING METRO EQUITABLE HOUSING PLANNING AND DEVELOPMENT GRANT APPLICATION**

Redevelopment Project Manager Farrelly presented this item. He said affordable housing is a growing issue in this area. This grant will help identify opportunities for preserving sites for affordable housing in the downtown and the Tigard Triangle areas. It includes an affordable housing funding analysis to support an anti-displacement strategy, and develop a model relocation program for residents impacted by the SW Corridor rail alignments and expected rental market price escalation. Staff briefed council on this potential grant in a Study Session on June 28. Metro notified the city that its letter of interest met the eligibility requirements for the program and encouraged the city to move forward with a full grant application. He said the grant is for \$50,000 and the city proposes using approximately \$10,000 of in-kind match (staff time). Metro will also be looking at this subject but from a higher level; this grant will zoom in on specific areas in Tigard. A resolution of support is required for the full application.

Councilor Henderson moved for adoption of Resolution No. 16-29. Council President Snider seconded the motion.

City Recorder Krager read the number and title of the resolution.

**RESOLUTION NO. 16-29 - A RESOLUTION APPROVING AN APPLICATION FOR A METRO EQUITABLE HOUSING PLANNING AND DEVELOPMENT GRANT TO FUND THE SOUTHWEST CORRIDOR AFFORDABLE HOUSING REDEVELOPMENT PROJECT**

Mayor Cook conducted a vote and Resolution No. 16-29 passed unanimously.

	Yes	No
Councilor Woodard	✓	
Mayor Cook	✓	
Councilor Goodhouse	✓	
Councilor Henderson	✓	
Council President Snider	✓	

6. **LEGISLATIVE PUBLIC HEARING – CONSIDERATION OF ORDINANCE AND RESOLUTION TO PLACE A GAS TAX ON THE NOVEMBER 8, 2016 BALLOT**

- a. Mayor Cook opened the public hearing.
- b. City Attorney read the hearing procedures.

**TIGARD CITY COUNCIL MEETING MINUTES – July 26, 2016**

c. Staff Report - Assistant Finance Director Fitzpatrick gave the staff report. At the July 12, 2016 council discussion reasons were reviewed for council to approve a five-cent increase to the gas tax to pay for the \$11 million backlog of paving projects. An increase to the gas tax must be referred to the voters. Drivers fueling in Tigard would contribute to the cost of maintaining Tigard roads instead of only Tigard residents and businesses paying a higher Street Maintenance Fee (SMF). At five cents a gallon it would provide an additional \$1 million per year as compared to the scheduled increase in the SMF on January 1, 2017 of approximately \$500,000. As discussed at the meeting much of the increase in the gas tax could be set aside for pavement projects and then revenues above that could be spent on either major capital transportation projects and/or pedestrian connections, bike lanes or sidewalks. At the July 12 meeting staff received ballot language and changes were made. The packet includes the revised ballot title language. The question states. Shall Tigard enact an ordinance to increase fuel tax by five cents, as compared to eight cents which was the wording used previously. Staff removed the statement regarding the SMF increase if the ballot measure did not pass and now that is in the explanatory statement. They made the road and street abbreviations consistent and three streets were added to the paving project list: Alderbrook Drive, 130<sup>th</sup> Avenue and Fonner Street.

The interactive project map on the website was demonstrated. It is a GIS map of Tigard with colored dots highlighting how the gas tax resources will be used. Clicking on the dots pulls up the project name and estimated cost. Dot size relates to the size of the project. Councilor Henderson compared the handout to the map on the GIS and Ms. Fitzpatrick will work with GIS staff to match the size of the dots on the handout and interactive map. Finance Director LaFrance said staff has been working on communication materials and FAQs for the city's website and for distribution.

Mayor Cook said this is the first round of projects for the first three to four years. It is not the entire breadth of projects desired over the 20 years. Council discussed the Tigard Street Bridge and Tiedeman Bridge cost differences.

d. Public Testimony.

-Proponents.

Elise Shearer, 9980 SW Johnson Street, Tigard, OR 97223 said she supports going out for an eight percent gas tax. Prices are low and this is an equitable tax. This is paid for by people driving through town and filling up. She said gas prices will always go up and there is a lot of overstock right now. She said, "You need to go for it. You are not going to get this opportunity again." She suggested evaluating the fee and tax system every five years.

-Opponents. None.

-Response to testimony by staff. None.

e. Staff Recommendation - Assistant Finance Director Fitzgerald said staff recommends council adopting an ordinance amending the Tigard Municipal Code and a resolution for the ballot title language to refer the measure to the voters in November to increase the city's motor vehicle fuel tax by five cents a gallon.

## **TIGARD CITY COUNCIL MEETING MINUTES – July 26, 2016**

- f. Close Public Hearing.
- g. Council Discussion and Consideration of Ordination No. 16-14

Councilor Goodhouse said he would like to see the increase rise to ten cents a gallon. He referred to the backlog and said the timing was perfect. The City of Tigard has a lower property tax. He encouraged putting in an explanation about the options to pay for the backlog.

Council President Snider noted that he missed the July 12 discussion and had some comments. He did not think the material adequately conveys the point that staff and the speaker made. One of the main rationales for doing this is to tax people who use our roads but do not pay our street maintenance fees. He did not think this is adequately explained in the explanatory statement. Council intends to amend or change the SMF if this passes and that needs to be objectively described. These are important points that leave voters uninformed. He added that he could also support a bigger increase than five cents if others wished to as well.

City Manager Wine read the original wording, “If this measure is approved the increase in the city street maintenance fee scheduled to begin January 1, 2017 would not go into effect.” Council’s discussion on July 12 was to find a more clear way to explain this. The request from councilors that night was to remove it from the ballot title and add it to the explanatory statement where there is less of a constraint on words. Ms. Fitzpatrick read the statement, “If the local gas tax ballot is approved Tigard residents will not see a scheduled street maintenance fee increase of 24 percent to their monthly utility bill and businesses will not see the scheduled increase of 16 percent beginning January 1, 2017.

Council President Snider said he wanted to see wording in the explanatory statement that clarifies specifically that if approved the increase of five cents a gallon to the local gas tax will be paid for by all persons who buy gas in Tigard [not just residents]. He said this will make that clear point that Tigard residents are currently footing the entire bill and all the people driving through Tigard and buying gas and driving on our streets are not paying an equitable share.

Councilor Goodhouse questioned whether it made more sense to remove some project information from the explanatory statement and insert the statement Council President Snider read. City Manager Wine said one philosophy from a staff perspective was that Tigard voters like to see specificity so the project list included for that reason. It could be edited.

Council President Snider said he would like to add [not just residents] to the explanatory statement. Ms. Fitzpatrick read, “If approved the increase of five cents per gallon local gas tax will be paid by all persons who purchase gas in Tigard [not just residents]. City Attorney Rihala expressed concerns with the “not just Tigard residents” line and said it approaches advocacy. Council President Snider said this can be converted into facts. He said it is also a fact that people who pay the SMF are only Tigard residents. Snider said it is also a fact that people who pay the street maintenance fee alone are only Tigard residents.

Councilor Henderson said it is cumbersome because the new street maintenance fee is not in effect yet. People do not know this was going to happen.

## **TIGARD CITY COUNCIL MEETING MINUTES – July 26, 2016**

Councilor Woodard suggested putting the SMF increase into effect, get the \$500,000 and then consider a future ballot measure in May. He is worried about competitiveness. He asked each councilor to be honest about telling him if they will go to gas stations outside of Tigard if the prices go up. Councilor Goodhouse said we can compare with other cities but we do have the lowest property tax. We are talking about a two-cent difference and if we have a chance to put this out to the voters we have a chance to get some projects done that are important to the city. Council President Snider said, “The IRS considers it costs 50 per mile, fully loaded, to drive, so why would anyone drive a few miles to save two cents on a gallon?”

Mayor Cook said his point is that he voted against the higher SMF because he felt a gas tax is more equitable. He said, “We’ve had a three-cent gas tax for more than ten years. I buy all my gas here because I know three cents goes to Tigard. If you read the stats, people buy gas when they need gas. The majority of Americans buy their gas that way.” He said this includes the station at Costco and assume cardlock stations are included in this so we are gaining tax from those drivers also. He said most people driving up to the street already experience a price difference from one end of Tigard to the other. Mayor Cook said he had concerns about a seven percent increase as ten cents is a huge difference. He worries that he does not want this to sunset. He would rather go lower and not have a sunset provision.

Language was reworked to read: If the local gas tax is approved Tigard residents and businesses will not see an increase of the street maintenance fee on January 1, 2017 the local gas tax will be paid for by all persons who purchase gas in Tigard Council President Snider and Mayor Cook agreed with this sentence. At Council President Snider’s request staff printed and distributed copies of the statement.

Councilor Henderson asked about adding the word “scheduled” in front of increase and council agreed this was a good idea.

City Attorney Rihala asked for a word count and cautioned that hyphenated words are counted as they would be spoken so they are sometimes counted as one sometimes as two.

Councilor Woodard suggested the words...will not see a scheduled increase in street maintenance fee in January 2017.

Councilor Woodard moved to approve Ordinance No. 16-14, as amended. Council President Snider seconded the motion.

City Recorder Krager read the number and title of the Ordinance.

**ORDINANCE NO. 16-14 – AN ORDINANCE AMENDING THE TIGARD MUNICIPAL CODE CHAPTER 3.65 TO INCREASE THE FUEL TAX BY 5 CENTS PER GALLON FOR STREET SYSTEM AND RIGHT OF WAY IMPROVEMENTS, REPAIR AND MAINTENANCE, as amended**

City Recorder Krager conducted a roll call vote.

Yes

No

**TIGARD CITY COUNCIL MEETING MINUTES – July 26, 2016**

Councilor Woodard	✓
Mayor Cook	✓
Councilor Goodhouse	✓
Councilor Henderson	✓
Council President Snider	✓

Mayor Cook announced that Ordinance No. 16-14 was adopted unanimously.

h. Council Discussion and Consideration: Resolution No. 16-30

Council President Snider moved for adoption of Resolution No. 16-30. Councilor Woodard seconded the motion. Council President Snider noted that staff did a lot of work and he wanted appreciation extended to City Engineer Faha, Senior Transportation Planner Brown and Streets and Transportation Projects Engineer McCarthy.

Mayor Cook said as discussed at a previous meeting regarding the maintenance part of the gas tax proposal, council will need to remove the increase street maintenance fee and staff will come back with a resolution that states the city will spend \$500,000 per year for 22 years to get rid of the \$11 million backlog, increased by the cost of construction price. This will make sure not all of it is spent on street improvements and sidewalks.

**RESOLUTION NO. 16-30 - A RESOLUTION APPROVING REFERRAL TO THE ELECTORS OF THE CITY OF TIGARD AT THE NOVEMBER 8, 2016 GENERAL ELECTION, THE QUESTION OF WHETHER TO INCREASE FUEL TAX BY 5 CENTS PER GALLON FOR STREET SYSTEM IMPROVEMENTS, REPAIR AND MAINTENANCE**

Council President Snider moved to clarify his motion to include the words, “as amended.” Council Woodard accepted the amendment.

City Recorder Krager reread the number and title of the resolution.

**RESOLUTION NO. 16-30 - A RESOLUTION APPROVING REFERRAL TO THE ELECTORS OF THE CITY OF TIGARD AT THE NOVEMBER 8, 2016 GENERAL ELECTION, THE QUESTION OF WHETHER TO INCREASE FUEL TAX BY 5 CENTS PER GALLON FOR STREET SYSTEM IMPROVEMENTS, REPAIR AND MAINTENANCE, as amended**

	Yes	No
Councilor Woodard	✓	
Mayor Cook	✓	
Councilor Goodhouse	✓	
Councilor Henderson	✓	
Council President Snider	✓	

**TIGARD CITY COUNCIL MEETING MINUTES – July 26, 2016**

Mayor Cook announced that Resolution No. 16-30 passed unanimously.

7. LEGISLATIVE PUBLIC HEARING – CONSIDERATION OF ORDINANCE AND RESOLUTION TO PLACE A MARIJUANA TAX ON THE NOVEMBER 2016 BALLOT

- a. Open Public Hearing - Mayor Cook.
- b. Hearing Procedures – City Attorney will read the hearing procedures.
- c. Staff Report - Assistant City Manager Newton gave the staff report on council consideration of an ordinance and resolution to place a marijuana tax on the November 8, 2016 ballot. She said City Attorney Rihala raised the issue that cities may be able to charge more depending on what the state legislature does. The language was changed in the ordinance to establish a tax on marijuana items at a minimum of three percent or whatever the law will allow. The next opportunity to ask voters for a marijuana tax is in 2018 if council elects not to put this on the ballot this November.

In response to a question from Councilor Woodard Ms. Newton said there is no limit on how local tax revenues are spent but the current state tax does have limits. The city tax would go into the general fund. Mayor Cook noted that unlike Measure 97 the legislature wanted an end-use tax that is not cumulative. Taxes that are too high make it unlikely to get the product off the black market. Council President Snider suggested charging a very large business license fee for a large grow operation. Mayor Cook said the city must be careful not to single out businesses. In response to a question from Councilor Woodard Mayor Cook said there was at least one such operation in town. He said the state is not taxing medical marijuana so the city will have to change their ordinance.

- d. Public Testimony.

- Proponents.

Elise Shearer, 9980 SW Johnson Street, Tigard, OR 97223 advocated for taxing recreational marijuana only. She said she supports the state plan not to tax medical marijuana. It helps with pain, anxiety and nausea. It benefits cancer patients as well as those who are mentally ill. Often these patients have diminished earning capacity. She advised if council does not put this on the ballot that they use the time to study the income coming from the state and ask if Tigard really needs the city tax. She said there is another shop requesting to go into the downtown that is trapped by a five-year lease that was signed preemptively.

Eva Sigersted, 13940 SW Chin Lane, Tigard OR 97224 seconded the opinion that the tax should be strictly for recreational rather than medical as there is already a fee for medical. Combining that with lowered income would be a hardship. She said the percentage could be the same for all cities and could be divided up among the cities. Mayor Cook said that is the way it stands. Tigard would collect the three percent for retail recreational marijuana sold in the city where it is located. Mayor Cook clarified the different laws on taxing marijuana.

- Opponents. None
- Response to testimony by staff. None.

**TIGARD CITY COUNCIL MEETING MINUTES – July 26, 2016**

- e. Staff Recommendation. Assistant City Manager Newton said the staff recommends two actions, first to approve the ordinance to establish the tax and the second is to approve the resolution referring the question to the voters.
- f. Close Public Hearing.
- g. Council Discussion and Consideration: Ordinance No. 16-15

Councilor Woodard clarified that this is for retail, not medical product. Councilor Henderson said the use of these funds is not dedicated. Any city tax would go into the general fund and allocated as part of city’s budget process. Mayor Cook commented that it could be used towards law enforcement because that is included in the general fund.

Council President Snider moved to approve Ordinance No. 16-15. Councilor Goodhouse seconded the motion. City Recorder Krager read the number and title of the ordinance.

**ORDINANCE NO. 16-15 – AN ORDINANCE ESTABLISHING A TAX ON THE SALE OF MARIJUANA ITEMS BY A MARIJUANA RETAILER IN THE CITY OF TIGARD**

City Recorder Krager conducted a roll call vote.

	Yes	No
Councilor Woodard	✓	
Mayor Cook	✓	
Councilor Goodhouse	✓	
Councilor Henderson	✓	
Council President Snider	✓	

Mayor Cook announced that Ordinance No. 16-15 was adopted unanimously.

- h. Council Discussion and Consideration: Resolution No. 16-31

Council President Snider moved for adoption of Resolution No. 16-31. Councilor Goodhouse seconded the motion. City Recorder Krager read the number and title of the resolution.

**RESOLUTION NO. 16-31 - A RESOLUTION APPROVING REFERRAL TO THE ELECTORS OF THE CITY OF TIGARD AT THE NOVEMBER 8, 2016 GENERAL ELECTION, THE QUESTION OF WHETHER TO ESTABLISH A TAX ON THE SALE OF MARIJUANA ITEMS BY A MARIJUANA RETAILER IN THE CITY OF TIGARD**

Mayor Cook conducted a vote and the motion passed unanimously.

	Yes	No
Councilor Woodard	✓	
Mayor Cook	✓	
Councilor Goodhouse	✓	
Councilor Henderson	✓	
Council President Snider	✓	

- 8. NON AGENDA ITEMS None.
- 9. EXECUTIVE SESSION None Scheduled.
- 10. ADJOURNMENT

At 9:13 p.m. Councilor Henderson moved for adjournment and Councilor Woodard seconded the motion. The motion passed unanimously.

	Yes	No
Councilor Woodard	✓	
Mayor Cook	✓	
Councilor Goodhouse	✓	
Councilor Henderson	✓	
Council President Snider	✓	

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Carol A. Krager, City Recorder

Attest:

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John L. Cook, Mayor

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Date

**TIGARD CITY COUNCIL MEETING MINUTES – July 26, 2016**

**AIS-2390**

**3. B.**

**Business Meeting**

**Meeting Date:** 09/27/2016

**Length (in minutes):** Consent Item

**Agenda Title:** Consider Authorizing the City Manager to Sign an IGA with ODOT for Design and Construction of New Sections of the Fanno Creek Trail

**Prepared For:** Mike McCarthy      **Submitted By:** Judy Lawhead,  
Public Works

**Item Type:** Motion Requested      **Meeting Type:** Consent  
Agenda

**Public Hearing** No

**Newspaper Legal Ad Required?:**

**Public Hearing Publication**

**Date in Newspaper:**

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**Information**

**ISSUE**

Shall council authorize the city manager to sign an intergovernmental agreement (IGA) with the Oregon Department of Transportation (ODOT) for design and construction of new sections of the Fanno Creek Trail?

**STAFF RECOMMENDATION / ACTION REQUEST**

Staff recommends that council authorize the city manager to sign the agreement.

**KEY FACTS AND INFORMATION SUMMARY**

This project will design and construct four sections of the Fanno Creek Trail:

- 1) New trail from Woodard Park to Grant Avenue
- 2) Replacement trail from Ash Avenue to Hall Boulevard
- 3) New trail from the Tigard Library to Bonita Road
- 4) New trail from 85th Avenue to the Ki-a-Kuts bridge to Tualatin

Federal Congestion Mitigation and Air Quality (CMAQ) funds have been allocated via Metro for this project. Projects using these funds must be administered by a federally-approved agency which, in Oregon, is the Oregon Department of Transportation (ODOT). The attached IGA outlines how the city and ODOT will work together to deliver this project.

Key terms of this agreement are:

- 1) ODOT will contract directly with the design firm and construction company, and will administer their contracts.
- 2) ODOT will submit requests for and receive the federal funds for this project; federal funds will not flow through city books.
- 3) All work on this project must be done in accordance with all federal and state laws, processes, and procedures.
- 4) The city and ODOT will work together to manage the project; ODOT's primary role will be to ensure the appropriate federal, state, etc. requirements are met.
- 5) \$4,350,000 of federal Congestion Mitigation and Air Quality (CMAQ) funds are allocated for this project.
- 6) The city's required match is 10.27% of the total project cost of \$4,847,877, which would be \$497,877. This will be paid at the beginning of each project phase (design, right-of-way acquisition, and construction) based on 10.27% of the estimated cost of that phase.
- 7) The city is responsible for cost overruns.
- 8) Once constructed, the trail will be under the jurisdiction of and maintained by the city.

The city attorney has completed a legal review of this agreement and found no reason to object to signing it.

The project is scalable - options are available to reduce its scope if necessary to stay within budget.

Note: The section of Fanno Creek Trail from Main Street to Ash Avenue will be reconstructed by a separate project to be done in conjunction with a Clean Water Services project to 're-meander' Fanno Creek in that area.

## **OTHER ALTERNATIVES**

Council could propose changes to the agreement or could decide not to approve the agreement. Should the council decide not to approve the agreement, the project would not move forward and the trail would not get built.

## **COUNCIL OR CCDA GOALS, POLICIES, MASTER PLANS**

Completion of this project would be a significant step towards the vision of Tigard as the most walkable community in the Pacific Northwest where people of all ages and abilities enjoy healthy and interconnected lives.

This is project number 92046 in the city's adopted Capital Improvement Plan, and includes high-priority projects in the city's Greenway Trails Plan, Transportation System Plan, Fanno Creek Park Master Plan, and Downtown Connectivity Plan.

## **DATES OF PREVIOUS CONSIDERATION**

Council was briefed on this agreement on September 13, 2016.

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## **Fiscal Impact**

**Cost:** \$497,877  
**Budgeted (yes or no):** Yes  
**Where Budgeted (department/program):** CIP 92046

### **Additional Fiscal Notes:**

The city's local match required under this IGA is \$497,877, which is 10.27% of the total project cost. Matching funds will need to be paid at the start of each phase of the project based on the cost of work to be done in that phase. Capital Improvement Plan project number 92046 includes \$1,111,342 of Parks SDC funds for this project.

The federal CMAQ funds for this project will go directly to ODOT and will not flow through the city's accounting system.

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## **Attachments**

IGA For Signature

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**LOCAL AGENCY AGREEMENT  
CONGESTION MITIGATION AND AIR QUALITY PROGRAM  
Fanno Creek Trail: Woodard Park-Bonita Rd/85<sup>th</sup> Ave-Tualatin Br.**

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State," and the Portland Urbanized Area Metropolitan Planning Organization, acting by and through its elected officials, hereinafter referred to as "Metro," and the CITY OF TIGARD, acting by and through its elected officials, hereinafter referred to as "Agency," herein referred to individually or collectively as "Party" or "Parties."

**RECITALS**

1. By the authority granted in Oregon Revised Statute (ORS) [190.110](#), [366.572](#) and [366.576](#), State may enter into cooperative agreements with counties, cities, and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
2. The Fanno Creek Trail is part of the Metro Regional trail system. It serves as the main north-south cycling and walking route in this portion of the Metro area and is the parallel cycling and walking route to Interstate 5 and OR217. The sections from Woodard Park to Bonita Road and from 85<sup>th</sup> Avenue to the Tualatin River (Ki-a-Kuts) Bridge are under the jurisdiction of Agency.
3. A portion of this trail will be constructed on property currently owned by Metro.

**NOW THEREFORE** the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

**DEFINITIONS**

1. "Contract Award" (construction projects) means the issuance of a Notice to Proceed (NTP) to the construction contractor.
2. "Contract Time" means amount of time for completing the bid item work under the contract.
3. "Establishment Period" means the time specified to assure satisfactory establishment and growth of planted materials.
4. "Final Acceptance" means written confirmation by Agency and State that the project has been completed according to the contract, with the exception of latent defects and warranty obligations, if any, and has been accepted.
5. "Final Payment" the amount of final payment will be the difference between the total amount due the contractor and the sum of all payments previously made. All prior partial estimates and payments shall be subject to correction in the final estimate and payment.
6. "Obligation" means approval of funding that allows a project to commence with spending.

7. "Project Close-Out" means project is ready to close as there are no more expenditures associated with project.
8. "Second Notification" means written acknowledgment by the Engineer of the end of Contract Time in accordance with ODOT Standard Specification 000180.50(g).
9. "Third Notification" written acknowledgment by the Engineer, subject to Final Acceptance, that as of the date of the notification the Contractor has completed the Project according to the Contract, including without limitation completion of all minor corrective work, Equipment and plant removal, site clean-up, and submittal of all certifications, bills, forms and documents required under the Contract.

## **TERMS OF AGREEMENT**

1. Under such authority, State, Agency and Metro agree to State constructing approximately 8,800 feet of paved shared-use path at four (4) sections of the Fanno Creek Trail, including bridges and boardwalk structures, and mitigation, hereinafter referred to as "Project." The location of the Project is approximately as shown on the map attached hereto, marked "Exhibit A – Project Location Maps 1 and 2," and by this reference made a part hereof.
2. This Project shall be conducted as a part of the Congestion Mitigation and Air Quality (CMAQ) Program under Title 23, United States Code. The total Project cost is estimated at \$4,847,877, which is subject to change. The CMAQ funds are limited to \$4,350,000. The Project will be financed with CMAQ funds at the maximum allowable federal participating amount, which is 89.73 percent, with Agency providing the 10.27 percent match for eligible costs and paying for any non-participating costs, including all costs in excess of the available federal funds. Agency is not guaranteed the use of unspent funds. Moving funds between phases requires the approval of State's CMAQ Program Manager.
3. The scope, schedule, progress report requirements, and Project Change Request process are described in Exhibit B, attached hereto and by this reference made a part hereof. Agency agrees to the conditions set forth in Exhibit B.
4. Metro grants State and Agency the right to enter onto Metro property for the performance of duties as set forth in this Agreement. Agency grants State the right to enter onto Agency property for the performance of duties as set forth in this Agreement.
5. State will submit the requests for federal funding to the Federal Highway Administration (FHWA). The federal funding for this Project is contingent upon approval of each funding request by FHWA. Any work performed prior to acceptance by FHWA or outside the scope of work will be considered nonparticipating and paid for at Agency expense.
6. Agency shall comply with the requirements of Buy America [23 CFR 635.410](#).
7. State considers Agency a subrecipient of the federal funds it receives as reimbursement under this Agreement. The Catalog of Federal Domestic Assistance (CFDA) number and title for this Project is [20.205](#), Highway Planning and Construction.

8. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate upon completion of the Project and final payment or ten (10) calendar years following the date all required signatures are obtained, whichever is sooner.
9. Agency shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in [ORS 190.003](#), if any, to indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Department of Transportation and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in [ORS 30.260](#), caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the Parties that State shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of State, be indemnified by the contractor and subcontractor from and against any and all Claims.
10. Any such indemnification shall also provide that neither Agency's contractor and subcontractor nor any attorney engaged by Agency's contractor and subcontractor shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at any time at its election assume its own defense and settlement in the event that it determines that Agency's contractor is prohibited from defending the State of Oregon, or that Agency's contractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against Agency's contractor if the State of Oregon elects to assume its own defense.
11. This Agreement may be terminated by mutual written consent of the Parties.
12. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
  - a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
  - b. If Agency fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.
  - c. If Agency fails to provide payment of its share of the cost of the Project.
  - d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its

reasonable administrative discretion, to continue to make payments for performance of this Agreement.

- e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or if State is prohibited from paying for such work from the planned funding source.
13. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
  14. Information required by [2 CFR 200.331\(a\)](#), except for (xiii) Indirect cost rate, shall be contained in the USDOT FHWA Federal Aid Project Agreement for this Project, a copy of which shall be provided by State to Agency with the Notice to Proceed. The indirect cost rate for this project, at the time the agreement is written, is 156 percent and may change upon notice to State and State's subsequent written approval. Agency may have other indirect cost rates for departments and or disciplines that have been approved for use by their cognizant agency and State and these rates may be used on the Project, as applicable.
  15. Agency and Metro shall each separately, upon completion of the Project and as a condition to this Agreement, complete and file with the appropriate County Clerk, "Memorandum of Agreement and Acknowledgment of Federal Assistance," substantially in the form of Exhibit C attached hereto and by this reference made a part hereof. Agency and Metro shall each provide confirmation of this filing by forwarding to State's Contact a notarized copy of the recorded Memorandum of Agreement and Acknowledgment of Federal Assistance. By means of said acknowledgment of Agency financial obligations, the continued use of said property for public purposes, and the maintenance of the facility or service at a level consistent with normal depreciation or demand or both is recognized and attached to the property as conditions. Any interest in said property by State is proportional to the federal state funding participation in Project. While in default of conditions of this Agreement, Agency will be ineligible to receive federal or state funds from any Active Transportation managed administered program for any project on a street, road or property. The Memorandum of Agreement and Acknowledgment of Federal Assistance shall remain in place for the useful life of Project identified in the Special Provisions. State acknowledges that such interest shall not be deemed a lien, mortgage, deed of trust or other security instrument or interest granted by Agency and Metro for security purposes.
  16. The Special and Standard Provisions attached hereto, marked Attachments 1 and 2, respectively, are by this reference made a part hereof. The Standard Provisions apply to all federal-aid projects and may be modified only by the Special Provisions. The Parties hereto mutually agree to the terms and conditions set forth in Attachments 1 and 2. In the event of a conflict, this Agreement shall control over the attachments, and Attachment 1 shall control over Attachment 2.
  17. Agency, as a recipient of federal funds, pursuant to this Agreement with the State, shall assume sole liability for Agency's breach of any federal statutes, rules, program

requirements and grant provisions applicable to the federal funds, and shall, upon Agency's breach of any such conditions that requires the State to return funds to FHWA, hold harmless and indemnify the State for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of Agency, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.

18. The Parties hereto agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
19. Agency and Metro certify and represent that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency or Metro, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.
20. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
21. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.
22. State's Project Manager for the Agreement is Michele Thom, Local Liaison, 123 NW Flanders, Portland, OR 97209, 503-731-8279, [Michele.r.thom@odot.state.or.us](mailto:Michele.r.thom@odot.state.or.us) or assigned designee upon individual's absence. State shall notify the other Parties in writing of any contact information changes during the term of this Agreement.
23. Agency's Project Manager for this Agreement is Mike McCarthy, Project Manager, 13125 SW Hall Blvd., Tigard, OR 97223, 503-718-2462, [mikem@tigard-or.gov](mailto:mikem@tigard-or.gov) or assigned designee upon individual's absence. Agency shall notify the other Parties in writing of any contact information changes during the term of this Agreement.
24. Metro's Contact for this Project is Robert Spurlock, Senior Regional Planner, 600 NE Grand Ave, Portland, OR, 97232, (503) 813-7560, [Robert.Spurlock@oregonmetro.gov](mailto:Robert.Spurlock@oregonmetro.gov), or assigned designee upon individual's absence. Agency shall notify the other Parties in writing of any contact information changes during the term of this Agreement.

**THE PARTIES**, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

This Project is in the 2015-2018 Statewide Transportation Improvement Program (STIP), (Key #19327) that was adopted by the Oregon Transportation Commission on December 18, 2014 (or subsequently by amendment to the STIP).

**SIGNATURE PAGE TO FOLLOW**

**CITY OF TIGARD**, by and through its  
elected officials

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By \_\_\_\_\_  
City Attorney

Date \_\_\_\_\_

**Agency Contact:**

Mike McCarthy, Project Manager  
13125 SW Hall Blvd.  
Tigard, OR 97223  
503-718-2462  
[mikem@tigard-or.gov](mailto:mikem@tigard-or.gov)

**METRO**, by and through its elected  
officials

By \_\_\_\_\_

Title \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By \_\_\_\_\_  
Metro Counsel

Date \_\_\_\_\_

**Metro Contact:**

Robert Spurlock, Senior Regional Planner  
600 NE Grand Ave  
Portland, OR, 97232  
(503) 813-7560  
[Robert.Spurlock@oregonmetro.gov](mailto:Robert.Spurlock@oregonmetro.gov)

**STATE OF OREGON**, by and through  
its Department of Transportation

By \_\_\_\_\_  
Highway Division Administrator

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Region 1 Manager

Date \_\_\_\_\_

By \_\_\_\_\_  
CMAQ Program Manager or  
Active Transportation Section Manager

Date \_\_\_\_\_

By \_\_\_\_\_  
Region 1 Project Services Manager

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By \_\_\_\_\_  
Assistant Attorney General

Date \_\_\_\_\_

**State Contact:**

Oregon Dept. of Transportation  
Michele Thom, Local Liaison  
123 NW Flanders  
Portland, OR 97209  
503-731-8279  
[Michele.r.thom@odot.state.or.us](mailto:Michele.r.thom@odot.state.or.us)

EXHIBIT A – Project Location Map 1 of 2

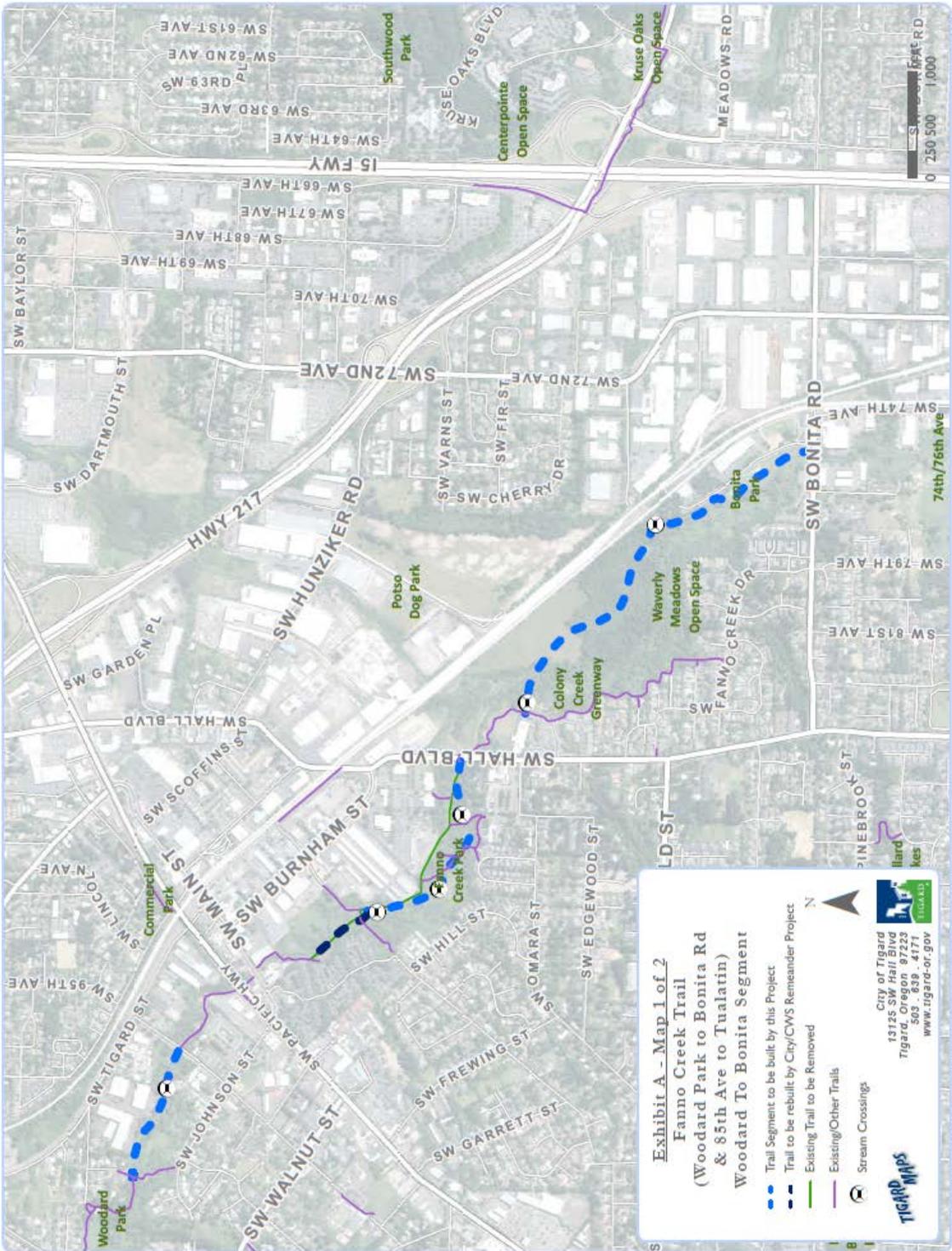


EXHIBIT A – Project Location Map 2 of 2



**EXHIBIT B**  
**Progress Reports and Project Change Request Process**  
**Agreement No. 31030**

**Key Number: 19327**

**Project Name:** Fanno Creek Trail: Woodard Park-Bonita Rd/85<sup>th</sup> Ave-Tualatin Br.

**1. Project Description**

The Project includes design and construction of four segments of shared-use path that are part of the regional Fanno Creek Trail system. A 12 foot wide paved path with structures is assumed for all four segments unless State determines that conditions such as environmental constraints justify a narrower section in a specific area. Path width will include a minimum one-foot shy distance along all structures with railings and in all areas with an adjacent vertical barrier. A one foot shoulder on either side of the trail will be required where no structures exist.

Segment #1—Woodard Park to Grant Avenue: Approximately 1,400 feet in length.

Segment #2—Ash Avenue to Hall Road: Approximately 1,800 feet in length.

Segment #3—Tigard Library to Bonita Road: Approximately 4,200 feet in length.

Segment #4—SW 85<sup>th</sup> Avenue to Tualatin River (Ki-a-Kuts Bridge): Approximately 1,400 feet in length.

2. This Project is subject to progress reporting and project change process as stated below.
3. **Monthly Progress Reports (MPR)** - Agency shall submit monthly progress reports using MPR Form 734-2862, incorporated by reference and made a part of this Agreement. The Monthly Progress Report is due by the 5th day of each month, starting the first month after execution of this Agreement, and continuing through the first month after State issues Project Acceptance (Second Note) for the Project's construction contract.

The fillable MPR form and instructions are available at the following address:

[http://www.oregon.gov/ODOT/TD/AT/Pages/Forms\\_Applications.aspx](http://www.oregon.gov/ODOT/TD/AT/Pages/Forms_Applications.aspx)

4. **Project Milestones** – The Parties agree that the dates shown in Table 1 constitute the intended schedule for advancing and completing the Project. Project Milestones may only be changed through amendment of this Agreement, after obtaining an approved Project Change Request.

**Table 1: Project Milestones**

	<b>Milestone Description</b>	<b>Completion Date</b>
1	Obligation (Federal Authorization) of Federal funds for the Preliminary Engineering phase of the Project	December 31, 2016
2	Obligation (Federal Authorization) of Federal Funds for the Right of Way phase of the Project (if needed)	September 30, 2017
3	Obligation (Federal Authorization) of Federal for the Construction phase of the Project	February 28, 2019

**5. Requirements for Construction Projects**

- a. **Second Notification** –Upon completion of on-site work Second Notification shall be issued. Second Notification is further defined in Definitions. The anticipated and actual date for issuance of Second Notification shall be reported in the required monthly report as described in paragraph 3, above.
- b. **Third Notification** – Issuance of Third Notification must be received within 120 days from the issuance of Second Notification as stated above with the exception of any Establishment Period noted in the Construction Contract or any remaining responsibilities of the Contractor. If Third notification is not issued within the required timeframe, Consequences for Non-Performance, paragraph 8 below may apply.

**6. Project Change Request (PCR) Process** - Agency must obtain approval from State’s Contact for changes to the Project’s scope, schedule, or budget as specified in paragraphs 6a, 6b and 6c, below. Agency shall be fully responsible for all costs that occur outside the established Project scope, schedule or budget and prior to an approved PCR. Amendments to this Agreement are required for all approved PCRs.

- a. **Scope** - A PCR is required for any significant change or reduction in the scope of work described in the Project Description (Paragraph 1 of this Exhibit).
- b. **Schedule** – A PCR is required if Agency or State’s Contact anticipate that any Project Milestone will be delayed by more than ninety (90) days, and also for any change in schedule that will require amendment of the Statewide Transportation Improvement Program (STIP).
- c. **Budget** – Total Project Cost and approved funds for the Project are controlled by Terms of Agreement paragraph 2 of this Agreement.

**7. PCR Form** - Agency must submit all change requests using PCR Form 734-2863, attached by reference and made a part of this Agreement. The PCR Form is due no later than thirty (30) days after the need for change becomes known to Agency. The PCR shall explain what change is being requested, the reasons for the change, and any efforts to

mitigate the change. A Project Change Request may be rejected at the discretion State's CMAQ Program Manager.

The fillable PCR form and its instructions are available at the following web site:  
[http://www.oregon.gov/ODOT/TD/AT/Pages/Forms\\_Applications.aspx](http://www.oregon.gov/ODOT/TD/AT/Pages/Forms_Applications.aspx)

8. **Consequence for Non-Performance** - If Agency fails to fulfill its obligations in paragraphs No. 3 through No. 7 above, or does not assist in advancing the Project or perform tasks that the Agency is responsible for under the Project Milestones, State's course of action through the duration of Agency's default may include: (a) restricting Agency consideration for future funds awarded through State's managed funding programs, (b) withdrawing unused Project funds, and (c) terminating this Agreement as stated in Terms of Agreement, Paragraph No. 12a and 12b. State may also choose to bill Agency for expenses incurred by State for staff time to assist in completion of the final project documentation and issuance of Third Notification.

After recording, return to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**EXHIBIT C**  
**MEMORANDUM OF AGREEMENT AND ACKNOWLEDGEMENT OF FEDERAL ASSISTANCE**  
**[State Recording Authority: ORS 93.710 and ORS 205.130(2)]**

Agreement Number:  
Project Name:  
Key Number:

Local Agency Agreement No. \_\_\_\_\_ between the *(Insert Agency Name)* and the State of Oregon, Department of Transportation was executed on \_\_\_\_\_. Pursuant to paragraph \_\_\_\_\_, Terms of Agreement, page \_\_\_\_\_ of the Local Agency Agreement, upon the recording of this document, the *(Insert Agency Name)* received federal funds for the Project described in the Local Agency Agreement. The property and assets under the jurisdiction of the *(Insert Agency Name)* were improved with the assistance from the United States Government. Such assistance was provided to *(Insert Agency Name)*, in reimbursement of costs associated with the *(Insert Project Name)*. The use and disposition of said property is subject to the terms of the above noted Local Agency Agreement, copies of which may be obtained from the Director of ODOT and is also subject to 2 CFR part 1201. A description of the improved property is attached.

*(Insert Agency Name)*

By: \_\_\_\_\_ (Notary Stamp)  
(Name of person)

Title: \_\_\_\_\_

State of Oregon: County of \_\_\_\_\_

Signed or attested before me on \_\_\_\_\_ by \_\_\_\_\_  
(Date) (name(s) of person(s))

\_\_\_\_\_ My commission expires on \_\_\_\_\_.

**STATE OF OREGON, DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_ (Notary Stamp)  
Title: Active Transportation Section Manager

State of Oregon: County of \_\_\_\_\_

Signed or attested before me on \_\_\_\_\_ by \_\_\_\_\_  
(Date) (name(s) of person(s))

\_\_\_\_\_ My commission expires on \_\_\_\_\_.

Oregon Department of Transportation; 555 13<sup>th</sup> Street NE; Salem, OR 97301-4178

**ATTACHMENT NO. 1 to Agreement No. 31030**  
**SPECIAL PROVISIONS**

1. State shall be responsible for delivering all aspects of the Project.
2. State shall award and administer the construction contract and be responsible for all required materials testing and quality documentation; and Agency will prepare necessary documentation with State-qualified personnel, to allow State to make all contractor payments. Contract administration, construction engineering and inspection will follow the most current version of the *ODOT Construction Manual* and the *ODOT Inspector's Manual*.
3. Agency guarantees the availability of Agency funding in an amount required to fully fund Agency's share of the Project.
4. State may make available the State's On-Call Preliminary Engineering (PE), Design and Construction Engineering Services consultant for Local Agency Projects upon written request. If Agency chooses to use said services, Agency agrees to manage the work performed by the Consultant and reimburse State for payment of any Consultant costs that are not eligible as federal participating costs or that are not included as part of the total cost of the Project.
5. State will perform work throughout the duration of the Project and shall provide a preliminary estimate of State costs for this work. This work includes, but is not limited to, contract administration, plan review and approval, and attend meetings when necessary. Prior to the start of each Project phase State shall provide an updated estimate of State costs for that phase. Such phases generally consist of Preliminary Engineering, Right-of-Way, Utility, and Construction. Agency understands that State's costs are estimates only and agrees to reimburse State for actual cost incurred per this Agreement.
6. The Parties agree that the useful life of this Project is defined as twenty (20) years. Agency shall, at its own expense, maintain and operate the Project upon completion and throughout the useful life of the Project at a minimum level that is consistent with normal depreciation and/or service demand.
7. Metro grants State and Agency the right to enter onto Metro property for the performance of duties as set forth in this Agreement. Agency grants State the right to enter onto Agency property for the performance of duties as set forth in this Agreement.
8. Agency shall, prior to State's award of the contract, obtain or assist State in obtaining all necessary permissions from Metro allowing State to perform work on Metro's facility.

## **ATTACHMENT NO. 1 FEDERAL STANDARD PROVISIONS**

### **PROJECT ADMINISTRATION**

1. State (ODOT) is acting to fulfill its responsibility to the Federal Highway Administration (FHWA) by the administration of this Project, and Agency (i.e. county, city, unit of local government, or other state agency) hereby agrees that State shall have full authority to carry out this administration. If requested by Agency or if deemed necessary by State in order to meet its obligations to FHWA, State will act for Agency in other matters pertaining to the Project. Prior to taking such action, State will confer with Agency concerning actions necessary to meet federal obligations. Agency shall, if necessary, appoint and direct the activities of a Citizen's Advisory Committee and/or Technical Advisory Committee, conduct a hearing and recommend the preferred alternative. State and Agency shall each assign a person in responsible charge "liaison" to coordinate activities and assure that the interests of both Parties are considered during all phases of the Project.
2. Any project that uses federal funds in project development is subject to plans, specifications and estimates (PS&E) review and approval by FHWA or State acting on behalf of FHWA prior to advertisement for bid proposals, regardless of the source of funding for construction.
3. Non-certified agencies must contract with State or a State certified local public agency to secure services to perform plans, specifications and estimates (PS&E), construction contract advertisement, bid, award, contractor payments and contract administration. Non-certified agencies may use a State-approved consultant to perform preliminary engineering, and construction engineering services.

### **PROJECT FUNDING REQUEST**

4. State shall submit a separate written Project funding request to FHWA requesting approval of federal-aid participation for each project phase including a) Program Development (Planning), b) Preliminary Engineering (National Environmental Policy Act - NEPA, Permitting and Project Design), c) Right of Way Acquisition, d) Utilities, and e) Construction (Construction Advertising, Bid and Award). Any work performed prior to FHWA's approval of each funding request will be considered nonparticipating and paid for at Agency expense. Agency shall not proceed on any activity in which federal-aid participation is desired until such written approval for each corresponding phase is obtained by State. State shall notify Agency in writing when authorization to proceed has been received from FHWA. All work and records of such work shall be in conformance with FHWA rules and regulations.

### **FINANCE**

5. Federal funds shall be applied toward Project costs at the current federal-aid matching ratio, unless otherwise agreed and allowable by law. Agency shall be

responsible for the entire match amount for the federal funds and any portion of the Project, which is not covered by federal funding, unless otherwise agreed to and specified in the intergovernmental Agreement (Project Agreement). Agency must obtain written approval from State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement. If federal funds are used, State will specify the Catalog of Federal Domestic Assistance (CFDA) number in the Project Agreement. State will also determine and clearly state in the Project Agreement if recipient is a subrecipient or vendor, using criteria in 2 CFR 200.330.

6. If the estimated cost exceeds the total matched federal funds available, Agency shall deposit its share of the required matching funds, plus 100 percent of all costs in excess of the total matched federal funds. Agency shall pay one hundred (100) percent of the cost of any item in which FHWA will not participate. If Agency has not repaid any non-participating cost, future allocations of federal funds or allocations of State Highway Trust Funds to Agency may be withheld to pay the non-participating costs. If State approves processes, procedures, or contract administration outside the *Local Agency Guidelines Manual* that result in items being declared non-participating by FHWA, such items deemed non-participating will be negotiated between Agency and State.
7. Agency agrees that costs incurred by State and Agency for services performed in connection with any phase of the Project shall be charged to the Project, unless otherwise mutually agreed upon by the Parties.
8. Agency's estimated share and advance deposit.
  - a) Agency shall, prior to commencement of the preliminary engineering and/or right of way acquisition phases, deposit with State its estimated share of each phase. Exception may be made in the case of projects where Agency has written approval from State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement.
  - b) Agency's construction phase deposit shall be one hundred ten (110) percent of Agency's share of the engineer's estimate and shall be received prior to award of the construction contract. Any additional balance of the deposit, based on the actual bid must be received within forty-five (45) days of receipt of written notification by State of the final amount due, unless the contract is cancelled. Any balance of a cash deposit in excess of amount needed, based on the actual bid, will be refunded within forty-five (45) days of receipt by State of the Project sponsor's written request.
  - c) Pursuant to Oregon Revised Statutes (ORS) 366.425, the advance deposit may be in the form of 1) money deposited in the State Treasury (an option where a deposit is made in the Local Government Investment Pool), and an Irrevocable Limited Power of Attorney is sent

to State's Active Transportation Section, Funding and Program Services Unit, or 2) an Irrevocable Letter of Credit issued by a local bank in the name of State, or 3) cash.

9. If Agency makes a written request for the cancellation of a federal-aid project; Agency shall bear one hundred (100) percent of all costs incurred as of the date of cancellation. If State was the sole cause of the cancellation, State shall bear one hundred (100) percent of all costs incurred. If it is determined that the cancellation was caused by third parties or circumstances beyond the control of State or Agency, Agency shall bear all costs, whether incurred by State or Agency, either directly or through contract services, and State shall bear any State administrative costs incurred. After settlement of payments, State shall deliver surveys, maps, field notes, and all other data to Agency.
10. Agency shall follow the requirements stated in the Single Audit Act. Agencies expending \$500,000 or more in Federal funds (from all sources) in its fiscal year beginning prior to December 26, 2014, shall have a single organization-wide audit conducted in accordance with the Single Audit Act of 1984, PL 98-502 as amended by PL 104-156 and subject to the requirements of 49 CFR Parts 18 and 19. Agencies expending \$750,000 or more in federal funds (from all sources) in a fiscal year beginning on or after December 26, 2014 shall have a single organization-wide audit conducted in accordance with the provisions of 2 CFR part 200, subpart F. Agencies expending less than \$500,000 in Federal funds in a fiscal year beginning prior to December 26, 2014, or less than \$750,000 in a fiscal year beginning on or after that date, is exempt from Federal audit requirements for that year. Records must be available for review or audit by appropriate officials based on the records retention period identified in the Project Agreement. The cost of this audit can be partially prorated to the federal program.
11. Agency shall make additional deposits, as needed, upon request from State. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete the Project.
12. Agency shall present invoices for one hundred (100) percent of actual costs incurred by Agency on behalf of the Project directly to State's Liaison for review, approval and reimbursement to Agency. Costs will be reimbursed consistent with federal funding provisions and the Project Agreement. Such invoices shall identify the Project by the name of the Project Agreement, reference the Project Agreement number, and shall itemize and explain all expenses for which reimbursement is claimed. Invoices shall be presented for periods of not less than one-month duration, based on actual expenses to date. All invoices received from Agency must be approved by State's Liaison prior to payment. Agency's actual costs eligible for federal-aid or State participation shall be those allowable under the provisions of the Federal-Aid Policy Guide (FAPG), Title 23 CFR parts 1.11, 140 and 710. Final invoices shall be submitted to State for processing within forty-five (45) days from the end of each funding phase as follows: a) preliminary engineering, which ends at the award date of construction b) last payment for right of way acquisition and c)

contract completion for construction. Partial billing (progress payment) shall be submitted to State within forty-five (45) days from date that costs are incurred. Invoices submitted after 45 days may not be eligible for reimbursement by FHWA. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to the Project Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period ending on the later of six (6) years following the date of final voucher to FHWA or after resolution of any disputes under the Project Agreement. Copies of such records and accounts shall be made available upon request. For real property and equipment, the retention period starts from the date of disposition ((2 CFR 200.333(c)).

13. Agency shall, upon State's written request for reimbursement in accordance with Title 23, CFR part 630.112(c) 1 and 2, as directed by FHWA, reimburse State for federal-aid funds distributed to Agency if any of the following events occur:

- a) Right of way acquisition is not undertaken or actual construction is not started by the close of the twentieth federal fiscal year following the federal fiscal year in which the federal-aid funds were authorized for right of way acquisition. Agency may submit a written request to State's Liaison for a time extension beyond the twenty (20) year limit with no repayment of federal funds and State will forward the request to FHWA. FHWA may approve this request if it is considered reasonable.
- b) Right of way acquisition or actual construction of the facility for which preliminary engineering is undertaken is not started by the close of the tenth federal fiscal year following the federal fiscal year in which the federal-aid funds were authorized. Agency may submit a written request to State's Liaison for a time extension beyond the ten (10) year limit with no repayment of federal funds and State will forward the request to FHWA. FHWA may approve this request if it is considered reasonable.

14. Agency shall maintain all Project documentation in keeping with State and FHWA standards and specifications. This shall include, but is not limited to, daily work records, quantity documentation, material invoices and quality documentation, certificates of origin, process control records, test results, and inspection records to ensure that the Project is completed in conformance with approved plans and specifications.

15. State shall submit all claims for federal-aid participation to FHWA in the normal manner and compile accurate cost accounting records. State shall pay all reimbursable costs of the Project. Agency may request a statement of costs-to-date at any time by submitting a written request. When the actual total cost of the Project has been computed, State shall furnish Agency with an itemized statement of final

costs. Agency shall pay an amount which, when added to said advance deposit and federal reimbursement payment, will equal one hundred (100) percent of the final total actual cost. Any portion of deposits made in excess of the final total costs of the Project, minus federal reimbursement, shall be released to Agency. The actual cost of services provided by State will be charged to the Project expenditure account(s) and will be included in the total cost of the Project.

## STANDARDS

16. Agency agrees that minimum design standards on all local agency jurisdictional roadway or street projects on the National Highway System (NHS) and projects on the non-NHS shall be the American Association of State Highway and Transportation Officials (AASHTO) standards and be in accordance with *State's Oregon Bicycle & Pedestrian Design Guide* (current version). Agency shall use either AASHTO's A Policy on Geometric Design of Highways and Streets (current version) or State's Resurfacing, Restoration and Rehabilitation (3R) design standards for 3R projects. Agency may use AASHTO for vertical clearance requirements on Agency's jurisdictional roadways or streets.
17. Agency agrees that if the Project is on the Oregon State Highway System or State-owned facility, that design standards shall be in compliance with standards specified in the current *ODOT Highway Design Manual* and related references. Construction plans for such projects shall be in conformance with standard practices of State and all specifications shall be in substantial compliance with the most current *Oregon Standard Specifications for Highway Construction* and current *Contract Plans Development Guide*.
18. Agency agrees that for all projects on the Oregon State Highway System or State-owned facility any design element that does not meet *ODOT Highway Design Manual* design standards must be justified and documented by means of a design exception. Agency further agrees that for all projects on the NHS, regardless of funding source; any design element that does not meet AASHTO standards must be justified and documented by means of a design exception. State shall review any design exceptions on the Oregon State Highway System and retains authority for their approval. FHWA shall review any design exceptions for projects subject to Focused Federal Oversight and retains authority for their approval.
19. Agency agrees all traffic control devices and traffic management plans shall meet the requirements of the current edition of the *Manual on Uniform Traffic Control Devices and Oregon Supplement* as adopted in Oregon Administrative Rule (OAR) 734-020-0005. Agency must obtain the approval of the State Traffic Engineer prior to the design and construction of any traffic signal, or illumination to be installed on a state highway pursuant to OAR 734-020-0430.
20. The standard unit of measurement for all aspects of the Project shall be English Units. All Project documents and products shall be in English. This includes, but is

not limited to, right of way, environmental documents, plans and specifications, and utilities.

## **PRELIMINARY & CONSTRUCTION ENGINEERING**

21. Preliminary engineering and construction engineering may be performed by either a) State, b) Agency, c) State-approved consultant, or d) certified agency. Engineering work will be monitored by State or certified agency to ensure conformance with FHWA rules and regulations. Project plans, specifications and cost estimates shall be performed by either a) State, b) State-approved consultant or c) certified agency. State shall review and approve Project plans, specifications and cost estimates. State shall, at project expense, review, process and approve, or submit for approval to the federal regulators, all environmental statements. State or certified agency shall, if they prepare any of the documents identified in this paragraph, offer Agency the opportunity to review and approve the documents prior to advertising for bids.
22. Agency may request State's two-tiered consultant selection process as allowed by OAR 137-048-0260 to perform architectural, engineering, photogrammetry, transportation planning, land surveying and related services (A&E Services) as needed for federal-aid transportation projects. Use of the State's processes is required to ensure federal reimbursement. State will award and execute the contracts. State's personal services contracting process and resulting contract document will follow Title 23 CFR part 172, 2 CFR part 1201, ORS 279A.055, 279C.110, 279C.125, OAR 137-048-0130, OAR 137-048-0220(4) and State Personal Services Contracting Procedures as approved by the FHWA. Such personal services contract(s) shall contain a description of the work to be performed, a project schedule, and the method of payment. No reimbursement shall be made using federal-aid funds for any costs incurred by Agency or the consultant prior to receiving authorization from State to proceed.
23. The party responsible for performing preliminary engineering for the Project shall, as part of its preliminary engineering costs, obtain all Project related permits necessary for the construction of said Project. Said permits shall include, but are not limited to, access, utility, environmental, construction, and approach permits. All pre-construction permits will be obtained prior to advertisement for construction.
24. State or certified agency shall prepare construction contract and bidding documents, advertise for bid proposals, and award all construction contracts.
25. Upon State's or certified agency's award of a construction contract, State or certified agency shall perform quality assurance and independent assurance testing in accordance with the FHWA-approved Quality Assurance Program found in State's *Manual of Field Test Procedures*, process and pay all contractor progress estimates, check final quantities and costs, and oversee and provide intermittent inspection services during the construction phase of the Project.

26. State shall, as a Project expense, assign a liaison to provide Project monitoring as needed throughout all phases of Project activities (preliminary engineering, right-of-way acquisition, and construction). State's liaison shall process reimbursement for federal participation costs.

**REQUIRED STATEMENT FOR United States Department of Transportation (USDOT) FINANCIAL ASSISTANCE AGREEMENT**

27. By signing the Federal-Aid Agreement to which these Federal Standard Provisions are attached, Agency agrees to adopt State's DBE Program Plan, available at [http://www.oregon.gov/ODOT/CS/CIVILRIGHTS/pages/sbe/dbe/dbe\\_program.aspx#plan](http://www.oregon.gov/ODOT/CS/CIVILRIGHTS/pages/sbe/dbe/dbe_program.aspx#plan). Agency shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR part 26. Agency agrees to take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. State's DBE program, as required by 49 CFR part 26 and as approved by USDOT, is incorporated by reference in this Project Agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Project Agreement. Upon notification to the recipient of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 United States Code (USC) 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 USC 3801 et seq.).

**Disadvantaged Business Enterprises (DBE) Obligations**

28. State and Agency agree to incorporate by reference the requirements of 49 CFR part 26 and State's DBE Program Plan, as required by 49 CFR part 26 and as approved by USDOT, into all contracts entered into under this Project Agreement. The following required DBE assurance shall be included in all contracts:

*"The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of Title 49 CFR part 26 in the award and administration of federal-aid contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as Agency deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b))."*

29. Agency agrees to comply with all applicable civil rights laws, rules and regulations, including Title V and Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (ADA), and Titles VI and VII of the Civil Rights Act of 1964.

30. The Parties hereto agree and understand that they will comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to the work including, but not limited to, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270, incorporated herein by reference and made a part hereof; Title 23 CFR parts 1.11, 140, 635, 710, and 771; Title 49 CFR parts 24 and 26; 2 CFR 1201, Title 23, USC, Federal-Aid Highway Act; Title 41, Chapter 1, USC 51-58, Anti-Kickback Act; Title 42 USC; Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended, the provisions of the FAPG and FHWA Contract Administration Core Curriculum Participants Manual & Reference Guide. State and Agency agree that FHWA-1273 Required Contract Provisions shall be included in all contracts and subcontracts verbatim and not by reference.

## **RIGHT OF WAY**

31. Agency and the consultant, if any, agree that right of way activities shall be in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35, FAPG, CFR, and the *ODOT Right of Way Manual*, Title 23 CFR part 710 and Title 49 CFR part 24. State, at Project expense, shall review all right of way activities engaged in by Agency to ensure compliance with all laws and regulations.

32. State is responsible for proper acquisition of the necessary right of way and easements for construction and maintenance of projects. Agency may perform acquisition of the necessary right of way and easements for construction and maintenance of the Project provided Agency or the consultant are qualified to do such work, as required by the *ODOT Right of Way Manual*, and Agency has obtained prior approval from State's Region Right of Way office to do such work.

33. Regardless of who acquires or performs any of the right of way activities, a right of way services agreement shall be created by State's Region Right of Way office setting forth the responsibilities and activities to be accomplished by each Party. If the Project has the potential of needing right of way, to ensure compliance in the event that right of way is unexpectedly needed, a right of way services agreement will be required. State, at Project expense, shall be responsible for requesting the obligation of project funding from FHWA. State, at Project expense, shall be responsible for coordinating certification of the right of way, and providing oversight and monitoring. Funding authorization requests for federal right of way funds must be sent through State's Liaison, who will forward the request to State's Region Right of Way office on all projects. Agency must receive written authorization to proceed from State's Right of Way Section prior to beginning right of way activities. All projects must have right of way certification coordinated through State's Region Right of Way office to declare compliance and project readiness for construction (even for projects where no federal funds were used for right of way, but federal funds were used elsewhere on a project). Agency shall contact State's Liaison, who will contact State's Region Right of Way office for additional information or clarification on behalf of Agency.

34. Agency agrees that if any real property purchased with federal-aid participation is no longer needed for the originally authorized purpose, the disposition of such property shall be subject to applicable rules and regulations, which are in effect at the time of disposition. Reimbursement to State and FHWA of the required proportionate shares of the fair market value may be required.
35. Agency ensures that all project right of way monumentation will be conducted in conformance with ORS 209.155.
36. State and Agency grants each other authority to enter onto the other's right of way for the performance of non-construction activities such as surveying and inspection of the Project.

## **RAILROADS**

37. Agency shall follow State established policy and procedures when impacts occur on railroad property. The policy and procedures are available through the State's Liaison, who will contact State's Railroad Liaison on behalf of Agency. Only those costs allowable under Title 23 CFR part 140 subpart I, and Title 23 part 646 subpart B shall be included in the total Project costs; all other costs associated with railroad work will be at the sole expense of Agency, or others. Agency may request State, in writing and at Project expense, to provide railroad coordination and negotiations. However, State is under no obligation to agree to perform said duties.

## **UTILITIES**

38. Agency shall follow State established statutes, policies and procedures when impacts occur to privately or publicly-owned utilities. Policy, procedures and forms are available through the State Utility Liaison or State's Liaison. Agency shall provide copies of all signed utility notifications, agreements and Utility Certification to the State Utility Liaison. Only those utility relocations, which are eligible for reimbursement under the FAPG, Title 23 CFR part 645 subparts A and B, shall be included in the total Project costs; all other utility relocations shall be at the sole expense of Agency, or others. Agency may send a written request to State, at Project expense, to arrange for utility relocations/adjustments lying within Agency jurisdiction. This request must be submitted no later than twenty-one (21) weeks prior to bid let date. However, State is under no obligation to agree to perform said duties. Agency shall not perform any utility work on state highway right of way without first receiving written authorization from State.

## **GRADE CHANGE LIABILITY**

39. Agency, if a County, acknowledges the effect and scope of ORS 105.755 and agrees that all acts necessary to complete construction of the Project which may alter or change the grade of existing county roads are being accomplished at the direct request of the County.

40. Agency, if a City, hereby accepts responsibility for all claims for damages from grade changes. Approval of plans by State shall not subject State to liability under ORS 105.760 for change of grade.
41. Agency, if a City, by execution of the Project Agreement, gives its consent as required by ORS 373.030(2) to any and all changes of grade within the City limits, and gives its consent as required by ORS 373.050(1) to any and all closure of streets intersecting the highway, if any there be in connection with or arising out of the Project covered by the Project Agreement.

## **MAINTENANCE RESPONSIBILITIES**

42. Agency shall, at its own expense, maintain operate, and provide power as needed upon Project completion at a minimum level that is consistent with normal depreciation and/or service demand and throughout the useful life of the Project. The useful life of the Project is defined in the Special Provisions. State may conduct periodic inspections during the life of the Project to verify that the Project is properly maintained and continues to serve the purpose for which federal funds were provided. Maintenance and power responsibilities shall survive any termination of the Project Agreement. In the event the Project will include or affect a state highway, this provision does not address maintenance of that state highway.

## **CONTRIBUTION**

43. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
44. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or

settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.

45. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

#### **ALTERNATIVE DISPUTE RESOLUTION**

46. The Parties shall attempt in good faith to resolve any dispute arising out of this Project Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

#### **WORKERS' COMPENSATION COVERAGE**

47. All employers, including Agency, that employ subject workers who work under this Project Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability Insurance with coverage limits of not less than five hundred thousand (\$500,000) must be included. Agency shall ensure that each of its contractors complies with these requirements.

#### **LOBBYING RESTRICTIONS** – pursuant to Form FHWA-1273, Required Contract Provisions

48. Agency certifies by signing the Project Agreement that:
- a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the

extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

- b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed one hundred thousand dollars (\$100,000), and that all such subrecipients shall certify and disclose accordingly.
- d) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31, USC Section 1352.
- e) Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure.

AIS-2837

3. C.

**Business Meeting**

**Meeting Date:** 09/27/2016

**Length (in minutes):** Consent Item

**Agenda Title:** Consideration of Citywide Collection Services Contract Award

**Prepared For:** Joseph Barrett

**Submitted By:** Joseph Barrett, Finance and Information Services

**Item Type:** Motion Requested      **Meeting Type:** Consent  
Agenda -  
LCRB

**Public Hearing** No

**Newspaper Legal Ad Required?:**

**Public Hearing Publication**

**Date in Newspaper:**

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**Information**

**ISSUE**

Shall the Local Contract Review Board award a contract for citywide collection services to Professional Credit Services?

**STAFF RECOMMENDATION / ACTION REQUEST**

Staff recommends the Local Contract Review Board award a contract for citywide collection services to Professional Credit Services for an estimated \$150,000 over the life of the contract and authorize the City Manager to take the steps necessary to execute the contract.

**KEY FACTS AND INFORMATION SUMMARY**

The City has worked with collection agencies since 1996 to collect the City's delinquent accounts. Delinquent accounts include, but may not be limited to:

- **Municipal Court includes:** Minor traffic cases, parking and environmental offenses. The Court will have already attempted collections through letters and suspension of driving privileges (where appropriate.) Accounts may have judgments entered up to two years prior. Account balances range from \$50 up to \$2,500. The estimated number of accounts the Court turns over to the collection agency is estimated at 300 accounts per year.
- **Utility Billing includes:** Utility payments for Water, Sewer, Surface Water Management and Street Maintenance and Parks and Recreation Fee. Prior to Utility Billing turning any account over to a collection agency they have sent one or two bills and letters stating that the account is being turned over to an outside collection agency. The majority of

the accounts that are turned over to a collection agency are for those people who no longer receive City services. The exception is the "Sewer Only" accounts. Utility Billing turns over accounts approximately once a quarter for an average of 150 accounts a year. The account balances range from \$5-\$2,000.

- Risk Management includes: Damage to City property and infrastructure. Examples include fire hydrants, signs, signal lights, fences, vehicles and buildings. These are accounts that have not been paid by insurance, and may include cases arising from small claims court. Account balances range from \$50 up to \$7,500. The estimated number of accounts that Risk will turn over to a collections agency may be one per year.
- Other types of delinquent accounts may be assigned to a collections agency as deemed to be in the best interest of the City.

The City issued a Request for Proposals for Collections Services in the spring with proposals due on May 10, 2016. Proposals were received from five(5) collection agencies and they were evaluated and scored by a multi-divisional team. The firms and their ranking from the evaluation team are as follows:

- Alliance One
- Professional Credit Service
- IC System
- Western Collection Bureau
- Fidelity Collection Service

Professional Credit Service was evaluated as the top submitting firm. As such, they receive staff's recommendation for contract award. The contract is estimated at \$150,000 over the life of the contract.

## **OTHER ALTERNATIVES**

The Local Contract Review Board may reject the contract award recommendation and direct staff to resolicit the work.

## **COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS**

## **DATES OF PREVIOUS COUNCIL CONSIDERATION**

The Local Contract Review Board discussed this contract at their September 13, 2016 meeting and elected to have this contract award on the consent agenda.

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### **Fiscal Impact**

**Cost:** \$150,000

**Budgeted (yes or no):** Annually

**Where budgeted?:** Multiple Funds

#### **Additional Fiscal Notes:**

The Court (General Fund) and Utility Billing (Central Services Fund) divisions budget annually for collection services.

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## Attachments

*No file(s) attached.*

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**AIS-2838**

**3. D.**

**Business Meeting**

**Meeting Date:** 09/27/2016  
**Length (in minutes):** Consent Item  
**Agenda Title:** Consideration of Janitorial Services Contract Award  
**Prepared For:** Joseph Barrett  
**Submitted By:** Joseph Barrett, Finance and Information Services  
**Item Type:** Motion Requested      **Meeting Type:** Consent  
Agenda -  
LCRB

**Public Hearing** No

**Newspaper Legal Ad Required?:**

**Public Hearing Publication**

**Date in Newspaper:**

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**Information**

**ISSUE**

Shall the Local Contract Review Board award a contract for janitorial services to Tualatin Valley Workshop?

**STAFF RECOMMENDATION / ACTION REQUEST**

Staff recommends the Local Contract Review Board award a contract for Tualatin Valley Workshop and authorize the City Manager to take the necessary steps to execute the contract.

**KEY FACTS AND INFORMATION SUMMARY**

In 1977, the Oregon legislature passed the “Products of Disabled Individuals” Act (ORS 279.835 to ORS 279.855.) This law obligates all state and local governments, school districts and other tax-supported political bodies in Oregon, to purchase goods and services from Qualified Rehabilitation Facilities (QRFs) when the products or a service meets their requirements. A QRF is a non-profit rehabilitation corporation that employs individuals with qualifying disabilities to provide products and services to public agencies. The Oregon Department of Administrative Services is responsible for qualifying each community rehabilitation program as a QRF. A QRF must employ individuals with qualifying disabilities for at least 75% of the hours of direct labor across the entire company.

Each QRF's mission must include providing vocational services which enable employment opportunities for individuals with disabilities. A QRF's programs are registered and reviewed on a regular basis by various state and federal agencies such as the Oregon Department of Human Services (DHS), Oregon Department of Administrative Services (DAS) and the

National Industries for the Severely Handicapped. Disabled people are referred to a QRF from the Vocational Rehabilitation or Mental Health Divisions of the Oregon Department of Human Services. Janitorial services is one services that is provided by a number of QRF vendors. As the city's existing contract for janitorial services has expired, staff entered into negotiations with the city's current QRF vendor, Tualatin Valley Workshop, for janitorial services on new contract pricing.

Staff chose to negotiate with Tualatin Valley Workshop due to their strong record of performance at the city's facilities and that their pricing is comparable among the QRFs as the state has final approval on the pricing. City staff and Tualatin Valley Workshop agreed upon the contract pricing. The next step, aside from Local Contract Review Board approval, will be to submit the pricing to the state for approval. Services that will be included in this contract are, but may not be limited to:

- Trash and waste removal
- Recyclable material removal
- Glass cleaning
- Restroom cleaning
- Floor vacuuming and mopping
- Dusting
- Day Porter duties
- Carpet and hardwood cleaning

Staff and the contractor have negotiated a first year cost of just over \$205,000 for the janitorial services at all the City's facilities. Using a 3% estimated annual escalator, the total cost of the contract over a potential five years would be just under \$1.1 million. All future years pricing shall be dependent upon the City's budget and state approval. Staff is recommending the Local Contract Review Board award a contract to Tualatin Valley Workshop for the estimated \$1.1 million over five years.

## **OTHER ALTERNATIVES**

The Local Contract Review Board may reject this contract and direct staff to explore negotiations with an alternate QRF providing janitorial services in Washington County.

The Local Contract Review Board may reject this contract and direct staff to explore bringing the service in-house.

## **COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS**

### **DATES OF PREVIOUS COUNCIL CONSIDERATION**

The Local Contract Review Board discussed this contract at their September 13, 2016 and elected to have this award item placed on the consent agenda.

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### **Fiscal Impact**

**Cost:** \$1.1 mil

**Budgeted (yes or no):** Annually

**Where budgeted?:** Fleet/Property Maintenance Fund

**Additional Fiscal Notes:**

The contract is for an estimated \$205,000 in the first year. Applying an estimated 3% annual escalator, the total cost of the contract over its potential five-year life is just under \$1.1 million. The appropriation for the contract are requested annually in the Fleet/Property Maintenance Fund.

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**Attachments**

*No file(s) attached.*

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**AIS-2839**

**3. E.**

**Business Meeting**

**Meeting Date:** 09/27/2016  
**Length (in minutes):** Consent Item  
**Agenda Title:** Consideration of Contract Award for Design of the Tiedeman Re-Alignment of Fanno Creek Trail  
**Prepared For:** Joseph Barrett  
**Submitted By:** Joseph Barrett, Finance and Information Services  
**Item Type:** Motion Requested      **Meeting Type:** Consent Agenda - LCRB

**Public Hearing** No

**Newspaper Legal Ad Required?:**

**Public Hearing Publication**

**Date in Newspaper:**

**Information**

**ISSUE**

Shall the Local Contract Review Board award a contract for design of the Tiedeman Re-Alignment of Fanno Creek Trail project to OBEC?

**STAFF RECOMMENDATION / ACTION REQUEST**

Staff recommends the Local Contract Review Board award the design contract for the Tiedeman Re-Alignment of Fanno Creek Trail project to OBEC and authorize the City Manager to take the necessary steps to execute the contract.

**KEY FACTS AND INFORMATION SUMMARY**

The Fanno Creek Trail is a regional trail and the main north-south walking and cycling route through Tigard. Its effectiveness as a transportation facility is significantly reduced by the many gaps and substandard sections throughout Tigard. This project will resolve a substandard trail issue at SW Tiedeman Avenue.

Currently the Fanno Trail comes to an abrupt end into the SW Tiedemann sidewalk. At this location, site lines of oncoming traffic are very difficult. Trail users have to find their way to a school crosswalk 500 feet to the south. There have been safety problems with bikes attempting to make the turn onto the sidewalk and falling into the street and with trail users trying to cross Tiedeman at this less than safe trail terminus.

The project will re-align the Fanno Greenway Trail so that it crosses Tiedeman Avenue in

order to align with the existing school crosswalk at Tiedeman Avenue. This location provides significantly greater visibility for both trail users and cars traveling along Tiedeman. The trail realignment will require a new pedestrian bridge over Fanno Creek and a new boardwalk section over sensitive habitat associated with the creek. The trail will also be widened to the full 10 foot width to meet desired standards for multi-use trails in the region and will meet all ADA requirements.

Staff issued a Qualification-based Request for Proposal (QBS) for the design work on the project in June of this year. Proposals were due in early July and the City received six and they were evaluated and ranked by the evaluation team based on the criteria detailed in the QBS packet

1. OBEC
2. OTAK
3. KPFF
4. Wallis Engineering
5. Cardno
6. Froelich Engineer

As OBEC was the top ranking firm, staff entered into negotiated with them on a contract price and final scope of work. The negotiated price agreed by both parties is \$229,000. The scope includes:

- Project management
- Project surveying
- Right-of-way and property line resolution
- Topographic survey and base mapping
- Environmental documentation and permits
- Geotechnical investigation
- Site restoration plans
- Pathway design
- Structure design
- Hydraulic and stormwater studies
- Construction support

Staff is recommending the Local Contract Review Board award the contract to OBEC for \$229,000 for this scope of services. This project is funded through a Metro Greenspace grant and there is \$230,000 in the 2016-2017 budget for external expenses for this project.

## **OTHER ALTERNATIVES**

The Local Contract Review Board may reject this award and direct staff to resolicit the work.

The Local Contract Review board may reject this award and stop the project and return the grant funding to Metro. Doing so may jeopardize future grant awards to Tigard.

## **COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS**

## **DATES OF PREVIOUS COUNCIL CONSIDERATION**

The Local Contract Review Board discussed this contract at their September 13, 2016 business meeting and authorized this award decision to be placed on the consent agenda.

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### **Fiscal Impact**

**Cost:** \$229,000

**Budgeted (yes or no):** Yes

**Where budgeted?:** Parks Capital Fund

#### **Additional Fiscal Notes:**

The 2016-2017 fiscal year budget has \$230,000 for external expenses for this project in the Parks Capital Fund.

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### **Attachments**

*No file(s) attached.*

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**AIS-2843**

**3. F.**

**Business Meeting**

**Meeting Date:** 09/27/2016

**Length (in minutes):** Consent Item

**Agenda Title:** Proclaim Distraction Free Driving Awareness Day

**Prepared For:** Joanne Bengtson, City Management

**Submitted By:** Joanne Bengtson, City Management

**Item Type:** Receive and File

**Meeting Type:** Proclamation

**Public Hearing:** No

**Publication Date:**

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**Information**

**ISSUE**

Should Mayor Cook proclaim October 4, 2016 as Distraction Free Driving Awareness Day?

**STAFF RECOMMENDATION / ACTION REQUEST**

N/A

**KEY FACTS AND INFORMATION SUMMARY**

Matt Garrett, Director of the Oregon Department of Transportation and George Granger, President of AT&T Oregon submitted a letter on Sept. 19 that asked Mayor Cook to support efforts to combat distracted driving.

**OTHER ALTERNATIVES**

N/A

**COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS**

N/A

**DATES OF PREVIOUS COUNCIL CONSIDERATION**

This is a new item, not previously considered by Council.

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**Attachments**

Distraction Free Driving Proclamation

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# Proclamation

City of Tigard

## DISTRACTION FREE DRIVING AWARENESS DAY

October 4, 2016

**Whereas**, Tigard holds the health and safety of its citizens as a paramount concern; and

**Whereas**, distracted driving occurs when drivers engage in activities that divert their attention from the road and their primary task of driving – such as texting, talking on a cell phone, interacting with passengers, listening to loud music or reading; and

**Whereas**, sixty percent of Oregonians use a smart phone; and

**Whereas**, seventy percent of Americans admit to using a smart phone while driving to text, check email, access social media and use their photo and video tools; and

**Whereas**, the National Highway Traffic Safety Administration reports that more than nine people are killed and over 1,060 people are injured each day in crashes that are reported to involve a distracted driver; and

**Whereas**, the Oregon Department of Transportation reports that in Oregon, a crash involving a distracted driver occurs every 2.5 hours; and

**Whereas**, no matter how experienced you are, the more you become distracted while driving, the higher your risk of getting into a car accident.

**NOW THEREFORE BE IT RESOLVED** that I, John L. Cook, Mayor of the City of Tigard, Oregon, do hereby proclaim October 4, 2016 as,

## DISTRACTION FREE DRIVING AWARENESS DAY

in Tigard, Oregon and urge residents to avoid distractions when they're behind the wheel in order to make Tigard a safer place for all motorists and pedestrians.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2016

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused the Seal of the City of Tigard to be affixed.

\_\_\_\_\_  
John L. Cook, Mayor  
City of Tigard

**Attest:**

\_\_\_\_\_  
Carol Krager, City Recorder

AIS-2844

3. G.

**Business Meeting**

**Meeting Date:** 09/27/2016

**Length (in minutes):** Consent Item

**Agenda Title:** Proclaim Willamette West Habitat for Humanity Habitat Day

**Prepared For:** Joanne Bengtson, City Management

**Submitted By:** Joanne Bengtson, City Management

**Item Type:** Receive and File

**Meeting Type:** Proclamation

**Public Hearing:** No

**Publication Date:**

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**Information**

**ISSUE**

Should Mayor Cook proclaim October 3, 2016 as Willamette West Habitat for Humanity Habitat Day?

**STAFF RECOMMENDATION / ACTION REQUEST**

N/A

**KEY FACTS AND INFORMATION SUMMARY**

Willamette West Habitat for Humanity invests in homeownership and communities so that low-income individuals and families may have a dignified living environment, achieve economic independence, and enjoy healthful and vital places to live and work. Elena Uhing, Community Outreach Manager for Willamette West Habitat for Humanity asked for Tigard's support for World Habitat Day on October 3, 2016.

**OTHER ALTERNATIVES**

**COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS**

N/A

**DATES OF PREVIOUS COUNCIL CONSIDERATION**

This item has not been considered by Council in the past.

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**Attachments**

Habitat Day Proclamation

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# Proclamation

City of Tigard

## **WILLAMETTE WEST HABITAT FOR HUMANITY HABITAT DAY OCTOBER 3, 2016**

**WHEREAS**, Willamette West Habitat for Humanity of Washington County was founded in 1988 by a group of concerned citizens focused on the need for decent, safe, stable, affordable housing; and

**WHEREAS**, Willamette West highlights the vital role that decent, stable, affordable housing plays in community stabilization and development and the economic vitality of our community; and

**WHEREAS**, Willamette West is a homeownership program that empowers families to achieve strength, stability and independence to build a new life for themselves through 500 hours of labor on their own home in addition to making an affordable mortgage payment; and

**WHEREAS**, Willamette West invests in homeownership and communities so that low-income individuals and families may have a dignified living environment, achieve economic independence, and enjoy healthful and vital places to live and work; and

**WHEREAS**, Willamette West has built 107 homes empowering over 463 adults and children throughout Washington and Clackamas Counties and is increasing the scope of affordable housing to include, *A Brush with Kindness* and *Critical Repair* programs to provide living-in-place opportunities for low-income homeowners especially the elderly, disabled and veterans; and

**WHEREAS**, Willamette West is expanding the scope of affordable housing options by building high-quality, energy-efficient homes that are better for the environment and help save low-income homeowners hundreds of dollars on annual utility bills; and

**WHEREAS**, Willamette West continues to transform the community through commitments to build 40 homes in four years as well as the purchase of two new properties in Washington County that will allow to build affordable housing into the future.

NOW THEREFORE BE IT RESOLVED THAT I, John L. Cook, Mayor of the City of Tigard, Oregon, do hereby proclaim October 3, 2016 as

### **WILLAMETTE WEST HABITAT FOR HUMANITY HABITAT DAY**

in Tigard, Oregon and ask all residents to join together to recognize the basic human right to have adequate shelter and a better future.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2016

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused the Seal of the City of Tigard to be affixed.

\_\_\_\_\_  
John L. Cook, Mayor  
City of Tigard

**Attest:**

\_\_\_\_\_  
Carol Krager, City Recorder

**AIS-2752**

**4.**

**Business Meeting**

**Meeting Date:** 09/27/2016

**Length (in minutes):** 45 Minutes

**Agenda Title:** Legislative Public Hearing - DCA2016-00002 Required Regulatory Changes and FEMA FIRM Map Update

**Submitted By:** Agnes Kowacz, Community Development

**Item Type:** Ordinance  
Public Hearing - Legislative

**Meeting Type:** Council  
Business Meeting - Main

**Public Hearing:** Yes

**Publication Date:**

**Information**

**ISSUE**

Shall the Tigard City Council approve the proposed Tigard Development Code amendment to adopt the updated FEMA Flood Insurance rate maps and text amendments to the Tigard Development Code (TDC) 18.775 relating to floodplain regulation and 18.735 relating to spacing of retail marijuana facilities?

**STAFF RECOMMENDATION / ACTION REQUEST**

Planning Commission recommends approval by ordinance of the proposed development code text amendments (Attachment 1) with any alterations as determined through the public hearing process. Additionally, that City Council directs staff to investigate Tigard's participation in the Community Rating System.

Staff recommends City Council adopt the Planning Commission's recommendation and the additional code changes that were added by staff after the Planning Commission Public Hearing, as directed by FEMA, and shown in Exhibit 3 of the ordinance.

**KEY FACTS AND INFORMATION SUMMARY**

The purpose of the Required Regulatory Changes and FEMA Firm Map Update Project is to update the Sensitive Lands Chapter (Section 18.775) with the required Federal Emergency Management Agency (FEMA) requirements, adopt the updated Flood Insurance Rate Maps and amend the Marijuana Facilities Chapter (Section 18.735) with reduced spacing requirements. FEMA requires that this ordinance with the proposed text amendments to TDC 18.775 and updated Flood Insurance Rate Maps be adopted and in effect by November 4, 2016 in order for the City of Tigard to remain a participant in the National Flood Insurance Program (NFIP).

Prior to the Planning Commission public hearing, staff received an email on August 10, 2016 from Roxanne Pilkenton, FEMA requesting additional changes to Chapter 18.775. The identified changes are required in order to be in compliance with the NFIP. Prior to the Planning Commission public hearing, staff incorporated the following:

1. Required definitions (18.775.040.R); and
2. removed the entire section 18.775.020.A. 1 through 10, leaving language requiring a CWS stormwater connection permit; and
3. disclaimer of liability (18.775.040.S); and
4. greater restriction (18.775.404.T)

The email also identified section 18.775.020.B and 18.775.020.C to be in direct conflict with the NFIP. Staff stated at the Planning Commission public hearing that FEMA has been contacted for further clarification on these two items and will make any necessary changes prior to the City Council public hearing. Staff is providing a memo to City Council outlining the last remaining changes that occurred after the Planning Commission public hearing. A draft was sent to FEMA for review and FEMA was satisfied with the proposed amendments.

The ordinance has two separate effective dates due to the required federal deadline for the effective date of the Flood Insurance Rate Maps. The approved and adopted FEMA code changes and updated FIRM will go into effect November 4, 2016, consistent with FEMA's timeline. The marijuana changes will go into effect after the standard 30 days after passage of the ordinance.

## **OTHER ALTERNATIVES**

Other alternative include:

1. Make revisions and adopt the revised amendments.
2. Deny the amendments.

## **COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS**

Below are the relevant City goals, policies and other state/federal regulations:

1. City's Comprehensive Plan Goals: 1 Citizen Involvement, 2 Land Use Planning, 7 Hazards
2. ORS 475B Cannabis Regulations
3. FEMA's NFIP Requirements for Participation (Part 60- Criteria for land management and use)

## **DATES OF PREVIOUS COUNCIL CONSIDERATION**

None

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## **Attachments**

Ordinance

Exhibit A Staff Report

Exhibit B Memo

Exhibit C 18.120 Definitions

Exhibit D 18.775 Sensitive Lands

Exhibit E 18.735 Marijuana Facilities

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CITY OF TIGARD, OREGON  
TIGARD CITY COUNCIL  
ORDINANCE NO. 16-\_\_\_\_\_

AN ORDINANCE AMENDING THE TIGARD DEVELOPMENT CODE (TITLE 18) TO ADOPT FEDERAL AND STATE REQUIRED REGULATORY CHANGES AND NEW FEMA FIRM MAPS. PROPOSED TIGARD DEVELOPMENT CODE CHANGES INCLUDE UPDATED AND NEW DEFINITIONS RELATED TO FLOODPLAINS TO BE PLACED WITHIN CHAPTER 18.120 (DEFINITIONS); TEXT AMENDMENTS TO CHAPTER 18.775 (SENSITIVE LANDS) TO PROVIDE REGULATION RELATING TO CRITICAL FACILITIES AND ADD A SEVERABILITY CLAUSE; AND TEXT AMENDMENTS TO CHAPTER 18.735 (MARIJUANA FACILITIES) THAT REDUCE THE SPACING REQUIREMENTS BETWEEN FACILITIES.

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WHEREAS, amendments to the Tigard Community Development Code Chapter 18.775 would adopt the updated FEMA Flood Insurance Rate Maps ensuring the City's participation in the National Flood Insurance Program and provide regulations pertaining to critical facilities within Special Flood Hazard Areas; and

WHEREAS, the Tigard City Council directed Planning Division staff to prepare amendments to the Tigard Community Development Code pertaining to regulatory changes to marijuana facilities within the boundaries of the City; and

WHEREAS, the purpose of amending Chapter 18.735 is to establish compliance with ORS 475B.340, which precludes local jurisdiction from enacting a buffer between retail marijuana facilities of more than 1,000 feet; and

WHEREAS, notice was provided to the Department of Land Conservation and Development at least 35 days prior to the first evidentiary public hearing; and

WHEREAS, notice of the public hearing was given in conformance with Community Development Code Chapter 18.390.060.D; and

WHEREAS, the Tigard Planning Commission held a duly noticed public hearing on August 15, 2016 and recommended with a unanimous vote that Council approve the proposed code amendment, as amended; and

WHEREAS, the Tigard City Council held a public hearing on September 27, 2016, to consider the proposed amendments; and

WHEREAS, the Tigard City Council has considered the Planning Commission recommendation; and

WHEREAS, the Tigard City Council has considered the applicable Statewide Planning Goals and Guidelines adopted under Oregon Revised Statutes Chapter 197; applicable federal or state statutes or

regulations; applicable Metro regulations; applicable Comprehensive Plan Policies; and applicable provisions of the City's implementing ordinances; and

WHEREAS, the Tigard City Council has determined that the proposed development code amendments are consistent with the applicable review criteria, and approves amendments to the Tigard Community Development Code as being in the best interest of the City of Tigard.

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

SECTION 1: Council adopts the findings recommended by the Planning Commission as contained in the September 27, 2016 Staff Report to the City Council, included as **“Exhibit A”** to this Ordinance as the basis in support of the corresponding code amendments.

SECTION 2: Council further adopts the staff memo to Council outlining additional changes to the proposed amendment after Planning Commission public hearing, shown as **“Exhibit B”**, as an additional basis in support of the corresponding code amendments.

SECTION 3: Tigard Development Code (Title 18) 18.120 Definitions is amended as shown in **“Exhibit C”** and 18.775 Sensitive Lands is amended as shown in **“Exhibit D”** to this Ordinance.

SECTION 4: Tigard Development Code (Title 18) 18.735 Marijuana Facilities is amended as shown in **“Exhibit E”** to this Ordinance.

SECTION 5: Section 3 of this Ordinance shall go into effect November 4, 2016.

SECTION 6: Section 4 of this Ordinance shall be effective 30 days after its passage by the Council, signature by the Mayor, and posting by the City Recorder.

PASSED: By \_\_\_\_\_ vote of all Council members present after being read by number and title only, this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Carol Krager, City Recorder

APPROVED: By Tigard City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

Approved as to form:

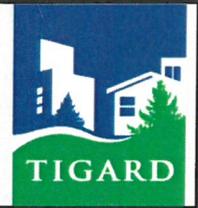
\_\_\_\_\_  
John L. Cook, Mayor

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Date

Agenda Item: # 1  
Hearing Date: September 27, 2016 Time: 7:30 PM

**PLANNING COMMISSION  
RECOMMENDATION TO THE  
CITY COUNCIL  
FOR THE CITY OF TIGARD, OREGON**



**SECTION I. APPLICATION SUMMARY**

**CASE NAME:** REQUIRED REGULATORY CHANGES AND FEMA FIRM MAP UPDATE

**CASE NO.:** Development Code Amendment (DCA) DCA2016-00002

**PROPOSAL:** The City of Tigard proposes legislative amendments to the Tigard Development Code (TDC). The proposed amendments include:  
1. Adopt updated Flood Insurance Rate Maps; and  
2. TDC amendments:  
a. Update floodplain regulations (Chapter 18.775 Sensitive Lands) relating to critical facilities and add a severability clause, definitions and conflicting language with the NFIP; and  
b. Change marijuana facilities (Chapter 18.735) spacing requirements between facilities from 2,000 feet to 1,000 feet.

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

**ZONES:** Citywide

**LOCATION:** Citywide

**APPLICABLE REVIEW CRITERIA:** Statewide Planning Goals 1 (Citizen Involvement), 2 (Land Use Planning), 7 (Areas subject to Natural Disasters and Hazards), and 9 (Economic Development); ORS 475B (Cannabis Regulation); METRO’s Urban Growth Management Functional Plan Titles 3, and 8; Comprehensive Plan Goals 1.1.2, 2.1.2, 2.1.3, 2.1.6, 2.1.11, 2.1.23, 7.1.7, 7.1.8 and 7.1.9; and Tigard Development Code Chapters 18.380 and 18.390

**SECTION II. PLANNING COMMISSION RECOMMENDATION**

Planning Commission recommends approval by ordinance of the proposed development code text amendments (Attachment 1) with any alterations as determined through the public hearing process. Additionally, that City Council directs staff to investigate Tigard’s participation in the Community Rating System;

### **SECTION III. BACKGROUND INFORMATION AND PROJECT SUMMARY**

#### **Required Regulatory Changes and FEMA Firm Map Update**

The purpose of the Required Regulatory Changes and FEMA Firm Map Update Project is to update the Sensitive Lands Chapter (Section 18.775) with the required Federal Emergency Management Agency (FEMA) requirements, adopt the updated Flood Insurance Rate Maps and amend the Marijuana Facilities Chapter (Section 18.735) with reduced spacing requirements. A brief summary of the National Flood Insurance Program and the proposed changes is provided below.

The National Flood Insurance Program (NFIP) is a federal program that was established in 1968 through the passage of the National Flood Insurance Act and administered by FEMA. The programs allow owners of properties within the Special Flood Hazard Area (SFHA)—also sometimes described as the 100-year floodplain—to obtain federally-backed insurance for their properties in jurisdictions that have adopted land use regulations for development in the floodplain. In addition to providing insurance, the NFIP identifies and maps the Nation's floodplains, known as the Flood Insurance Rate Map (FIRM) which results from a Flood Insurance Study. The FIRM is an official map on which FEMA has delineated both the SFHA and other flood zones within a community. The FIRM is used in determining a jurisdiction's floodplain regulations, whether a property owner is required to obtain flood insurance as well as the insurance rate.

Floodplain boundaries do not stay constant but rather undergo change over time due to effects of erosions, development impacts, vegetation removal and other factors. To account for floodplain boundary changes, FEMA periodically adjusts the SFHA maps used by local jurisdictions. The City of Tigard does not conduct floodplain inventories and relies on FEMA for the determination of the SFHA boundary. FEMA periodically amends the regulatory requirement of the NFIP through updates to the local FIRM and a corresponding Flood Insurance Study Report. Prior to amending the FIRM and/or developing new or revised floodplain requirements as part of the NFIP updates, FEMA coordinates with local jurisdictions to determine local flood area conditions. The FIRM updates must be adopted and effective within 6 months of FEMA's Letter of Final Determination. On May 4, 2016 FEMA notified the City of Tigard of the final flood elevation determinations on the FIRM for properties in the City of Tigard within the SFHA. FEMA's notification gave the City a 6-month timeline to adopt the FIRM and associated floodplain regulations by ordinance.

The NFIP's Community Assistance Program provides communities with technical assistance to ensure that the community is adequately enforcing its floodplain management regulations. This is done through a Community Assistance Visit (CAV). If any administrative problems or potential violations are identified during a CAV the community will be notified and given the opportunity to correct those administrative procedures and remedy the violations to the maximum extent possible within established deadlines. The City of Tigard received a Community Assistance Visit (CAV) Narrative in September of 2014 that identified deficiencies in the City's current floodplain regulations that are required to be adopted in order to be in compliance with NFIP requirements.

FEMA requires that this ordinance with the proposed text amendments to TDC 18.775 and updated Flood Insurance Rate Maps be adopted and in effect by November 4, 2016 in order for the City of Tigard to remain a participant in NFIP.

Staff received an email on August 10, 2016 from Roxanne Pilkenton; FEMA requesting additional changes to Chapter 18.775. The identified changes are required in order to be in compliance with the NFIP. Prior to the Planning Commission public hearing, staff incorporated the following:

1. Required definitions (18.775.040.R); and
2. removed the entire section 18.775.020.A. 1 through 10, leaving language requiring a CWS stormwater connection permit; and
3. disclaimer of liability (18.775.040.S); and
4. greater restriction (18.775.404.T)

The email also identified section 18.775.020.B and 18.775.020.C to be in direct conflict with the NFIP. Staff stated at the Planning Commission public hearing that FEMA has been contacted for further clarification on these two items and that staff will propose any necessary changes to the City Council at the public hearing.

## **Proposed Amendments**

Amend the Tigard Development Code Sensitive Lands Chapter (TDC 18.775) as proposed:

- o Text Amendments to Chapter 18.120 (Definitions) to establish new definitions for “Critical facility” and “Special Flood Hazard Area”
- o Text Amendments to Chapter 18.120 (Definitions) to amend the definition for “Floodway” as defined by FEMA
- o Text Amendments to Chapter 18.120 (Definitions) to remove the definition for “Floodplain” which is replaced by “Special Flood Hazard Area”.
- o Text Amendments to Chapter 18.775 (Sensitive Lands) to replace the term “floodplain” with “Special Flood Hazard Area”
- o Text Amendments to Chapter 18.775 (Sensitive Lands) to amend the date of the updated Flood Insurance Study and accompanying Flood Insurance Rate Map dated November 4, 2016
- o Text Amendments to Chapter 18.775 (Sensitive Lands) to establish new regulations for the construction of new critical facilities
- o Text Amendments to Chapter 18.775 (Sensitive Lands) to include a severability clause.
- o Text Amendments to Chapter 18.775 (Sensitive Lands) to remove No. 1 through 10 listed in 18.775.020.A.
- o Text Amendments to Chapter 18.775 (Sensitive Lands) to include additional definitions.
- o Text Amendments to Chapter 18.775 (Sensitive Lands) to include a disclaimer of liability.
- o Text Amendments to Chapter 18.775 (Sensitive Lands) to include a greater restriction section.

## **Marijuana Change Legislative Background**

In November 2014, Oregon became the fourth state in the nation to legalize recreational marijuana. Prior to this, legal marijuana activity was limited to the state medical marijuana program. Below is a brief summary of legislative history on marijuana followed by the proposed changes to the City’s marijuana regulations.

- August 14, 2013 - Governor signs HB3460, which requires the Oregon Health Authority to develop and implement a process to register medical marijuana dispensaries so that patients could legally purchase medical marijuana. Under this bill, dispensaries cannot be within 1,000 feet of a school, 1,000 feet of another dispensary, and must be located within an industrial, commercial, or mixed-use zone.
- March 19, 2014 – Governor signs SB1531 which authorizes local governments to adopt reasonable regulations regarding the hours of operation; location; and manner in which medical marijuana dispensaries are operated. SB1531 also states that a local jurisdiction may enact an ordinance declaring a one-year moratorium on dispensaries.
- November 4, 2014 - Oregon voters approved Ballot Measure 91 to legalize the use and possession of recreational marijuana on July 1, 2015. The law also directs the Oregon Liquor Control Commission to tax, license, and regulate recreational marijuana through a licensing system to be established by January 2016. The measure did not make any changes to the existing medical marijuana system.

- April 21, 2015- City of Tigard Ordinance No 15-07 was adopted, which established time, place and manner restrictions on Marijuana Facilities through the creation of new chapter in the TDC titled Marijuana Facilities (TDC 17.735), which applied to both medical and recreational marijuana.
- June 30, 2015 - Governor signs HB3400A which authorizes local government to regulate commercial recreation marijuana regulations; establishes the requirement of a Land Use Compatibility Statement (LUCS); recognizes marijuana as a farm crop; requires OLCC to create a seed-to-sale tracking system; and establishes provisions for state and local taxation. **HB3400A also prohibits local jurisdictions from requiring a distance buffer of greater than 1,000 feet between stated-licensed retail marijuana facilities.**

### **Proposed Amendments**

The proposed amendment to the Marijuana Facilities Chapter (18.735) changes the spacing requirements between marijuana facilities from 2,000 feet to 1,000 feet (TDC 17.735.040.C.3.b). This change is a result of House Bill (HB) 3400A, which precludes local jurisdictions from enacting a larger spacing requirement than 1,000 feet.

## **SECTION IV. APPLICABLE CRITERIA, FINDINGS AND CONCLUSIONS**

### **STATEWIDE PLANNING GOALS AND GUIDELINES**

State planning regulations require cities to adopt and amend Comprehensive Plans and land use regulations in compliance with the state land use goals. Because the proposed Code Amendments have a limited scope and the text amendments address only some of the topics in the Statewide Planning Goals, only applicable Statewide Goals are addressed below.

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

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

FINDING: This goal has been met by complying with the Tigard Development Code notice requirements set forth in Section 18.390.060 (Type IV Procedures). Notices were sent by US Postal Service on July 28, 2016 to affected government agencies and the latest version of the City’s interested parties list. A notice was published in the Tigard Times newspaper prior to the hearing. Project information and documents were published to the City website prior to the public hearing. A minimum of two public hearings will be held (one before the Planning Commission and the second before the City Council) at which an opportunity for public input is provided. This goal is satisfied.

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

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

FINDING: The Department of Land Conservation and Development (DLCD) has acknowledged the City’s Comprehensive Plan as being consistent with the statewide planning goals. The Development Code implements the Comprehensive Plan. The Development Code establishes a process and standards to review changes to the Tigard Development Code in compliance with the Comprehensive Plan and other applicable state requirements. As discussed within this report, the applicable Development Code process and standards have been applied to the proposed amendment. This goal is satisfied.

#### **Statewide Planning Goal 7 – Areas Subject to Natural Disaster:**

**This goal requires jurisdictions to protect development in places subject to natural hazards.**

FINDING: The Department of Land Conservation and Development has acknowledged the City’s Comprehensive Plan as being consistent with the statewide planning goals. The proposed text amendments create a land use control that will buffer land uses and protect development in places subject to natural hazards.

Consistency with the City's Hazard goals and policies are discussed later in this report under applicable policies of the Tigard Comprehensive Plan. This goal is satisfied.

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

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

FINDING: The Department of Land Conservation and Development has acknowledged the City's Comprehensive Plan as being consistent with the statewide planning goals. Consistency with the City's Comprehensive Plan Economic Development goals and policies is discussed later in this report under Tigard Comprehensive Plan Goal 9.1 and associated policies. This goal is satisfied.

CONCLUSION: Based on the findings above and the related findings below, staff finds the proposed code amendments are consistent with applicable Statewide Planning Goals.

**APPLICABLE PROVISIONS OF THE OREGON CANNABIS REGULATIONS**

**ORS 475B.340(2): Notwithstanding ORS 633.738, the governing body of a city or county may adopt ordinances that impose reasonable regulations on the operation of businesses located at premises for which a license has been issued under ORS 475B.070, 475B.090, 475B.100 or 475B.110 if the premises are located in the area subject to the jurisdiction of the city or county, except that the governing body of a city or county may not adopt an ordinance that prohibits a premises for which a license has been issued under ORS 475B.110 from being located within a distance that is greater than 1,000 feet of another premises for which a license has been issued under ORS 475B.110**

FINDING: The proposed amendment changes the City's current spacing requirement of 2,000 feet between facilities to 1,000 feet, making the City's code in compliance with the state statute. This requirement is satisfied.

CONCLUSION: Based on the findings above, staff finds that the proposed code text amendment is consistent with the Oregon Cannabis Regulations (ORS 475B).

**METRO'S URBAN GROWTH MANAGEMENT FUNCTIONAL PLAN**

State planning regulations require cities to adopt and amend Comprehensive Plans and land use regulations in compliance with the state land use goals. Because the proposed Code Amendments have a limited scope and the text amendments address only some of the topics in the METRO's Urban Growth Management Functional Plan, only applicable Titles are addressed below.

**Title 3 – Water Quality and Flood Management:**

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

FINDING: The proposed amendment will adopt the newly updated FEMA Flood Insurance Rate Maps, which will allow the City to continue to participate in the National Flood Insurance Program. The proposed floodplain regulation relating to critical facilities will provide protection for development located within natural flood hazard areas. The proposed amendment also includes updated terminology consistent with state and federal laws. This title is satisfied.

**Title 8 – Compliance Procedures:**

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

FINDING: This title has been met by complying with the Tigard Development Code notice requirements set forth in Section 18.390.060 (Type IV Procedures). Notices were sent by US Postal Service on July 28, 2016 to affected government agencies and the latest version of the City's interested parties list. A notice was published in the Tigard Times newspaper prior to the hearing. Project information and documents were published to the City website prior to the public hearing. A minimum of two public hearings will be held (one before the Planning Commission and the second before the City Council) at which an opportunity for public input is provided. This title is satisfied.

CONCLUSION: Based on the findings above, staff finds that the proposed code amendment is consistent with Metro's Urban Growth Management Functional Plan.

## **TIGARD COMPREHENSIVE PLAN**

State planning regulations require cities to adopt and amend Comprehensive Plans and land use regulations in compliance with the state land use goals and consistent with Comprehensive Plan Goals and Policies. Because the Development Code Amendments have a limited scope and the text amendments address only some of the topics in the Tigard Comprehensive Plan, only applicable comprehensive plan goals and associated policies are addressed below.

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

**Policy 1.1.2: The City shall define and publicize an appropriate role for citizens in each phase of the land use planning process.**

FINDING: This policy has been met by complying with the Tigard Development Code notice requirements set forth in Section 18.390.060 (Type IV Procedures). Notices were sent by US Postal Service on July 28, 2016 to affected government agencies and the latest version of the City's interested parties list. A notice was published in the Tigard Times newspaper prior to the hearing. Project information and documents were published to the City website prior to the public hearing. A minimum of two public hearings will be held (one before the Planning Commission and the second before the City Council) at which an opportunity for public input is provided. This policy is met.

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

**Policy 2.1.2: The City's land use regulations, related plans, and implementing actions shall be consistent with and implement its Comprehensive Plan.**

FINDING: As demonstrated in this staff report, the proposed amendments to the Tigard Development Code are consistent with the Tigard Comprehensive Plan. This policy is satisfied.

**Policy 2.1.3: The City shall coordinate the adoption, amendment, and implementation of its land use program with other potentially affected jurisdictions and agencies.**

FINDING: Copies of the proposed text amendments were sent to affected agencies and were invited to comment on the proposal, as required by Section 18.390.060 (Type IV Procedures) and discussed in Section V of this report. Comments submitted by affected agencies have been incorporated into this report and the proposed amendments. This policy is satisfied.

**Policy 2.1.6: The City shall promote the development and maintenance of a range of land use types which are of sufficient economic value to fund needed services and advance the community's social and fiscal stability.**

FINDING: The proposed text amendments will enable more marijuana facilities to be located within the City which will result in more taxable economic activity to occur. This policy is satisfied.

**Policy 2.1.11: The City shall adopt regulations and standards to protect public safety and welfare from hazardous conditions related to land use activities.**

FINDING: The proposed amendment includes the adoption of FEMA's Flood Insurance Rate Maps, which will maintain the City's participation in the National Flood Insurance Program and protect the public welfare for properties located within the SFHA.

Due to requirements by the State of Oregon, the spacing requirement between marijuana facilities is proposed to be reduced from 2,000 feet to 1,000 feet. However, all other buffers from residential areas and parks, and minimum design requirements, will remain in order to protect public safety and welfare from associated marijuana facilities. This policy is satisfied.

**Policy 2.1.23** The City shall require new development, including public infrastructure, to minimize conflicts by addressing the need for compatibility between it and adjacent existing and future land uses.

FINDING: The proposed amendments include reducing the buffer between marijuana facilities from 2,000 feet to 1,000 feet between facilities; this is a requirement of the State of Oregon. However, all other buffers from residential areas and parks, and minimum design requirements, will remain in order to ensure compatibility between marijuana facilities subject to state licensing or registration, and adjacent development and public facilities. This policy is satisfied.

### **Comprehensive Plan Goal 7: Hazards**

**Policy 7.1.7:** The City shall comply with the Federal Emergency Management Agency (FEMA) flood regulations, which include standards for base flood levels, flood proofing, and minimum finished floor elevations.

FINDING: The proposed amendments adopt the newly updated FEMA Flood Insurance Rate Maps, update definitions consistent with federal law, and establish regulations for critical facilities. These proposed amendments are consistent with state and federal laws. This policy is satisfied.

**Policy 7.1.8:** The City shall prohibit any land form alterations or developments in the 100-year floodplain which would result in any rise in elevation of the 100-year floodplain.

FINDING: The proposed amendments adopt the recently updated FEMA Flood Insurance Rate Maps and regulations for development within the SFHA ensuring that development will not result in any rise in elevation of the 100-year floodplain. This policy is satisfied.

**Policy 7.1.9:** The City shall not allow land form alterations of development within the 100-year floodplain outside the zero-foot rise floodway unless:

- A. The streamflow capacity of the zero-foot rise and floodway is maintained; and
- B. Engineered drawings and/or documentation shows there will be no detrimental upstream or downstream effects in the floodplain area.

FINDING: The proposed amendments adopt the newly updated FEMA Flood Insurance Rate Maps and regulations for development within the SFHA ensuring that development will not be detrimental to the floodplain. This policy is satisfied.

CONCLUSION: Based on the findings above, staff concludes that the proposed code text amendment is consistent with applicable provisions of the Tigard Comprehensive Plan.

## **APPLICABLE PROVISIONS OF THE TIGARD DEVELOPMENT CODE**

### **Section 18.380: Zoning Map and Text Amendments**

#### **18.380.020 Legislative Amendments to this Title and Map**

Legislative zoning map and text amendments shall be undertaken by means of a Type IV procedure, as governed by Section 18.390.060G.

FINDING: The proposed amendments are legislative in nature. Therefore, the amendment will be reviewed under the Type IV legislative procedure as set forth in the chapter. This procedure requires public hearings by both the Planning Commission and City Council. This standard is satisfied.

### **Section 18.380: Decision Making Procedures**

#### **18.390.060 Type IV Procedure**

**G. Decision-making considerations.** The recommendation by the commission and the decision by the council shall be based on consideration of the following factors:

1. The Statewide Planning Goals and Guidelines adopted under Oregon Revised Statutes Chapter 197;
2. Any federal or state statutes or regulations found applicable;

3. Any applicable METRO regulations;
4. Any applicable comprehensive plan policies; and
5. Any applicable provisions of the City's implementing ordinances.

FINDING: Findings and conclusions are provided in this section for the applicable listed factors on which the recommendation by the Commission and the decision by the Council shall be based. This standard is satisfied.

CONCLUSION: Based on the findings above, staff concludes that the proposed code text amendment is consistent with applicable provisions of the Tigard Development Code.

**SUMMARY**

**CONCLUSION:** As shown in the findings above, staff concludes that the proposed amendments are consistent with the applicable Statewide Planning Goals; the Oregon Cannabis Regulations (ORS 475B); METRO's Urban Growth Management Functional Plan; applicable Comprehensive Plan goals and policies, and the applicable provisions of the City's implementing ordinances.

**SECTION V. AGENCY COMMENTS**

City of Portland, City of Beaverton, City of Durham, City of Lake Oswego, City of Tualatin, City of King City, Washington County, METRO, ODOT, Oregon, DLCD, DEQ, ODFW, CWS, Tri-Met, FEMA and Tigard Water District and were notified of the proposed code text amendment but provided no comment.

Tualatin Valley Fire and Rescue provided comments stating they have reviewed the proposal and have no objections to it.

FEMA provided comments stating that several things were out of compliance with the NFIP. Staff worked with FEMA and made the appropriate changes to Chapter 18.775 to comply with the NFIP. These emails are provided as Attachment 4.

**SECTION VI. PUBLIC COMMENTS**

Prior to the Planning Commission public hearing, the City received one email from Mr. Joel Vermillion, 10525 SW Tigard Street, asking how the proposed amendment will impact his property. A map of the current 100-year floodplain and the proposed map were provided. Mr. Vermillion also asked about paving an existing gravel area within the floodplain. Staff notified Mr. Vermillion that other sensitive lands are present on the property which may impact any development on the property.

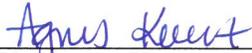
The City received six phone calls and two residents came into the permit center asking about properties within the special flood hazard area. A map of the current 100-year floodplain and the proposed map were provided. No further comments were received.

The Planning Commission heard testimony from three citizens and received one written public comment (received from one of the citizens who also testified) at the public hearing on August 15, 2016. The testimony and written comment were considered by the Planning Commission as they formed their recommendation to Council that the proposed map update and code changes be approved. The written public comment is included as Attachment 2 and Planning Commission Minutes are Attachment 3.

**ATTACHMENTS:**

Attachments:

1. Proposed Amendments
  - a. 18.120 Definitions
  - b. 18.775 Sensitive Lands
  - c. 18.735 Marijuana Facilities
2. Public Comment Letter- Mr. Davis
3. August 15, 2016 Planning Commission Minutes
4. Emails from FEMA dated August 10<sup>th</sup> and 17<sup>th</sup>, 2016



PREPARED BY: Agnes Kowacz  
Associate Planner

August 31, 2016

DATE

 for Tom McGuire

APPROVED BY: Tom McGuire  
Assistant Community Development Director

August 31, 2016

DATE

**DCA2016-00002**  
**REQUIRED REGULATORY CHANGES AND FEMA FIRM MAP UPDATE**  
**DEVELOPMENT CODE AMENDMENT**

**Explanation of Formatting**

These text amendments employ the following formatting:

~~Strikethrough~~ - Text to be deleted

**[Bold, Underline and Italic]** – Text to be added

**Excerpt from Chapter 18.120**

**18.120 Definitions**

**18.120.030 Meaning of Specific Words and Terms**

86. Flood-related definitions:

a. “Base flood” - The flood having a one percent chance of being equaled or exceeded in any given year. Also referred to as the “100-year flood.”

***b. “Critical facility”- A facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to schools,; nursing homes,; hospitals; police, fire, and emergency response installations; and installations which produce, use or store hazardous materials or hazardous waste.***

~~b. “Floodplain” - The zone along a watercourse enclosed by the outer limits of land which is subject to inundation in its natural or lower revised contours by the base flood.~~

~~c. “Floodway” - The normal stream or drainage channel of a river or other watercourse and that the adjoining adjacent land areas of the natural floodplain needed to convey the waters, including the zero-foot rise floodway area defined by the U.S. Corps of Engineers Flood Insurance Study, February, 1984.that Floodways must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.~~

~~d. “Floodway fringe” - The area of the floodplain special flood hazard area lying outside of the floodway.~~

***e. “Special Flood Hazard Area”- The land area covered by the floodwaters of the base flood is the Special Flood Hazard Area (SFHA) on NFIP maps. The SFHA is the area where the National Flood Insurance Program's (NFIP's) floodplain management regulations must be enforced and the area where the mandatory purchase of flood insurance applies. The SFHA includes Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, VI-30, VE, and V. Also referred to as the “100-year floodplain.”***

**DCA2016-00002**  
**REQUIRED REGULATORY CHANGES AND FEMA FIRM MAP UPDATE**  
**DEVELOPMENT CODE AMENDMENT**

**Explanation of Formatting**

These text amendments employ the following formatting:

~~Strikethrough~~ - Text to be deleted

**[Bold, Underline and Italic]** – Text to be added

**Chapter 18.775**  
**SENSITIVE LANDS**

**Sections:**

- 18.775.010 Purpose**
- 18.775.020 Applicability of Uses: Permitted, Prohibited, and Nonconforming**
- 18.775.030 Administrative Provisions**
- 18.775.040 General Provisions for ~~Floodplain~~ *Special Flood Hazard* Areas**
- 18.775.050 General Provisions for Wetlands**
- 18.775.060 Expiration of Approval: Standards for Extension of Time**
- 18.775.070 Sensitive Land Permits**
- 18.775.080 Application Submission Requirements**
- 18.775.090 Special Provisions for Development within Locally Significant Wetlands and Along the Tualatin River, Fanno Creek, Ball Creek, and the South Fork of Ash Creek**
- 18.775.100 Adjustments to Underlying Zone Standards**
- 18.775.110 Density Transfer**
- 18.775.120 Variances to Section 18.775.090 Standards**
- 18.775.130 Plan Amendment Option**
- 18.775.140 Significant Habitat Areas Map Verification Procedures**

**18.775.010 Purpose**

- A. Maintain integrity of rivers, streams, and creeks. Sensitive land regulations contained in this chapter are intended to maintain the integrity of the rivers, streams, and creeks in Tigard by minimizing erosion, promoting bank stability, maintaining and enhancing water quality, and fish and wildlife habitats, and preserving scenic quality and recreation potential.
- B. Implement comprehensive plan and floodplain management program. The regulations of this chapter are intended to implement the comprehensive plan and the city's floodplain management program as required by the Federal Emergency Management Agency (FEMA) through the National Flood Insurance Program, ~~and to~~ help to preserve ~~natural~~ sensitive land areas from encroaching use, and to maintain the November 4, 2016 ~~February 18, 2005~~, zero-foot rise floodway elevation.
- C. Implement Clean Water Service (CWS) design and construction standards. The regulations of this chapter are intended to protect the beneficial uses of water within the Tualatin River Basin in accordance with the CWS "Design and Construction Standards," as adopted February 7, 2000.

- D. Implement the Metro Urban Growth Management Functional Plan. The regulations of this chapter are intended to protect the beneficial water uses and functions and values of resources within water quality and flood management areas and to implement the performance standards of the Metro Urban Growth Management Functional Plan.
- E. Implement Statewide Planning Goal 5 (Natural Resources). The regulations in this chapter are intended to address the requirements of Statewide Planning Goal 5 (Natural Resources) and the safe harbor provisions of the Goal 5 administrative rule pertaining to wetland and riparian corridors.
- F. Protect public health, safety, and welfare. Sensitive land areas are designated as such to protect the public health, safety, and welfare of the community through the regulation of these sensitive land areas.
- G. Location. Sensitive lands are lands potentially unsuitable for development because of their location within:
1. The ~~100-year floodplain~~ special flood hazard area or 1996 flood inundation line, whichever is greater;
  2. Natural drainageways;
  3. Wetland areas which are regulated by the other agencies including the U.S. Army Corps of Engineers and the Division of State Lands, or are designated as significant wetland on the City of Tigard “Wetland and Stream Corridors Map”;
  4. Steep slopes of 25% or greater and unstable ground; and
  5. Significant fish and wildlife habitat areas designated on the City of Tigard “Significant Habitat Areas Map.” (Ord. 06-20, Ord. 05-01)

**18.775.020 Applicability of Uses—Permitted, Prohibited, and Nonconforming**

- A. CWS stormwater connection permit. All proposed development must obtain a stormwater connection permit from CWS pursuant to its design and construction standards. ~~As used in this chapter, the meaning of the word “development” shall be as defined in the CWS “Design and Construction Standards”:~~ All human induced changes to improved or unimproved real property, including:
1. ~~Construction of structures requiring a building permit, if such structures are external to existing structures;~~
  2. ~~Land division;~~
  3. ~~Drilling;~~
  4. ~~Site alterations resulting from surface mining or dredging;~~
  5. ~~Grading;~~
  6. ~~Construction of earthen berms;~~
  7. ~~Paving;~~

- ~~8. Excavation; or~~
  - ~~9. Clearing when it results in the removal of trees or vegetation which would require a permit from the local jurisdiction or an Oregon Department of Forestry tree removal permit.~~
  - ~~10. The following activities are not included in the definition of development:
    - ~~a. Farming activities when conducted in accordance with accepted farming practices as defined in ORS 30.930 and under a Senate Bill 1010 water quality management plan;~~
    - ~~b. Construction, reconstruction, or modification of a single family residence on an existing lot of record within a subdivision that was approved by the city or county after September 9, 1995 (from ORS 92.040(2)); and~~
    - ~~c. Any development activity for which land use approvals have been issued pursuant to a land use application submitted to the city or county on or before February 4, 2000, and deemed complete on or before March 15, 2000.~~~~
- B. Outright permitted uses with no permit required. Except as provided below and by subsections D, F, and G of this section, the following uses are outright permitted uses within the ~~100-year floodplain,~~ ***special flood hazard area*** drainageways, slopes that are 25% or greater, and unstable ground when the use does not involve paving. For the purposes of this chapter, the word “structure” shall exclude: children’s play equipment, picnic tables, sand boxes, grills, basketball hoops and similar recreational equipment.
1. Accessory uses such as lawns, gardens, or play areas; except in a water quality sensitive area or vegetated corridor, as defined in the CWS “Design and Construction Standards” or the Statewide Goal 5 vegetated corridor established for the Tualatin River, as defined in Section 18.775.090.
  2. Farm uses conducted without locating a structure within the sensitive land area; except in a water quality sensitive area or vegetative corridor, as defined in CWS “Design and Construction Standards” or the Statewide Goal 5 vegetated corridor established for the Tualatin River, as defined in Section 18.775.090.
  3. Community recreation uses, excluding structures; except in a water quality sensitive area or vegetated corridor, as defined in the CWS “Design and Construction Standards” or the Statewide Goal 5 vegetated corridor established for the Tualatin River, as defined in Section 18.775.090.
  4. Public and private conservation areas for water, soil, open space, forest, and wildlife resources.
  5. Removal of poison oak, tansy ragwort, blackberry, English ivy, or other noxious vegetation.
  6. Maintenance of floodway excluding re-channeling; except in a water quality sensitive area or vegetated corridor, as defined in the CWS “Design and Construction Standards” or the Statewide Goal 5 vegetated corridor established for the Tualatin River, as defined in Section 18.775.090.
  7. Fences; except in the floodway area; a water quality sensitive area or vegetated corridor, as defined in the CSW “Design and Construction Standards”; or the Statewide Goal 5 vegetated corridor established for the Tualatin River, as defined in Section 18.775.090.

8. Accessory structures which are less than 120 square feet in size; except in the floodway area; a water quality sensitive area or vegetated corridor, as defined in the CSW “Design and Construction Standards”; or the Statewide Goal 5 vegetated corridor established for the Tualatin River, as defined in Section 18.775.090.
  9. Land form alterations involving up to 10 cubic yards of material; except in the floodway area; a water quality sensitive area or vegetated corridor, as defined in the CSW “Design and Construction Standards”; or the Statewide Goal 5 vegetated corridor established for the Tualatin River, as defined in Section 18.775.090.
- C. Exemptions. When performed under the direction of the city, and in compliance with the provisions of the City of Tigard Standards and Specifications for Riparian Area Management, on file in the engineering division, the following shall be exempt from the provisions of this section:
1. Responses to public emergencies, including emergency repairs to public facilities;
  2. Stream and wetlands restoration and enhancement programs;
  3. Non-native vegetation removal;
  4. Planting of native plant species; and
  5. Routine maintenance or replacement of existing public facilities projects.
- D. Jurisdictional wetlands. Landform alterations or developments which are only within wetland areas that meet the jurisdictional requirements and permit criteria of the U.S. Army Corps of Engineers, Division of State Lands, CWS, and/or other federal, state, or regional agencies, and are not designated as significant wetlands on the City of Tigard “Wetland and Streams Corridors Map,” do not require a sensitive lands permit. The city shall require that all necessary permits from other agencies are obtained. All other applicable city requirements must be satisfied, including sensitive land permits for areas within the ~~100-year floodplains~~ **special flood hazard area**, slopes of 25% or greater or unstable ground, drainageways, and wetlands which are not under state or federal jurisdiction.
- E. Administrative sensitive lands review.
1. Administrative sensitive lands permits in the ~~100-year floodplains~~ **special flood hazard area**, drainageway, slopes that are 25% or greater, and unstable ground shall be obtained from the appropriate community development division for the following:
    - a. The city engineer shall review the installation of public support facilities by means of a Type I procedure, as governed by Section 18.390.030 subject to compliance with all of the standards in this chapter;
    - b. The city engineer shall review minimal ground disturbance(s) or landform alterations involving 10 to 50 cubic yards of material, except in the floodway area, for land that is within public easements and rights-of-way by means of a Type I procedure, as governed by Section 18.390.030 subject to compliance with all of the standards in this chapter;
    - c. The director shall review minimal ground disturbance(s) or landform alterations involving 10 to 50 cubic yards of material, except in the floodway area by means of a Type I procedure, as governed by Section 18.390.030 subject to compliance with all of the standards in this chapter;

- d. The director shall review the repair, reconstruction, or improvement of an existing structure or utility, the cost of which is less than 50% of the market value of the structure prior to the improvement or the damage requiring reconstruction provided no development occurs in the floodway by means of a Type I procedure, as governed by Section 18.390.030 subject to compliance with all of the standards in this chapter;
  - e. The building official shall review building permits for accessory structures which are 120 to 528 square feet in size, except in the floodway area; and
  - f. The director shall review applications for paving on private property, except in the floodway area by means of a Type I procedure, as governed by Section 18.390.030 subject to compliance with all of the standards in this chapter.
2. The responsible community development division shall approve, approve with conditions, or deny an application for a development permit, as described above, based on the standards set forth in Sections 18.775.050, 18.775.070, and 18.775.080.

F. Sensitive lands permits issued by the director.

1. The director shall have the authority to issue a sensitive lands permit in the following areas by means of a Type II procedure, as governed in Section 18.390.040, using approval criteria contained in Section 18.775.070:
  - a. Drainageways;
  - b. Slopes that are 25% or greater or unstable ground; and
  - c. Wetland areas which are not regulated by other local, state, or federal agencies and are designated as significant wetlands on the City of Tigard “Wetland and Streams Corridors Map.”
2. Sensitive lands permits shall be required for the areas in paragraph 1 of this subsection F when any of the following circumstances apply:
  - a. Ground disturbance(s) or land form alterations involving more than 50 cubic yards of material;
  - b. Repair, reconstruction, or improvement of an existing structure or utility, the cost of which equals or exceeds 50% of the market value of the structure prior to the improvement or the damage requiring reconstruction;
  - c. Residential and nonresidential structures intended for human habitation; and
  - d. Accessory structures which are greater than 528 square feet in size, outside floodway areas.

G. Sensitive lands permits issued by the hearings officer.

1. The hearings officer shall have the authority to issue a sensitive lands permit in the ***special flood hazard area***~~100-year floodplain~~ by means of a Type IIIA procedure, as governed by Section 18.390.050, using approval criteria contained in Section 18.775.070.

2. Sensitive lands permits shall be required in the ~~100-year floodplain~~ special flood hazard area when any of the following circumstances apply:
- a. Ground disturbance(s) or landform alterations in all floodway areas;
  - b. Ground disturbance(s) or landform alterations in floodway fringe locations involving more than 50 cubic yards of material;
  - c. Repair, reconstruction, or improvement of an existing structure or utility, the cost of which equals or exceeds 50% of the market value of the structure prior to the improvement or the damage requiring reconstruction provided no development occurs in the floodway;
  - d. Structures intended for human habitation; and
  - e. Accessory structures which are greater than 528 square feet in size, outside of floodway areas.
- H. Other uses. Except as explicitly authorized by other provisions of this chapter, all other uses are prohibited on sensitive land areas.
- I. Nonconforming uses. A use established prior to the adoption of this title, which would be prohibited by this chapter or which would be subject to the limitations and controls imposed by this chapter, shall be considered a nonconforming use. Nonconforming uses shall be subject to the provisions of Chapter 18.760. (Ord. 09-13; Ord. 06-20)

#### **18.775.030 Administrative Provisions**

- A. Interagency coordination. The appropriate approval authority shall review all sensitive lands permit applications to determine that all necessary permits shall be obtained from those federal, state, or local governmental agencies from which prior approval is also required.

As governed by CWS “Design and Construction Standards,” the necessary permits for all “development,” as defined in Section 18.775.020.A, shall include a CWS service provider letter, which specifies the conditions and requirements necessary, if any, for an applicant to comply with CWS water quality protection standards and for the agency to issue a stormwater connection permit.

- B. Alteration or relocation of water course.
1. The director shall notify communities adjacent to the affected area and the State Department of Land Conservation and Development prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration;
  2. The director shall require that maintenance is provided within the altered or relocated portion of a watercourse so that the flood-carrying capacity is not diminished.
- C. Apply standards. The appropriate approval authority shall apply the standards set forth in Sections 18.775.040 and 18.775.070 when reviewing an application for a sensitive lands permit.
- D. Elevation and floodproofing certification. The appropriate approval authority shall require that the elevations and floodproofing certification required in subsection E of this section be provided prior to permit issuance and verification upon occupancy and final approval.
- E. Maintenance of records.

1. Where base flood elevation data is provided through the flood insurance study, the building official shall obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement;
2. For all new or substantially improved floodproofed structures, the building official shall:
  - a. Verify and record the actual elevation (in relation to mean sea level); and
  - b. Maintain the floodproofing certifications required in this chapter.
3. The director shall maintain for public inspection all other records pertaining to the provisions in this chapter.

**18.775.040 General Provisions for Floodplain ~~Floodplain~~ Special Flood Hazard Areas**

- A. Permit review. The appropriate approval authority shall review all permit applications to determine whether proposed building sites will minimize the potential for flood damage.
- B. Special flood hazard. The areas of special flood hazard identified by ~~the Federal Insurance Administration~~ FEMA in a scientific and engineering report entitled “The Flood Insurance Study of the City for Washington County, Oregon and Incorporated Areas of Tigard,” effective February 18, 2005 ~~dated effective November 4, 2016~~” with accompanying ~~Flood Insurance rate maps~~ Map effective February 18, 2005, is hereby adopted by reference and declared to be a part of this chapter ordinance. ~~This flood insurance study is on file at the Tigard Civic Center.~~
- C. Base flood elevation data. When base flood elevation data has not been provided in accordance with subsection B of this section, the director shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, in order to administer subsections M and N of this section.
- D. Test of reasonableness. Where elevation data is not available either through the flood insurance study or from another authoritative source, applications for building permits shall be reviewed to assure that the potential for flood damage to the proposed construction will be minimized. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available. Failure to elevate at least two feet above grade in these sensitive land areas may result in higher insurance rates.
- E. Resistant to flood damage. All new construction and substantial improvements, including manufactured homes, shall be constructed with materials and utility equipment resistant to flood damage.
- F. Minimize flood damage. All new construction and substantial improvements, including manufactured homes, shall be constructed using methods and practices that minimize flood damage.
- G. Equipment protection. Electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- H. Water supply systems. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwater into the system.

- I. Anchoring. All new construction, all manufactured homes and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.
- J. Sanitary sewerage systems. New and replacement sanitary sewerage systems shall be designed to minimize or eliminate infiltration of floodwater into the systems and discharge from the systems into floodwater.
- K. On-site water disposal systems. On-site water disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
- L. Residential construction.
1. New construction and substantial improvement of any residential structure, including manufactured homes, shall have the lowest floor, including the basement, elevated at least one foot above base flood elevation;
  2. Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must either be certified by a registered professional engineer or architect, or must meet or exceed the following minimum criteria:
    - a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;
    - b. The bottom of all openings shall be no higher than one foot above grade; and
    - c. Openings may be equipped with screens, louvers, or other coverings or devices, provided that they permit the automatic entry and exit of flood waters.
  3. Manufactured homes shall be securely anchored to an adequately anchored permanent foundation system. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors.
- M. Nonresidential construction. New construction and substantial improvement of any commercial, industrial, or other nonresidential structure shall either have the lowest floor, including basement, elevated to the level of the base flood elevation, or together with attendant utility and sanitary facilities, shall:
1. Be floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water;
  2. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;
  3. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications and plans. Such certifications shall be provided to the building official as set forth in 18.775.030.E.2; and

4. Nonresidential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described in paragraph L.2 of this section. Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g., a building constructed to the base flood level will be rated as one foot below that level).

N. Subdivisions and partitions in ~~400-year floodplains~~ **special flood hazard areas**. Subdivisions and partitions in the ~~400-year floodplains~~ **special flood hazard area** shall meet the following criteria:

1. The design shall minimize the potential for flood damage;
2. Public utilities and facilities such as sewer, gas, electrical, and water systems shall be located and constructed so as to minimize flood damage;
3. Adequate drainage shall be provided to reduce exposure to flood damage; and
4. For subdivisions or partitions which contain more than 50 lots or five acres and where base flood elevation data is not available from the Federal Emergency Management Agency (FEMA) or another authoritative source, the applicant shall generate base flood elevation data to be reviewed as part of the application.

O. Recreational vehicles. Recreational vehicles placed on sites within Zones A1-A30, AH, and AE on the community's flood insurance rate map either:

1. Are on the site for fewer than 180 consecutive days;
2. Are fully licensed and ready for highway use:
  - a. Are on wheels or jacking system,
  - b. Are attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached additions, or
  - c. Meet the requirements of subsections E, F, I, and L of this section and the elevation and anchoring requirements for manufactured homes. (Ord. 05-01)

**P. Construction of new critical facilities shall be, to the extent possible, located outside of the limits of the special flood hazard area. Construction of new critical facilities shall be permissible within the special flood hazard area if no feasible alternative site is available. Critical facilities constructed within the special flood hazard area shall have the lowest floor elevated three feet above base flood elevation or to the height of the 500-year flood, whichever is higher. Access to and from the critical facility should also be protected to the height utilized above. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the level of the base flood elevation shall be provided to all critical facilities to the extent possible.**

**O. Severability. If any section, clause, sentence, or phrase of the ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.**

**R. Definitions. The following definitions are only applicable to this section:**

1. DEVELOPMENT means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.
2. FLOOD INSURANCE RATE MAP (FIRM) means an official map of a community, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).
3. FLOOD INSURANCE STUDY (FIS) means the official report provided by the Federal Insurance Administration that includes flood profiles, the Flood Boundary-Floodway Map, and the water surface elevation of the base flood.
4. LOWEST FLOOR means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; Provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of § 60.3.
5. MANUFACTURED HOME means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured" home does not include a "recreational vehicle".
6. NEW CONSTRUCTION means, for the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, new construction means structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.
7. RECREATIONAL VEHICLE means a vehicle which is: (a) Built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) Designed to be self-propelled or permanently towable by a light duty truck; and (d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.
8. START OF CONSTRUCTION includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure, whether or not that alteration affects the external dimensions of the building.

9. *STRUCTURE means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.*
10. *SUBSTANTIAL DAMAGE means damage of any origin sustained by a structure whereby the cost of restoring the structure to it's before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.*
11. *VIOLATION means the failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in § 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.*

*S. Disclaimer of Liability. This section provides a reasonable degree of flood protection but does not imply total flood protection.*

*T. Greater Restriction. This section shall not in any way impair/remove the necessity of compliance with any other applicable laws, ordinances, regulations, etc. Where this section imposes a greater restriction, the provisions of this section shall control.*

#### **18.775.050 General Provisions for Wetlands**

- A. *Code compliance requirements.* Wetland regulations apply to those areas classified as significant on the City of Tigard “Wetland and Streams Corridors Map,” and to a vegetated corridor ranging from 25 to 200 feet wide, measured horizontally, from the defined boundaries of the wetland, per “Table 3.1, Vegetated Corridor Widths,” and “Appendix C, Natural Resource Assessments,” of the CWS “Design and Construction Standards.” Wetland locations may include but are not limited to those areas identified as wetlands in “Wetland Inventory and Assessment for the City of Tigard, Oregon,” Fishman Environmental Services, 1994.
- B. *Delineation of wetland boundaries.* Precise boundaries may vary from those shown on wetland maps; specific delineation of wetland boundaries may be necessary. Wetland delineation will be done by qualified professionals at the applicant’s expense.

#### **18.775.060 Expiration of Approval—Standards for Extension of Time**

- A. *Voiding of permit.* Approval of a sensitive lands permit shall be void if:
  1. Substantial construction of the approved plan has not begun within a one-and-one-half year period;  
or
  2. Construction on the site is a departure from the approved plan.
- B. *Granting of extension.* The director shall, upon written request by the applicant and payment of the required fee, grant an extension of the approval period not to exceed one year, provided that:
  1. No changes are made on the original plan as approved by the approval authority;

2. The applicant can show intent of initiating construction of the site within the one year extension period; and
  3. There have been no changes to the applicable comprehensive plan policies and ordinance provisions on which the approval was based.
- C. Notice of the decision. Notice of the decision shall be provided to the applicant. The director's decision may be appealed by the applicant as provided by 18.390.040.G and H.

#### **18.775.070 Sensitive Land Permits**

- A. Permits required. An applicant, who wishes to develop within a sensitive area, as defined in Chapter 18.775, must obtain a permit in certain situations. Depending on the nature and intensity of the proposed activity within a sensitive area, either a Type II or Type III permit is required, as delineated in 18.775.020.F and G. The approval criteria for various kinds of sensitive areas, e.g., special flood hazard area~~floodplain~~, are presented in subsections B through E of this section.
- B. Within the 100-year floodplain~~special flood hazard area~~. The hearings officer shall approve, approve with conditions or deny an application request within the 100-year floodplain~~special flood hazard area~~ based upon findings that all of the following criteria have been satisfied:
1. Compliance with all of the applicable requirements of this title;
  2. Land form alterations shall preserve or enhance the special flood hazard area ~~floodplain~~ storage function and maintenance of the zero-foot rise floodway shall not result in any encroachments, including fill, new construction, substantial improvements and other development unless certified by a registered professional engineer that the encroachment will not result in any increase in flood levels during the base flood discharge;
  3. Land form alterations or developments within the 100-year floodplain ~~special flood hazard area~~ shall be allowed only in areas designated as commercial or industrial on the comprehensive plan land use map, except that alterations or developments associated with community recreation uses, utilities, or public support facilities as defined in Chapter 18.120 of the community development code shall be allowed in areas designated residential subject to applicable zoning standards;
  4. Where a land form alteration or development is permitted to occur within the special flood hazard area~~floodplain~~ it will not result in any increase in the water surface elevation of the 100-year flood;
  5. The land form alteration or development plan includes a pedestrian/bicycle pathway in accordance with the adopted pedestrian/bicycle pathway plan, unless the construction of said pathway is deemed by the hearings officer as untimely;
  6. Pedestrian/bicycle pathway projects within the special flood hazard area~~floodplain~~ shall include a wildlife habitat assessment that shows the proposed alignment minimizes impacts to significant wildlife habitat while balancing the community's recreation and environmental educational goals;
  7. The necessary U.S. Army Corps of Engineers and State of Oregon Land Board, Division of State Lands, and CWS permits and approvals shall be obtained; and
  8. Where land form alterations and/or development are allowed within and adjacent to the special flood hazard area~~100-year floodplain~~, the city shall require the consideration of dedication of

sufficient open land area within and adjacent to the special flood hazard area~~-floodplain~~ in accordance with the comprehensive plan. This area shall include portions of a suitable elevation for the construction of a pedestrian/bicycle pathway within the special flood hazard area~~-floodplain~~ in accordance with the adopted pedestrian/bicycle pathway plan.

- C. With steep slopes. The appropriate approval authority shall approve, approve with conditions or deny an application request for a sensitive lands permit on slopes of 25% or greater or unstable ground based upon findings that all of the following criteria have been satisfied:
1. Compliance with all of the applicable requirements of this title;
  2. The extent and nature of the proposed land form alteration or development will not create site disturbances to an extent greater than that required for the use;
  3. The proposed land form alteration or development will not result in erosion, stream sedimentation, ground instability, or other adverse on-site and off-site effects or hazards to life or property;
  4. The structures are appropriately sited and designed to ensure structural stability and proper drainage of foundation and crawl space areas for development with any of the following soil conditions: wet/high water table; high shrink-swell capability; compressible/organic; and shallow depth-to-bedrock; and
  5. Where natural vegetation has been removed due to land form alteration or development, the areas not covered by structures or impervious surfaces will be replanted to prevent erosion in accordance with Chapter 18.745, Landscaping and Screening.
- D. Within drainageways. The appropriate approval authority shall approve, approve with conditions or deny an application request for a sensitive lands permit within drainageways based upon findings that all of the following criteria have been satisfied:
1. Compliance with all of the applicable requirements of this title;
  2. The extent and nature of the proposed land form alteration or development will not create site disturbances to an extent greater than that required for the use;
  3. The proposed land form alteration or development will not result in erosion, stream sedimentation, ground instability, or other adverse on-site and off-site effects or hazards to life or property;
  4. The water flow capacity of the drainageway is not decreased;
  5. Where natural vegetation has been removed due to land form alteration or development, the areas not covered by structures or impervious surfaces will be replanted to prevent erosion in accordance with Chapter 18.745, Landscaping and Screening;
  6. The drainageway will be replaced by a public facility of adequate size to accommodate maximum flow in accordance with the adopted 1981 Master Drainage Plan;
  7. The necessary U.S. Army Corps of Engineers and State of Oregon Land Board, Division of State Lands, and CWS approvals shall be obtained;

8. Where land form alterations and/or development are allowed within and adjacent to the *special flood hazard area*~~100-year floodplain~~, the city shall require the consideration of dedication of sufficient open land area within and adjacent to the *special flood hazard area*~~floodplain~~ in accordance with the comprehensive plan. This area shall include portions of a suitable elevation for the construction of a pedestrian/bicycle pathway within the *special flood hazard area*~~floodplain~~ in accordance with the adopted pedestrian bicycle pathway plan.
- E. Within wetlands. The director shall approve, approve with conditions or deny an application request for a sensitive lands permit within wetlands based upon findings that all of the following criteria have been satisfied:
1. Compliance with all of the applicable requirements of this title;
  2. The proposed land form alteration or development is neither on wetland in an area designated as significant wetland on the comprehensive plan *special flood hazard area*~~floodplain~~ and wetland map nor is within the vegetative corridor established per “Table 3.1 Vegetative Corridor Widths” and “Appendix C: Natural Resources Assessments” of the CWS “Design and Construction Standards,” for such a wetland;
  3. The extent and nature of the proposed land form alteration or development will not create site disturbances to an extent greater than the minimum required for the use;
  4. Any encroachment or change in on-site or off-site drainage which would adversely impact wetland characteristics have been mitigated;
  5. Where natural vegetation has been removed due to land form alteration or development, erosion control provisions of the Surface Water Management program of Washington County must be met and areas not covered by structures or impervious surfaces will be replanted in like or similar species in accordance with Chapter 18.745, Landscaping and Screening;
  6. All other sensitive lands requirements of this chapter have been met;
  7. The necessary U.S. Army Corps of Engineers and State of Oregon Land Board, Division of State Lands, and CWS approvals shall be obtained;
  8. The provisions of Chapter 18.790, Tree Removal, shall be met;
  9. Physical limitations and natural hazards, *special flood hazard area*~~floodplains~~ and wetlands, natural areas, and parks, recreation and open space policies of the comprehensive plan have been satisfied. (Ord. 12-09 §1; Ord. 09-11)

#### **18.775.080 Application Submission Requirements**

All applications for uses and activities identified in 18.775.020.A through G shall be made on forms provided by the director and must include the following information in graphic, tabular and/or narrative form. The specific information on each of the following is available from the director:

- A. A CWS stormwater connection permit;
- B. A site plan;

- C. A grading plan;
- D. An urban forestry plan per Chapter 18.790 (for 18.775.020.F and G); and
- E. A landscaping plan. (Ord. 12-09 §1)

**18.775.090 Special Provisions for Development within Locally Significant Wetlands and Along the Tualatin River, Fanno Creek, Ball Creek, and the South Fork of Ash Creek**

- A. In order to address the requirements of Statewide Planning Goal 5 (Natural Resources) and the safe harbor provisions of the Goal 5 administrative rule (OAR 666-023-0030) pertaining to wetlands, all wetlands classified as significant on the City of Tigard “Wetlands and Streams Corridors Map” are protected. No land form alterations or developments are allowed within or partially within a significant wetland, except as allowed/approved pursuant to Section 18.775.130.
- B. In order to address the requirements of Statewide Planning Goal 5 (Natural Resources) and the safe harbor provisions of the Goal 5 administrative rule (OAR 660-023-0030) pertaining to riparian corridors, a standard setback distance or vegetated corridor area, measured horizontally from and parallel to the top of the bank, is established for the Tualatin River, Fanno Creek, Ball Creek, and the South Fork of Ash Creek.
  - 1. The standard width for “good condition” vegetated corridors along the Tualatin River is 75 feet, unless wider in accordance with CWS “Design and Construction Standards,” or modified in accordance with Section 18.775.130. If all or part of a locally significant wetland (a wetland identified as significant on the City of Tigard “Wetlands and Streams Corridors Map”) is located within the 75-foot setback area, the vegetated corridor is measured from the upland edge of the associated wetland.
  - 2. The standard width for “good condition” vegetated corridors along Fanno Creek, Ball Creek, and the South Fork of Ash Creek is 50 feet, unless wider in accordance with CWS “Design and Construction Standards”, or modified in accordance with Section 18.775.130. If all or part of a locally significant wetland (a wetland identified as significant on the City of Tigard “Wetlands and Streams Corridors Map”) is located within the 50-foot setback area, the vegetated corridor is measured from the upland edge of the associated wetland.
  - 3. The minimum width for “marginal or degraded condition” vegetated corridors along the Tualatin River, Fanno Creek, Ball Creek, and the South Fork of Ash Creek is 50% of the standard width, unless wider in accordance with CWS “Design and Construction Standards,” or modified in accordance with Section 18.775.130.
  - 4. The determination of corridor condition shall be based on the natural resource assessment guidelines contained in the CWS “Design and Construction Standards.”
  - 5. The standard setback distance or vegetated corridor area applies to all development proposed on property located within or partially within the vegetated corridors, except as allowed below:
    - a. Roads, pedestrian or bike paths crossing the vegetated corridor from one side to the other in order to provide access to the sensitive area or across the sensitive area, as approved by the city per Section 18.775.070 and by CWS “Design and Construction Standards”;
    - b. Utility/service provider infrastructure construction (i.e. storm, sanitary sewer, water, phone, gas, cable, etc.), if approved by the city and CWS;

- c. A pedestrian or bike path, not exceeding 10 feet in width and meeting the CWS “Design and Construction Standards”;
  - d. Grading for the purpose of enhancing the vegetated corridor, as approved by the city and CWS;
  - e. Measures to remove or abate hazards, nuisances, or fire and life safety violations, as approved by the regulating jurisdiction;
  - f. Enhancement of the vegetated corridor for water quality or quantity benefits, fish, or wildlife habitat, as approved by the city and CWS;
  - g. Measures to repair, maintain, alter, remove, add to, or replace existing structures, roadways, driveways, utilities, accessory uses, or other developments provided they are consistent with city and CWS regulations, and do not encroach further into the vegetated corridor or sensitive area than allowed by the CWS “Design and Construction Standards.”
6. Land form alterations or developments located within or partially within the Goal 5 safeharbor setback or vegetated corridor areas established for the Tualatin River, Fanno Creek, Ball Creek, and the South Fork of Ash Creek that meet the jurisdictional requirements and permit criteria of the CWS, U.S. Army Corps of Engineers, Division of State Lands, and/or other federal, state, or regional agencies, are not subject to the provisions of this subsection B, except where the:
- a. Land form alterations or developments are located within or partially within a good condition vegetated corridor, as defined in paragraphs 1 and 2 of this subsection B;
  - b. Land form alterations or developments are located within or partially within the minimum width area established for marginal or a degraded condition vegetated corridor, as defined in paragraph 3 of this subsection B.

These exceptions reflect instances of the greater protection of riparian corridors provided by the safe harbor provisions of the Goal 5 administrative rule.

#### **18.775.100 Adjustments to Underlying Zone Standards**

Adjustments to dimensional standards of the underlying zone district may be approved by the Planning Director when necessary to further the purpose of this section.

- A. Adjustment option. The planning director may approve up to 50% adjustment to any dimensional standard (e.g., setback height or lot area) of the underlying zone district to allow development consistent with the purposes of this section. The purpose of the adjustment process is to reduce adverse impacts on wetlands, stream corridors, fish and wildlife habitat, water quality and the potential for slope of flood hazards.
- B. Adjustment criteria. A special adjustment to the standards in the underlying zoning district may be requested under Type II procedure when development is proposed within or adjacent to the vegetated corridor area or within or adjacent to areas designated as “strictly limit” or “moderately limit” on the City of Tigard “Significant Habitat Areas Map.” Verification of significant habitat boundaries shall be done in accordance with the procedures described in Section 18.775.140. In order for the director to approve a dimensional adjustment to standards in the underlying zoning district, the applicant shall demonstrate that all the following criteria are fully satisfied:

1. The adjustment is the minimum necessary to allow a permitted use, while at the same time minimizing disturbance to a water resource, riparian setback area or water quality buffer;
  2. Explicit consideration has been given to maximizing vegetative cover, minimizing excavation and minimizing impervious surface area on buildable land;
  3. Design options have been considered to reduce the impacts of development, including but not limited to multi-story construction, siting of the residence close to the street to reduce driveway distance, maximizing the use of native landscaping materials, minimizing parking areas, minimizing hydrologic impacts and garage space;
  4. In no case shall the impervious surface area as a single-family residence (including the building footprint, driveway and parking areas, accessory structures, swimming pools and patios) exceed 3,000 square feet of a vegetated corridor area;
  5. Assurances are in place to guarantee that future development will not encroach further on land under the same ownership within the vegetated corridor area;
  6. Protected vegetated corridor, significant habitat areas and adjacent buffer areas must be:
    - a. Placed in a non-buildable tract or protected with a restrictive easement;
    - b. Restoration and enhancement of habitat and buffer areas required, including monitoring for five years.
- C. Reduction to minimum density requirements for developments that include inventoried significant habitat areas. The minimum number of units required by Section 18.510.040 (Density Calculation) may be waived if necessary to ensure that impacts on habitat areas are minimized.
1. Approval criteria. Reduction requests will be approved if the review body finds that the applicant has shown that the following criteria are met:
    - a. An area of the property lot or parcel to be developed has been identified on the “Significant Habitat Areas Map.” Verification of significant habitat boundaries shall be done in accordance with the procedures described in Section 18.775.140.
    - b. The proposal will be consistent with the character of the neighboring area.
    - c. This provision may only be applied to properties that were inside the Metro Urban Growth Boundary (UGB) on January 1, 2002.
    - d. The proposal will directly result in the protection of significant habitat areas through placement in a non-buildable tract or protected with a restrictive easement.
  2. Procedure.
    - a. The amount of reduction in the minimum density shall be calculated by subtracting the number of square feet of inventoried significant habitat that is permanently protected from the total number of square feet used to calculate the minimum density requirement.

- b. Requests for a reduction are processed as Type II procedure along with the development proposal for which the application has been filed.

The planning director may impose any reasonable condition necessary to mitigate identified impacts resulting from development on otherwise unbuildable land. (Ord. 06-20)

**18.775.110 Density Transfer**

Density may be transferred from vegetated corridor areas as provided in Sections 18.715.020 through 18.715.030.

**18.775.120 Variances to Section 18.775.090 Standards**

Variances to the use provisions of Section 18.775.090 are not permitted. Variances from measurable (dimensional) provisions of this section shall be discouraged and may be considered only as a last resort.

- A. Type II variance option. The hearings officer shall hear and decide variances from dimensional provisions of this chapter under Type III procedure, in accordance with the criteria in Chapter 18.370 of the zoning ordinance.
- B. Additional criteria. In addition to the general variance criteria described in Chapter 18.370, all the following additional criteria must be met to grant a variance to any dimensional provision of this chapter:
  - 1. The variance is necessary to allow reasonable economic use of the subject parcel of land, which is owned by the applicant, and which was not created after the effective date of this chapter;
  - 2. Strict application of the provisions of this chapter would otherwise result in the loss of a buildable site for a use that is permitted outright in the underlying zoning district, and for which the applicant has submitted a formal application;
  - 3. The applicant has exhausted all options available under this chapter to relieve the hardship;
  - 4. Based on review of all required studies identical to those described in Section 3.02.5.c Tier 2 Alternatives Analysis of the CWS “Design and Construction Standards,” the variance is the minimum necessary to afford relief, considering the potential for increased flood and erosion hazard, and potential adverse impacts on native vegetation, fish and wildlife habitat, and water quality;
  - 5. Based on review of all required studies identical to those described in Section 3.02.5 of the CWS “Design and Construction Standards,” no significant adverse impacts on water quality, erosion or slope stability will result from approval of this hardship variance, or these impacts have been mitigated to the greatest extent possible;
  - 6. Loss of vegetative cover shall be minimized. Any lost vegetative cover shall be replaced on-site, on a square foot for square foot basis, by native vegetation.

**18.775.130 Plan Amendment Option**

Any owner of property affected by the Goal 5 safeharbor (1) protection of significant wetlands and/or (2) vegetated areas established for the Tualatin River, Fanno Creek, Ball Creek, and the South Fork of Ash

Creek may apply for a quasi-judicial comprehensive plan amendment under Type IV procedure. This amendment must be based on a specific development proposal. The effect of the amendment would be to remove Goal 5 protection from the property, but not to remove the requirements related to the CWS Stormwater Connection Permit, which must be addressed separately through an alternatives analysis, as described in Section 3.02.5 of the CWS “Design and Construction Standards.” The applicant shall demonstrate that such an amendment is justified by either of the following:

- A. ESEE analysis. The applicant may prepare an environmental, social, economic and energy (ESEE) consequences analysis prepared in accordance with OAR 660-23-040.
  1. The analysis shall consider the ESEE consequences of allowing the proposed conflicting use, considering both the impacts on the specific resource site and the comparison with other comparable sites within the Tigard Planning Area;
  2. The ESEE analysis must demonstrate to the satisfaction of the Tigard City Council that the adverse economic consequences of not allowing the conflicting use are sufficient to justify the loss, or partial loss, of the resource;
  3. In particular, ESEE analysis must demonstrate why the use cannot be located on buildable land, consistent with the provisions of this chapter, and that there are no other sites within the Tigard Planning Area that can meet the specific needs of the proposed use;
  4. The ESEE analysis shall be prepared by a team consisting of a wildlife biologist or wetlands ecologist and a land use planner or land use attorney, all of whom are qualified in their respective fields and experienced in the preparation of Goal 5 ESEE analysis;
  5. If the application is approved, then the ESEE analysis shall be incorporated by reference into the Tigard Comprehensive Plan, and the “Tigard Wetland and Stream Corridor Map” shall be amended to remove the site from the inventory.
- B. Determination of “insignificance.” In this case, the applicant must demonstrate that the sensitive area site(s) no longer meet(s) the applicable significance threshold defined by the Goal 5 administrative rule, relative to other comparable resources within the Tigard Planning Area.
  1. Significance thresholds are described and applied in the addendum to the City of Tigard Local Wetlands Inventory adopted by reference as part of this chapter.
  2. In considering this claim, the city council shall determine that the decline in identified resource values did not result from a violation of this chapter or any other provision of the Tigard Community Development Code.

#### **18.775.140 Significant Habitat Areas Map Verification Procedures**

The significant habitat areas map shall be the basis for determining the general location of significant habitat areas on or adjacent to the site.

- A. Applicants who concur that the significant habitat areas map is accurate shall submit the following information to serve as the basis for verifying the boundaries of inventoried habitat areas:
  1. Submission requirements.

- a. A detailed property description;
  - b. A scale map of the property showing the locations of significant habitat areas, any existing built area, wetlands or water bodies, Clean Water Services' vegetated corridor, the **special flood hazard area**~~100-year floodplain~~, the 1996 flood inundation line, and contour lines (two-foot intervals for slope less than 15% and 10-foot intervals for slopes 15% or greater); and
  - c. A current aerial photograph of the property.
2. Decision process. The planning director's decision shall be based on consideration of submitted information, site visit information, and other factual information. Should the applicant disagree with the planning director's determination on the location of significant habitat areas on the property, the precise boundaries shall be verified by the applicant in accordance with the detailed delineation methodology outlined in subsection B of this section.
- B. Applicants who believe that the map is inaccurate shall submit a detailed delineation conducted by a qualified professional in accordance with the following methodology to verify the precise boundaries of the inventoried habitat areas by means of a Type II procedure.
1. Verifying boundaries of inventoried riparian habitat. Locating habitat and determining its riparian habitat class is a four-step process:
    - a. Locate the water feature that is the basis for identifying riparian habitat.
      - i. Locate the top of bank of all streams, rivers, and open water within 200 feet of the property.
      - ii. Locate the **special flood hazard area** ~~100-year floodplain~~ or 1996 flood inundation line, whichever is greater, within 100 feet of the property.
      - iii. Locate all wetlands within 150 feet of the property. Identified wetlands on the property shall be further delineated consistent with methods currently accepted by the Oregon Division of State Lands and the U.S. Army Corps of Engineers.
    - b. Identify the vegetative cover status of all areas on the property that are within 200 feet of the top of bank of streams, rivers, and open water, are wetlands or are within 150 feet of wetlands, and are flood areas and within 100 feet of flood areas.
      - i. Vegetative cover status shall be as identified on the metro vegetative cover map.
      - ii. The vegetative cover status of a property may be adjusted only if (a) the property was developed prior to the time the regional program was approved; or (b) an error was made at the time the vegetative cover status was determined. To assert the latter type of error, applicants shall submit an analysis of the vegetative cover on their property using summer 2002 aerial photographs and the following definition of vegetative cover types in Table 18.775.1.

**Table 18.775.1**  
**Definitions of Vegetative Cover Types**

<b>Type</b>	<b>Definition</b>
Low structure vegetation or open soils	Areas that are part of a contiguous area one acre or larger of grass, meadow, croplands, or areas of open soils located within 300 feet of a

	surface stream (low structure vegetation areas may include areas of shrub vegetation less than one acre in size if they are contiguous with areas of grass, meadow, croplands, orchards, Christmas tree farms, holly farms, or areas of open soils located within 300 feet of a surface stream and together form an area of one acre in size or larger).
Woody vegetation	Areas that are part of a contiguous area one acre or larger of shrub or open or scattered forest canopy (less than 60% crown closure) located within 300 feet of a surface stream.
Forest canopy	Areas that are part of a contiguous grove of trees one acre or larger in area with approximately 60% or greater crown closure, irrespective of whether the entire grove is within 200 feet of the relevant water feature.

- c. Determine whether the degree that the land slope upward from all streams, rivers, and open water within 200 feet of the property is greater than or less than 25% (using the vegetated corridor measurement methodology as described in Clean Water Services Design and Construction Standards); and
- d. Identify the riparian habitat classes applicable to all areas on the property using Table 18.775.2 and Table 18.775.3.

**Table 18.775.2  
Method for Locating Boundaries of Class I and II Riparian Areas**

Distance in feet from water feature	Development/Vegetation Status <sup>1</sup>			
	Developed areas not providing vegetative cover	Low structure vegetation or open soils	Woody vegetation (shrub and scattered forest canopy)	Forest canopy (closed to open forest canopy)
<b>Surface streams</b>				
0-50	Class II	Class I	Class I	Class I
50-100		Class II <sup>2</sup>	Class I	Class I
100-150		Class II <sup>2</sup> if slope > 25%	Class II <sup>2</sup> if slope > 25%	Class II <sup>2</sup>
150-200		Class II <sup>2</sup> if slope > 25%	Class II <sup>2</sup> if slope > 25%	Class II <sup>2</sup> if slope > 25%
<b>Wetlands (Wetland feature itself is a Class I Riparian Area)</b>				
0-100		Class II <sup>2</sup>	Class I	Class I
100-150				Class II <sup>2</sup>
<b>Flood Areas (Undeveloped portion of flood area is a Class I Riparian Area)</b>				
0-100			Class II <sup>2</sup>	Class II <sup>2</sup>

<sup>1</sup> The vegetative cover type assigned to any particular area was based on two factors: the type of vegetation observed in aerial photographs and the size of the overall contiguous area of vegetative cover to which a particular piece of vegetation belonged. As an example of how the categories were assigned, in order to qualify as a “forest canopy” the forested area had to be part of a larger patch of forest land at least one acre in size.

<sup>2</sup> Areas that have been identified as habitats of concern, as designated on the Metro Habitats of Concern Map (on file in the Metro Council office), shall be treated as Class I riparian habitat areas in all cases, subject to the provision of additional information that establishes that they do not meet the criteria used to identify habitats of concern as described in Metro’s Technical Report for Fish and Wildlife. Examples of habitats of concern include: Oregon white oak woodlands, bottomland hardwood forests, wetlands, native grasslands, riverine islands or deltas, and important wildlife migration corridors.

**Table 18.775.3  
Tualatin Basin “Limit” Decision**

	<b>Conflicting Use Category</b>
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Resource Category	High Intensity Urban	Other Urban	Future Urban (2002 and 2004 additions)	Non-Urban (outside UGB)
Class I & II Riparian Inside Vegetated Corridor	Moderately Limit	Strictly Limit	Strictly Limit	N/A
Class I & II Riparian Outside Vegetated Corridor	Moderately Limit	Moderately Limit	Moderately Limit	Moderately Limit
All other Resource Areas	Lightly Limit	Lightly Limit	Lightly Limit	Lightly Limit
Inner Impact Area	Lightly Limit	Lightly Limit	Lightly Limit	Lightly Limit
Outer Impact Area	Lightly Limit	Lightly Limit	Lightly Limit	Lightly Limit

\* Vegetated corridor standards are applied consistently throughout the District; in HIU areas they supersede the “limit” decision.

2. Verifying boundaries of inventoried upland habitat was identified based on the existence of contiguous patches of forest canopy, with limited canopy openings. The “forest canopy” designation is made based on analysis of aerial photographs as part of determining the vegetative cover status of land within the region. Upland habitat shall be as identified on the Significant Habitat Areas Map unless corrected as provided in this subsection.
  - a. Except as provided below, vegetative cover status shall be as identified on the Metro Vegetative Cover Map used to inventory habitat (available from the Metro Data Resource Center, 600 N.E. Grand Ave., Portland, OR 97232).
  - b. The only allowed corrections to the vegetative cover status of a property area as follows:
    - i. To correct errors made when the vegetative status of an area was determined based on analysis of the aerial photographs used to inventory the habitat. The perimeter of an area delineated as “forest canopy” on the Metro Vegetative Cover Map may be adjusted to more precisely indicate the dripline of the trees within the canopied area provided that no areas providing greater than 60% canopy crown closure are de-classified from the “forest canopy” designation. To assert such errors, applicants shall submit an analysis of the vegetative habitat cover on their property using the aerial photographs that were used to inventory the habitat and the definitions of the different vegetative cover types provided in Table 18.775.1; and
    - ii. To remove tree orchards and Christmas tree farms from inventoried habitat; provided, however, that Christmas tree farms where the trees were planted prior to 1975 and have not been harvested for sale as Christmas trees shall not be removed from the habitat inventory.
  - c. If the vegetative cover status of any area identified as upland habitat is corrected pursuant to subparagraph A.2.b.i of this section to change the status of an area originally identified as “forest canopy,” then such area shall not be considered upland habitat unless it remains part of a forest canopy opening less than one acre in area completely surrounded by an area of contiguous forest canopy. (Ord. 06-20) ■

**DCA2016-00002**  
**REQUIRED REGULATORY CHANGES AND FEMA FIRM MAP UPDATE**  
**DEVELOPMENT CODE AMENDMENT**

**Explanation of Formatting**

These text amendments employ the following formatting:

~~Strikethrough~~ - Text to be deleted

**[Bold, Underline and Italic]** – Text to be added

**Chapter 18.735**  
**MARIJUANA FACILITIES**

**Sections:**

- 18.735.010 Purpose**
- 18.735.020 Applicability**
- 18.735.030 Compliance and Enforcement**
- 18.735.040 Development Standards**

**18.735.010 Purpose**

The purpose of this chapter is to:

- A. Protect the general health, safety, property, and welfare of the public;
- B. Balance the right of individuals to produce and access marijuana and marijuana derivatives consistent with state law, with the need to minimize adverse impacts to nearby properties that may result from the production, storage, distribution, sale, and/or use of marijuana and derivatives;
- C. Prevent or reduce criminal activity that may result in harm to persons or property;
- D. Prevent or reduce diversion of state-licensed marijuana and marijuana derivatives to minors; and
- E. Minimize impacts to the city's public safety services by reducing calls for service. (Ord. 15-07 §3)

**18.735.020 Applicability**

- A. Relationship to other standards. The regulations within this chapter are in addition to base zone standards. Sites with overlay zones, plan districts, inventoried hazards, and/or sensitive lands are subject to additional regulations. Specific uses or development types may also be subject to regulations set forth elsewhere in this title.
- B. When provisions apply. The provisions of this chapter shall apply to all marijuana facilities requiring a state license or registration. (Ord. 15-07 §3)

**18.735.030 Compliance and Enforcement**

- A. Procedure. All marijuana facilities requiring a state license or registration, and public places of assembly where marijuana is consumed, shall demonstrate minimal compliance with these standards through a Type I procedure as set forth in Section 18.390.030 of this title, using approval criteria set forth in subsection B of this section.
- B. Approval criteria. Development subject to the provisions of this chapter shall demonstrate compliance with all standards set forth in Section 18.735.040 of this chapter.
- C. Documentation. The following provisions shall apply at the time of minimum compliance review or a request for enforcement:
  - 1. When processing a minimum compliance review, the city may accept an evaluation and explanation certified by a registered engineer or architect, as appropriate, that the proposed development will meet the off-site odor impact standard. The evaluation and explanation shall provide a description of the use or activity, equipment, processes and the mechanisms, or equipment used to avoid or mitigate off-site impacts.
  - 2. If the city does not have the equipment or expertise to measure and evaluate a specific complaint regarding off-site impacts, it may request assistance from another agency or may contract with an independent expert to perform the necessary measurements. The city may accept measurements made by an independent expert hired by the controller or operator of the off-site impact source. (Ord. 15-07 §3)

#### **18.735.040 Development Standards**

Development subject to the provisions of this chapter shall demonstrate compliance with all of the following standards:

- A. The proposed development complies with all applicable state requirements.
- B. The proposed use is allowed in the underlying zone and complies with all applicable requirements of this title.
- C. The proposed development meets all of the following site location restrictions. All distances shall be measured at the closest property lines between the proposed site and nearest lot or parcel containing the specified use or characteristic.
  - 1. Marijuana facilities are prohibited within the MU-CBD zone.
  - 2. The proposed development is not within 1,000 feet of a public or private elementary school, secondary school, or career school attended primarily by minors.
  - 3. Sale-oriented retail and wholesale sales uses open to the public shall be subject to the following restrictions:
    - a. Must be located on a lots or parcel with frontage along Pacific Highway (Oregon Route 99W);
    - b. Shall not be located within ~~2,000~~1,000 feet of another state-licensed retail or wholesale marijuana facility within or outside of city limits; and

- c. Shall not be located within 500 feet of a public library or Tigard parks and recreation zone.
4. Non-retail uses and wholesale sales uses not open to the public shall not be located within 500 feet of one or more of the following zones or facilities:
  - a. Residential zone;
  - b. Parks and recreation zone;
  - c. Public library.
- D. Hours of commercial operation shall be limited to the hours between 10:00 am and 8:00 pm. General industrial uses with no on-site retail activity are exempt from this restriction.
- E. Primary entrances shall be clearly visible from Pacific Highway (Oregon Route 99W).
- F. The proposed development shall be located inside a permanent building and may not be located within a trailer, shipping container, cargo container, tent, or motor vehicle. Outdoor storage of merchandise, plants, or other materials is not allowed.
- G. Parking lots, primary entrances, and exterior walkways shall be illuminated with downward facing security lighting to provide after-dark visibility to employees and patrons. Fixtures shall be located so that light patterns overlap at a height of seven feet with a minimum illumination level of 1.0 footcandles at the darkest spot on the ground surface.
- H. Drive-through marijuana facilities are prohibited.
- I. The proposed development shall confine all marijuana odors and other objectionable odors to levels undetectable at the property line.
- J. Marijuana or marijuana product shall not be visible from the exterior of the building or structure. (Ord. 15-07 §3) ■

**Dr. Gene & Vivian Davis**  
10875 S.W. 89<sup>th</sup> Ave  
Tigard, Oregon 97223 USA  
: 503 246-5862  
Fax: 503 977-9343  
Email: [fmf.india@yahoo.com](mailto:fmf.india@yahoo.com)

August 15<sup>th</sup>, 2016

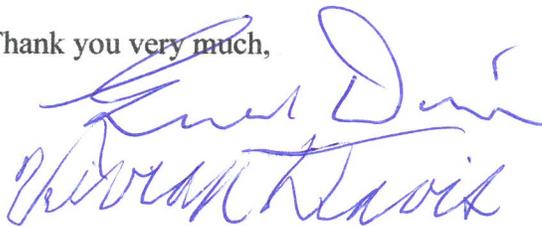
Dear Planning Commission and City Council:

In 1986 the city of Tigard put in a 16" water main paralleling the Southern Pacific Railroad at SW North Dakota just 135 feet from where Ash Creek flows into Fanno Creek (see red line on map for water main and yellow line for creeks). This was done without any engineering as your city files clearly reveal. Since that time, Ash Creek has silted in and deposited 30" or so of sediment. This sediment is pretty much from the water main to Oak Street but is most evident in the two, 12' wide by 9' high box culverts under Hwy 217 next to our property. This is about a half of a mile upstream.

City manager, Marty Wine, on October 23<sup>rd</sup>, 2014, gave me written permission to lower that 16" water main at my expense. I am willing to do it if ever I can sell enough property to get enough money to make it happen. This water main is causing flooding upstream and impacting the FEMA floodplain water levels on our property (see blue area on map).

Please do not change and increase the FEMA floodplain model until this problem is solved. The flooding and increased high water is being caused by the improper installation of the 16" city water main and will be alleviated when that issue is solved. To take away land value from upstream owners, in this case myself, is not fair and is not necessary. Please do not adopt the updated FEMA Firm Map without considering correcting the map when the water main is lowered.

Thank you very much,



Dr. Gene and Vivian Davis

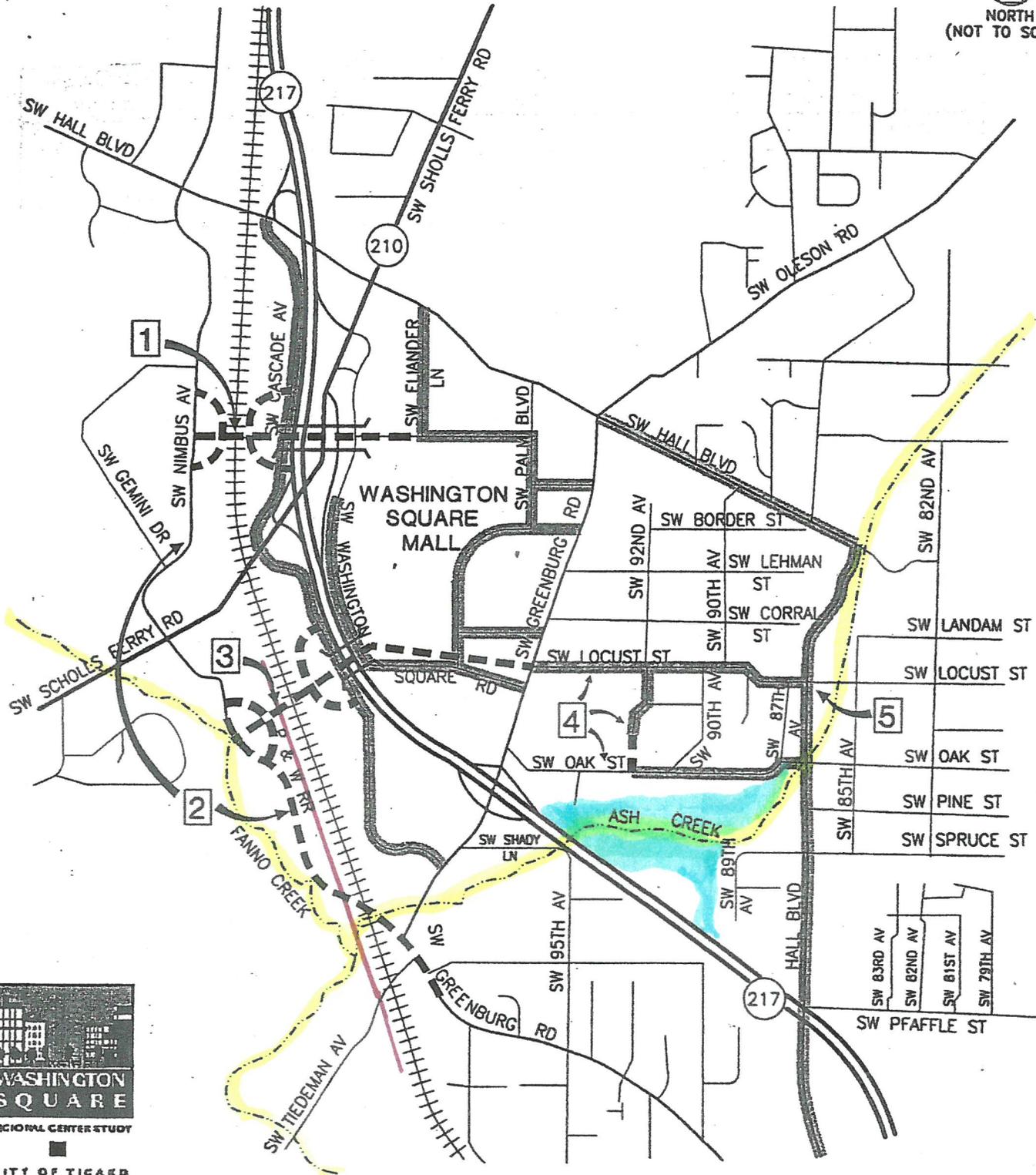
# DON'T UPDATE FEMA MAP

August 15<sup>th</sup>, 2016

(RED) 16" City water main

(YELLOW) Fanno and Ash Creeks

(BLUE) Area of flooding due to improper installation of water main



**CITY OF TIGARD  
PLANNING COMMISSION  
Meeting Minutes  
August 15, 2016**

**CALL TO ORDER**

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

**ROLL CALL**

**Present:** President Fitzgerald  
Commissioner Jelinek  
Commissioner Lieuallen  
Commissioner McDowell  
Commissioner Middaugh  
Alt. Commissioner Mooney  
Commissioner Muldoon  
Commissioner Schmidt

**Absent:** Vice President Feeney; Alt. Commissioner Enloe; Commissioner Hu

**Staff Present:** Tom McGuire, Assistant Community Development Director; Agnes Kowacz, Associate Planner; -Joe Patton, Sr. Admin. Specialist

**COMMUNICATIONS** – President Fitzgerald reported she attended the Tigard Triangle CAC meeting and they are continuing to work ahead.

**CONSIDER MINUTES**

July 18, 2016 Meeting Minutes: President Fitzgerald asked if there were any additions, deletions, or corrections to the July 18 minutes; there being none, Fitzgerald declared the minutes approved as submitted.

**OPEN PUBLIC HEARING**

President Fitzgerald opened the public hearing.

**REQUIRED REGULATORY CHANGES AND FEMA FIRM MAP UPDATE  
DEVELOPMENT CODE AMENDMENT (DCA) 2016-00002)**

**REQUEST:** The City of Tigard proposes legislative amendments to the Tigard Development Code (TDC). The proposed amendments include: (1) Adopt updated Flood Insurance Maps; and (2) Update floodplain regulations (Chapter 18.775 Sensitive Lands) relating to critical facilities and add a severability clause; and (3) Change marijuana facilities (Chapter 18.735) spacing requirements between facilities from 2,000 feet to 1,000 feet. **LOCATION:** Citywide. **APPLICABLE REVIEW CRITERIA:** Statewide Planning Goals 1 (Citizen Involvement), 2

(Land Use Planning), 7(Areas subject to Natural Disasters and Hazards), and 9 (Economic Development); ORS 475B (Cannabis Regulation); METRO's Urban Growth Management Functional Plan Titles 3, and 8; Comprehensive Plan Goals 1.1.2, 2.1.2, 2.1.3, 2.1.6, 2.1.11, 2.1.21, 2.1.23, 7.1.7, 7.1.8, 7.1.9, 9.1.3, and 9.1.12; and Tigard Development Code Chapters 18.380 and 18.390.

## STAFF REPORT

Agnes Kowacz, City of Tigard Associate Planner, gave the staff report (staff reports are available to the public online one week before public hearings). She gave a brief overview of the required regulatory changes and FEMA FIRM map updates. The National Flood Insurance Program (NFIP) was established in 1968. Jurisdictions have six months to adopt the FIRM maps and corresponding Flood Insurance Study (FIS) in order to participate, or have its citizens eligible to participate, in the discounted NFIP. FEMA periodically updates the floodplain maps and amends the NFIP. A Community Assistance Visit (CAV) occurred in September 2014 and identified that Tigard's Code lacked Critical Facilities regulations and a severability clause. In order for Tigard to continue its participation in the NFIP it must adopt, by November 4, 2016, the updated FIRM and corresponding FIS, regulations specified by the CAV, and additional items identified in the FEMA email (Exhibit A). The draft Tigard Development Code (TDC – Exhibit B) shows the proposed changes which she briefly described. Also distributed prior to the start of the meeting is a letter from Dr. Davis (Exhibit C).

Ballot Measure 91 legalized the use and possession of recreational marijuana on November 4, 2014. Tigard adopted new regulations for handling marijuana related businesses on April 21, 2015. HB3400A established statewide regulations and recognized marijuana as a farm crop. It also prohibits local jurisdictions from requiring a larger buffer than 1,000 feet between retail marijuana facilities. The adoption of the revision is required to comply with state law.

## QUESTIONS

**Can you tell me about how the FEMA maps were developed, the process to appeal the decision?** *FEMA's process is to hire a contractor to develop a hydraulic model that FEMA will use to develop their maps. FEMA does have an appeal process and this current process started in 2008 and that process has been completed for these revisions. FEMA and the county previously notified affected property owners.*

**What happens if the City chooses not to adopt the maps?** *The City would be dropped from the National Flood Insurance Program as would Tigard property owners. They would have to pay full cost for flood insurance.*

**TESTIMONY IN FAVOR** – None.

**TESTIMONY IN OPPOSITION** –

**Cece Dispenza, 11460 SW Dawns Court**, voiced frustration regarding the FEMA FIRM process and the NFIP. Her flood insurance went from \$0 per year 25 years ago to the highest risk with premiums of \$1,400 per year due to the NFIP changes. She stated the notice of rate

change can come from your mortgage or insurance company. She has spoken to multiple agencies and has not been able to figure out the reason for the increase. She questioned if Tigard will complete the same process as Beaverton to lower the insurance rates for its citizens.

**Dr. Gene Davis, 10875 SW 89<sup>th</sup> Avenue**, lives near Ash Creek. He stated his property had no flooding issues until the water main was installed in 1986. He has received permission to lower the water main and believes lowering it will alleviate the flooding on his property. An analysis of the issue should be conducted before adopting the new maps.

**Paul Jackson, 10250 SW Tigard Street**, expressed concern about the notice stating the proposed changes may affect the value of your property. He referred to an Oregonian article questioning FEMA's legal authority. *Tom noted there are two separate processes. One is adoption of the new maps. The second involves a lawsuit against FEMA for violation of the Endangered Species Act. It is unknown how the settlement of the case will impact Tigard, but none of the proposed Code changes are affected as they are separate issues.*

## QUESTIONS TO STAFF

**Why change the definition of the 100 year floodplain?** *Special flood hazard areas is the term FEMA uses and in some ways it is a better term. 100 year floodplain can be confusing. Someone that experienced a flood 10 years ago may assume they will not experience another for 90 years. What it actually refers to is the area has a 1% chance to flood in any given year, not the length of time between flooding.*

**Can Tigard do anything to change these maps, such as lowering the water main on Dr. Davis' property?** *In general no, and the City does not agree that the water main is the cause of the flooding. The City Manager has given Dr. Davis permission to move the water main at his expense if he obtains the proper permits. There are two processes that can take place. A property owner can go to FEMA's website and find an application to appeal and find out the requirements and fees involved. The City could theoretically complete a basin study and based off the results ask for map revisions. All of the evidence would be required and expensive to gather.*

**Is there anything Tigard can do to help alleviate some of the costs to citizens such as Beaverton is doing?** *Tom noted FEMA has a program called Community Rating System. Depending on the City's level of participation, flood insurance premium rates for floodplain property owners can be reduced up to 45%. Council has not given any direction to formally apply for the program or for the associated expenses.*

## PUBLIC HEARING CLOSED

## DELIBERATION

Some points – comments:

- The marijuana Code change does not alter Tigard's policy regarding siting, just the distance between retail facilities, making it compliant with the state law.
- Providing more comprehensive information regarding the FEMA map revision process would be helpful to affected property owners. Even though Tigard will not advocate on

behalf of individual property owners, it should advocate for the City as a whole by completing the FEMA process to lower the rates as much as possible.

- For help with the Community Rating System required studies, local agencies such as the U.S. Army Corps of Engineers may be able to help on a volunteer or assisted basis.
- Tigard has to comply with the law and approve the map revisions without control over how the maps are determined. Failure to comply will result in even higher flood insurance rates for the affected property owners.

#### **MOTION**

Commissioner Middaugh made the following motion – “I move for approval of the application DCA2016-00002 and adoption of the findings and conditions of approval contained in the staff report, and based on the testimony received, with the addition that staff investigates the ranking system option.” The motion was seconded by Commissioner Lieuallen.

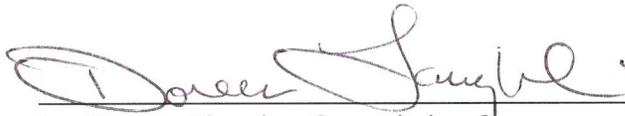
**RESULT** – All in favor, none opposed.

#### **BRIEFING**

Agnes gave an overview of upcoming changes to the Code. Changes are needed due to known problems with poor code construction, deferred maintenance and incremental changes. The focus is on terminology, process, administration and reorganization. The first part includes the mandatory changes approved tonight which will be heard by Council on September 27. The "Content" portion will be covered in two packages. The first package will include administrative fixes, new processes, new sections and regulations, and clean-up/miscellaneous. Package two will include terminology and permit review. She discussed the timeline (Exhibit D) which is an ambitious schedule. The goal is final adoption in February 2018. Tom noted there are some controversial issues that could slow the process considerably.

#### **ADJOURNMENT**

President Fitzgerald adjourned the meeting at 8:40 p.m.

  
For: Joe Patton, Planning Commission Secretary

  
ATTEST: President Fitzgerald  
For

**Agnes Kowacz**

---

**From:** Pilkenton, Roxanne <roxanne.reale-pilkenton@fema.dhs.gov>  
**Sent:** Wednesday, August 17, 2016 11:44 AM  
**To:** Agnes Kowacz  
**Subject:** RE: Flood Ordinance

The challenge is with FEMA's definition of development which reads:

*Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.*

Because of the strict definition many of the things that are listed in both 18.775.020.B and 18.775.020.C cannot be exempted; specifically the following:

18.775.020.B

6. Maintenance of floodway excluding re-channeling; except in a water quality sensitive area or vegetated corridor, as defined in the CSW "Design and Construction Standards" or the Statewide Goal 5 vegetated corridor established for the Tualatin River, as defined in Section 18.775.090.

*If the maintenance of the floodway includes any of the activities as listed in the definition of development, a flood hazard permit must be required and cannot be outright permitted.*

7. Fences; except in the floodway area; a water quality sensitive area or vegetated corridor, as defined in the CSW "Design and Construction Standards"; or the Statewide Goal 5 vegetated corridor established for the Tualatin River, as defined in Section 18.775.090.

*Even if the fences are located in the special flood hazard area (versus just the floodway) they are considered a man-made change and would require a flood hazard permit and cannot be outright permitted.*

8. Accessory structures which are less than 120 square feet in size; except in the floodway area; a water quality sensitive area or vegetated corridor, as defined in the CSW "Design and Construction Standards"; or the Statewide Goal 5 vegetated corridor established for the Tualatin River, as defined in Section 18.775.090.

*Even if the accessory structures are located in the special flood hazard area (versus just the floodway) they are considered a man-made change and would require a flood hazard permit and cannot be outright permitted.*

9. Land form alterations involving up to 10 cubic yards of material; except in the floodway area; a water quality sensitive area or vegetated corridor, as defined in the CSW "Design and Construction Standards"; or the Statewide Goal 5 vegetated corridor established for the Tualatin River, as defined in Section 18.775.090.

*Land form alterations involving up to 10 cubic yards of material is considered development, a flood hazard permit must be required and cannot be outright permitted.*

18.775.020.C

1. Responses to public emergencies, including emergency repairs to public facilities.

*Are there provisions in Tigard code that state what an actual emergency is comprised of? And if emergency work is done is it only done during an imminent threat that must be alleviated? Does the Tigard code address that after the emergency is abated that permitting is required to keep the emergency measures in place? Often jurisdictions will issue an emergency permit that includes conditions that within so many days (example: 90) the emergency abatement measures are removed or permitted demonstrating compliance with all applicable codes and ordinances.*

2. Stream and wetlands restoration and enhancement programs;

*If the restoration and enhancements include any of the work described in the FEMA definition of development the work cannot be exempt from a flood hazard permit.*

5. Routine maintenance or replacement of existing public facility projects.

*I was unable to find a definition of public facility in the Tigard code but if the routine maintenance or replacement includes any of the work described in the FEMA definition of development the work cannot be exempt from a flood hazard permit.*

Please let me know if I can provide any further assistance.

Take care,  
Rox-

Roxanne Pilkenton, CFM  
Floodplain Management Specialist  
FEMA Region X | Floodplain Management and Insurance Branch  
130 228<sup>th</sup> Street SW | Bothell, Washington 98021-9792  
Phone: (425) 487-4654 | Cell: (202) 341-6948  
KF7ROX  
[Roxanne.Pilkenton@fema.dhs.gov](mailto:Roxanne.Pilkenton@fema.dhs.gov)



**FEMA**

**From:** Agnes Kowacz [mailto:AgnesK@tigard-or.gov]  
**Sent:** Monday, August 15, 2016 3:04 PM  
**To:** Pilkenton, Roxanne <roxanne.reale-pilkenton@fema.dhs.gov>  
**Subject:** RE: Flood Ordinance

Roxanne-  
Can you specifically tell me which items are in conflict in section 18.775.020.B and 18.775.020.C?

Enforcement language is found in Tigard Municipal Code 14.04.090.

The remaining items will be added to the ordinance.

Thanks,

**Agnes Kowacz | Associate Planner**  
City of Tigard | Community Development

13125 SW Hall Boulevard  
Tigard, Oregon 97223  
Phone: 503.718.2429  
Email: AgnesK@tigard-or.gov

**From:** Pilkenton, Roxanne [mailto:roxanne.reale-pilkenton@fema.dhs.gov]  
**Sent:** Thursday, August 11, 2016 11:32 AM  
**To:** Tom McGuire <TomM@tigard-or.gov>  
**Cc:** Shirley, Christine <christine.shirley@state.or.us>; Lentzner, Dave <david.lentzner@state.or.us>; Agnes Kowacz <AgnesK@tigard-or.gov>  
**Subject:** FW: Flood Ordinance

Hello Tom,  
Scott Van Hoff told me about your phone call this morning and I wanted to get an email out to you right away. A Community Assistance Visit (CAV) was conducted in 2014 and there were two ordinance items that were requested to be changed in regards to Critical Facilities and the Severability section. I was able to confirm that both of these items are being corrected in the update that is why they are not included in what I requested below. Please note that I'm not asking for the items in my email below to be corrected or added due to the CAV but because of the adoption of the new maps; the ordinance is required to be compliant with the NFIP minimum standards and portions of the Tigard code do not meet these minimum standards.  
Scott said that you needed confirmation today that the items below do need to be addressed; please accept this email as confirmation that the items in my email below need to be addressed in the Tigard ordinance update.  
Again, please let me know if I've inadvertently missed areas where some of the below code can be found. Please feel free to contact me with any further questions. I'd be happy to review the draft changes once they are made.  
Take care,  
Roxanne

Roxanne Pilkenton, CFM  
Floodplain Management Specialist  
FEMA Region X | Floodplain Management and Insurance Branch  
130 228<sup>th</sup> Street SW | Bothell, Washington 98021-9792  
Phone: (425) 487-4654 | Cell: (202) 341-6948  
KF7ROX  
[Roxanne.Pilkenton@fema.dhs.gov](mailto:Roxanne.Pilkenton@fema.dhs.gov)



**FEMA**

**From:** Pilkenton, Roxanne  
**Sent:** Wednesday, August 10, 2016 4:37 PM  
**To:** Agnes Kowacz <[AgnesK@tigard-or.gov](mailto:AgnesK@tigard-or.gov)>  
**Cc:** Lentzner, Dave <[david.lentzner@state.or.us](mailto:david.lentzner@state.or.us)>; Shirley, Christine <[christine.shirley@state.or.us](mailto:christine.shirley@state.or.us)>  
**Subject:** RE: Flood Ordinance

Hello Agnes,

Please forgive the lateness of my response I was out of the office last week and the first two days of this week were spent catching back up! ☺ I've found the following items that the City of Tigard may want to consider changing in the

ordinance along with the adoption of the maps. Please know that I realize I do not know your ordinance as well as you do and if I have inadvertently missed where the code/definition is I apologize:

Definitions:

FEMA's definition of development: *DEVELOPMENT* means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

I do see that Tigard has a definition of development but not one that would cover what is stated above.

FEMA's definition of Flood Insurance Rate Map: *FLOOD INSURANCE RATE MAP (FIRM)* means an official map of a community, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

I do not see that Tigard has a definition of Flood Insurance Rate Map (FIRM).

The Oregon Model Flood Damage Prevention Ordinance definition of Flood Insurance Study: *FLOOD INSURANCE STUDY* means the official report provided by the Federal Insurance Administration that includes flood profiles, the Flood Boundary-Floodway Map, and the water surface elevation of the base flood.

I do not see that Tigard has a definition of Flood Insurance Study.

FEMA's definition of Lowest Floor: *LOWEST FLOOR* means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; *Provided*, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of § 60.3.

I do not see that Tigard has a definition of Lowest Floor.

FEMA's definition of Manufactured Home: *MANUFACTURED HOME* means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured" home does not include a "recreational vehicle".

I do see that Tigard has a definition of Mobile Home but it does not include all of the language that the NFIP requires.

FEMA's definition of New Construction: *NEW CONSTRUCTION* means, for the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, *new construction* means structures for which the *start of construction* commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

I do not see that Tigard has a definition of New Construction.

FEMA's definition of Recreational Vehicle: *RECREATIONAL VEHICLE* means a vehicle which is: (a) Built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) Designed to be self-propelled or permanently towable by a light duty truck; and (d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

I do see that Tigard has a definition of Recreational Vehicle but it does not include all of the language that the NFIP requires.

The Oregon Model Flood Damage Prevention Ordinance definition of Start of Construction: *START OF CONSTRUCTION* includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure, whether or not that alteration affects the external dimensions of the building.

I do not see that Tigard has a definition of Start of Construction.

FEMA's definition of Structure: *STRUCTURE* means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

I do see that Tigard has a definition of Structure, which asks you to go to the definition of Building, but it does not include all of the language that the NFIP requires.

FEMA's definition of Substantial Damage: *SUBSTANTIAL DAMAGE* means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

I do not see that Tigard has a definition of Substantial Damage.

FEMA's definition of Violation: *VIOLATION* means the failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in § 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

I do not see that Tigard has a definition of Violation.

#### Code Challenges:

18.775.020 (A)(10) In the Tigard code is in direct conflict with the NFIP. This section needs to be removed from the ordinance.

Several of the exemptions listed in 18.775.020 (B) are in direct conflict with the NFIP and need to be removed from the ordinance. While I agree that many of these items will not require a building or other permits they will require a flood hazard (or sensitive land) permit.

18.775.020 (C) in the Tigard code includes provisions that are in direct conflict with the NFIP. While some of these exemptions may be allowed in the NFIP not all are.

I am unable to find an enforcement provisions in 18.775, including a violation and penalty section specifying actions that Tigard will take to assure compliance. Please let me know if it is located in another area of the code.

I could not locate a Disclaimer of Liability section advising that the degree of flood protection required by the ordinance is considered reasonable but does not imply total flood protection. Please direct me to the location in code if I have missed it.

I am unable to find an Abrogation and Greater Restriction section (e.g., This Ordinance shall not in any way impair/remove the necessity of compliance with any other applicable laws, ordinances, regulations, etc. Where this Ordinance imposes a greater restriction, the provisions of this Ordinance shall control.) Please let me know if it is located in another area of the code.

Again, please forgive me if you have these items covered in your code and in my inexperience I have overlooked them. Please feel free to contact me with any questions about this email.

Take care,  
Roxanne

Roxanne Pilkenton, CFM  
Floodplain Management Specialist  
FEMA Region X | Floodplain Management and Insurance Branch  
130 228<sup>th</sup> Street SW | Bothell, Washington 98021-9792  
Phone: (425) 487-4654 | Cell: (202) 341-6948  
KF7ROX  
[Roxanne.Pilkenton@fema.dhs.gov](mailto:Roxanne.Pilkenton@fema.dhs.gov)



**FEMA**

**From:** Agnes Kowacz [<mailto:AgnesK@tigard-or.gov>]  
**Sent:** Wednesday, July 27, 2016 2:38 PM  
**To:** Pilkenton, Roxanne <[roxanne.reale-pilkenton@fema.dhs.gov](mailto:roxanne.reale-pilkenton@fema.dhs.gov)>  
**Cc:** Shirley, Christine <[christine.shirley@state.or.us](mailto:christine.shirley@state.or.us)>  
**Subject:** RE: Flood Ordinance

Roxanne-  
DLCD was sent all materials of this code package on 7/11/2016. I forgot to include the timeline. The first public hearing with the Planning Commission will be 8/15/2016 and City Council on 9/27/2016. The changes will be adopted by 11/4/2016. Thanks,

**Agnes Kowacz | Associate Planner**  
City of Tigard | Community Development  
13125 SW Hall Boulevard  
Tigard, Oregon 97223  
Phone: 503.718.2429  
Email: [AgnesK@tigard-or.gov](mailto:AgnesK@tigard-or.gov)

**From:** Pilkenton, Roxanne [<mailto:roxanne.reale-pilkenton@fema.dhs.gov>]  
**Sent:** Wednesday, July 27, 2016 1:50 PM  
**To:** #CD PoD <[CDPoD@tigard-or.gov](mailto:CDPoD@tigard-or.gov)>  
**Cc:** Shirley, Christine <[christine.shirley@state.or.us](mailto:christine.shirley@state.or.us)>  
**Subject:** Flood Ordinance

Good Afternoon Tom,

FEMA has you listed as the Floodplain Manager for the City of Tigard in our database; please forgive me if this information is incorrect. I'm reaching out to you in regards to the Washington County jurisdictions that will have new FIRMs and FIS becoming effective 04 November 2016. I know that Oregon State Law requires you to send them a copy of the proposed changes in your flood ordinance at least 35 days before the first public hearing. In communicating with Christine Shirley, DLCD it sounds as if she will be working closely with you to ensure State obligations are met. Because FEMA has a vested interest in ensuring that your new ordinance meets the NFIP minimum standards I would like to request that a copy of the ordinance that you send to Ms. Shirley is sent to me at the same time. In doing this it would also be helpful for you to provide a timeline as to when the City expects to pass major milestones in the ordinances adoption procedure.

If you have any questions please do not hesitate to contact me.

Take care,  
Roxanne

Roxanne Pilkenton, CFM  
Floodplain Management Specialist  
FEMA Region X | Floodplain Management and Insurance Branch  
130 228<sup>th</sup> Street SW | Bothell, Washington 98021-9792  
Phone: (425) 487-4654 | Cell: (202) 341-6948  
KF7ROX  
[Roxanne.Pilkenton@fema.dhs.gov](mailto:Roxanne.Pilkenton@fema.dhs.gov)



**FEMA**

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## City of Tigard Memorandum

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**To:** Tigard City Council  
**From:** Agnes Kowacz, Associate Planner  
**Re:** DCA2016-00002 Required Regulatory Changes and FEMA FIRM Map Update  
**Date:** September 27, 2016

This memo outlines the additional changes made to Chapter 18.775 Sensitive Lands, after the Planning Commission public hearing. These changes are required by FEMA in order to be in compliance with and continue to participate in the National Flood Insurance Program (NFIP) as stated in emails from Roxanne Pilkenton; FEMA Floodplain Management Specialist, on August 10<sup>th</sup> and August 17<sup>th</sup>, 2016. Staff was able to include most of the changes prior to the Planning Commission, however, there were two areas that staff needed further clarification from FEMA. Staff stated that any necessary changes would be made prior to the City Council public hearing once FEMA provided more information. Below is an explanation of how the remaining issues identified by FEMA were addressed:

- FEMA's email dated August 17, 2016 stated that section 18.775.020.B.6, 18.775.020.B.7, 18.775.020.B.8, and 18.775.020.B.9 cannot be permitted outright because these activities meet the definition of "development" as defined by FEMA and require a permit.

In order to comply with this requirement, staff revised section 18.775.020.B to remove four specific exemptions from applying within the special flood hazard area and added those four specific activities to the list of items needing to obtain a sensitive lands permit by means of a Type I procedure, section 18.775.020.E (g) through (j).

- FEMA's email also stated that section 18.775.020.C.1 is not clear on what constitutes an actual emergency and that we need to be clear that only the work necessary to alleviate the immediate threat may be performed under this section. Permitting is required to keep the emergency measures in place or to approve permanent measures to address the emergency situation long term.

Staff is not proposing any changes to the code as the City's current practice is sufficient to meet the requirements of FEMA. City procedures are to address any emergency that causes immediate threat as necessary, while the permanent solution/work goes through the proper permitting process, demonstrating compliance with all applicable laws and regulations.

- FEMA's email also stated that section 18.775.020.C.2 and 18.775.020.C.5 include any activities that meet the definition of "development" as defined by FEMA, they cannot be exempt from permitting.

**DCA2016-00002**  
**REQUIRED REGULATORY CHANGES AND FEMA FIRM MAP UPDATE**  
**DEVELOPMENT CODE AMENDMENT**

**Explanation of Formatting**

These text amendments employ the following formatting:

~~Strikethrough~~ - Text to be deleted

**[Bold, Underline and Italic]** – Text to be added

**Chapter 18.775**  
**SENSITIVE LANDS**

**Sections:**

<b>18.775.010</b>	<b>Purpose</b>
<b>18.775.020</b>	<b>Applicability of Uses: Permitted, Prohibited, and Nonconforming</b>
<b>18.775.030</b>	<b>Administrative Provisions</b>
<b>18.775.040</b>	<b>General Provisions for <del>Floodplain</del> <i>Special Flood Hazard</i> Areas</b>
<b>18.775.050</b>	<b>General Provisions for Wetlands</b>
<b>18.775.060</b>	<b>Expiration of Approval: Standards for Extension of Time</b>
<b>18.775.070</b>	<b>Sensitive Land Permits</b>
<b>18.775.080</b>	<b>Application Submission Requirements</b>
<b>18.775.090</b>	<b>Special Provisions for Development within Locally Significant Wetlands and Along the Tualatin River, Fanno Creek, Ball Creek, and the South Fork of Ash Creek</b>
<b>18.775.100</b>	<b>Adjustments to Underlying Zone Standards</b>
<b>18.775.110</b>	<b>Density Transfer</b>
<b>18.775.120</b>	<b>Variances to Section 18.775.090 Standards</b>
<b>18.775.130</b>	<b>Plan Amendment Option</b>
<b>18.775.140</b>	<b>Significant Habitat Areas Map Verification Procedures</b>

**18.775.010 Purpose**

- A. Maintain integrity of rivers, streams, and creeks. Sensitive land regulations contained in this chapter are intended to maintain the integrity of the rivers, streams, and creeks in Tigard by minimizing erosion, promoting bank stability, maintaining and enhancing water quality, and fish and wildlife habitats, and preserving scenic quality and recreation potential.
- B. Implement comprehensive plan and floodplain management program. The regulations of this chapter are intended to implement the comprehensive plan and the city's floodplain management program as required by the Federal Emergency Management Agency (FEMA) through the National Flood Insurance Program, ~~and to~~ help to preserve ~~natural~~ sensitive land areas from encroaching use, and to maintain the November 4, 2016 ~~February 18, 2005~~, zero-foot rise floodway elevation.
- C. Implement Clean Water Service (CWS) design and construction standards. The regulations of this chapter are intended to protect the beneficial uses of water within the Tualatin River Basin in accordance with the CWS "Design and Construction Standards," as adopted February 7, 2000.

- D. Implement the Metro Urban Growth Management Functional Plan. The regulations of this chapter are intended to protect the beneficial water uses and functions and values of resources within water quality and flood management areas and to implement the performance standards of the Metro Urban Growth Management Functional Plan.
- E. Implement Statewide Planning Goal 5 (Natural Resources). The regulations in this chapter are intended to address the requirements of Statewide Planning Goal 5 (Natural Resources) and the safe harbor provisions of the Goal 5 administrative rule pertaining to wetland and riparian corridors.
- F. Protect public health, safety, and welfare. Sensitive land areas are designated as such to protect the public health, safety, and welfare of the community through the regulation of these sensitive land areas.
- G. Location. Sensitive lands are lands potentially unsuitable for development because of their location within:
1. The ~~100-year floodplain~~ special flood hazard area or 1996 flood inundation line, whichever is greater;
  2. Natural drainageways;
  3. Wetland areas which are regulated by the other agencies including the U.S. Army Corps of Engineers and the Division of State Lands, or are designated as significant wetland on the City of Tigard “Wetland and Stream Corridors Map”;
  4. Steep slopes of 25% or greater and unstable ground; and
  5. Significant fish and wildlife habitat areas designated on the City of Tigard “Significant Habitat Areas Map.” (Ord. 06-20, Ord. 05-01)

#### **18.775.020 Applicability of Uses—Permitted, Prohibited, and Nonconforming**

- A. CWS stormwater connection permit. All proposed development must obtain a stormwater connection permit from CWS pursuant to its design and construction standards. ~~As used in this chapter, the meaning of the word “development” shall be as defined in the CWS “Design and Construction Standards”:~~ All human induced changes to improved or unimproved real property, including:
1. ~~Construction of structures requiring a building permit, if such structures are external to existing structures;~~
  2. ~~Land division;~~
  3. ~~Drilling;~~
  4. ~~Site alterations resulting from surface mining or dredging;~~
  5. ~~Grading;~~
  6. ~~Construction of earthen berms;~~

- ~~7. Paving;~~
- ~~8. Excavation; or~~
- ~~9. Clearing when it results in the removal of trees or vegetation which would require a permit from the local jurisdiction or an Oregon Department of Forestry tree removal permit.~~
- ~~10. The following activities are not included in the definition of development:~~
  - ~~a. Farming activities when conducted in accordance with accepted farming practices as defined in ORS 30.930 and under a Senate Bill 1010 water quality management plan;~~
  - ~~b. Construction, reconstruction, or modification of a single family residence on an existing lot of record within a subdivision that was approved by the city or county after September 9, 1995 (from ORS 92.040(2)); and~~
  - ~~c. Any development activity for which land use approvals have been issued pursuant to a land use application submitted to the city or county on or before February 4, 2000, and deemed complete on or before March 15, 2000.~~

- B. Outright permitted uses with no permit required. Except as provided below and by subsections D, F, and G of this section, the following uses are outright permitted uses within the ~~100-year floodplain~~, drainageways, slopes that are 25% or greater, and unstable ground when the use does not involve paving. For the purposes of this chapter, the word “structure” shall exclude: children’s play equipment, picnic tables, sand boxes, grills, basketball hoops and similar recreational equipment.
- 1. Accessory uses such as lawns, gardens, or play areas; except in a water quality sensitive area or vegetated corridor, as defined in the CWS “Design and Construction Standards” or the Statewide Goal 5 vegetated corridor established for the Tualatin River, as defined in Section 18.775.090.
  - 2. Farm uses conducted without locating a structure within the sensitive land area; except in a water quality sensitive area or vegetative corridor, as defined in CWS “Design and Construction Standards” or the Statewide Goal 5 vegetated corridor established for the Tualatin River, as defined in Section 18.775.090.
  - 3. Community recreation uses, excluding structures; except in a water quality sensitive area or vegetated corridor, as defined in the CWS “Design and Construction Standards” or the Statewide Goal 5 vegetated corridor established for the Tualatin River, as defined in Section 18.775.090.
  - 4. Public and private conservation areas for water, soil, open space, forest, and wildlife resources.
  - 5. Removal of poison oak, tansy ragwort, blackberry, English ivy, or other noxious vegetation.
  - 6. Maintenance of floodway excluding re-channeling; except in a water quality sensitive area or vegetated corridor, as defined in the CWS “Design and Construction Standards” or the Statewide Goal 5 vegetated corridor established for the Tualatin River, as defined in Section 18.775.090.
  - 7. Fences; except in the floodway area; a water quality sensitive area or vegetated corridor, as defined in the CSW “Design and Construction Standards”; or the Statewide Goal 5 vegetated corridor established for the Tualatin River, as defined in Section 18.775.090.

8. Accessory structures which are less than 120 square feet in size; except in the floodway area; a water quality sensitive area or vegetated corridor, as defined in the CSW “Design and Construction Standards”; or the Statewide Goal 5 vegetated corridor established for the Tualatin River, as defined in Section 18.775.090.
  9. Land form alterations involving up to 10 cubic yards of material; except in the floodway area; a water quality sensitive area or vegetated corridor, as defined in the CSW “Design and Construction Standards”; or the Statewide Goal 5 vegetated corridor established for the Tualatin River, as defined in Section 18.775.090.
- C. Exemptions. When performed under the direction of the city, and in compliance with the provisions of the City of Tigard Standards and Specifications for Riparian Area Management, on file in the engineering division, the following shall be exempt from the provisions of this section:
1. Responses to public emergencies, including emergency repairs to public facilities;
  2. Stream and wetlands restoration and enhancement programs, **except in special flood hazard areas when meeting the definition of development in 18.775.040.R.1;**
  3. Non-native vegetation removal;
  4. Planting of native plant species; and
  5. Routine maintenance or replacement of existing public facilities projects, **except in special flood hazard areas when meeting the definition of development in 18.775.040.R.1.**
- D. Jurisdictional wetlands. Landform alterations or developments which are only within wetland areas that meet the jurisdictional requirements and permit criteria of the U.S. Army Corps of Engineers, Division of State Lands, CWS, and/or other federal, state, or regional agencies, and are not designated as significant wetlands on the City of Tigard “Wetland and Streams Corridors Map,” do not require a sensitive lands permit. The city shall require that all necessary permits from other agencies are obtained. All other applicable city requirements must be satisfied, including sensitive land permits for areas within the ~~100-year floodplain~~ **special flood hazard area**, slopes of 25% or greater or unstable ground, drainageways, and wetlands which are not under state or federal jurisdiction.
- E. Administrative sensitive lands review.
1. Administrative sensitive lands permits in the ~~100-year floodplain~~ **special flood hazard area**, drainageway, slopes that are 25% or greater, and unstable ground shall be obtained from the appropriate community development division for the following:
    - a. The city engineer shall review the installation of public support facilities by means of a Type I procedure, as governed by Section 18.390.030 subject to compliance with all of the standards in this chapter;
    - b. The city engineer shall review minimal ground disturbance(s) or landform alterations involving 10 to 50 cubic yards of material, except in the floodway area, for land that is within public easements and rights-of-way by means of a Type I procedure, as governed by Section 18.390.030 subject to compliance with all of the standards in this chapter;

- c. The director shall review minimal ground disturbance(s) or landform alterations involving 10 to 50 cubic yards of material, except in the floodway area by means of a Type I procedure, as governed by Section 18.390.030 subject to compliance with all of the standards in this chapter;
  - d. The director shall review the repair, reconstruction, or improvement of an existing structure or utility, the cost of which is less than 50% of the market value of the structure prior to the improvement or the damage requiring reconstruction provided no development occurs in the floodway by means of a Type I procedure, as governed by Section 18.390.030 subject to compliance with all of the standards in this chapter;
  - e. The building official shall review building permits for accessory structures which are 120 to 528 square feet in size, except in the floodway area; and
  - f. The director shall review applications for paving on private property, except in the floodway area by means of a Type I procedure, as governed by Section 18.390.030 subject to compliance with all of the standards in this chapter; and
  - g. The director shall review applications for maintenance of floodway excluding re-channeling; within special flood hazard areas, by means of a Type I procedure, as governed by Section 18.390.030 subject to compliance with all of the standards in this chapter; and
  - h. The director shall review applications for the construction of fences within special flood hazard areas by means of a Type I procedure, as governed by Section 18.390.030 subject to compliance with all of the standards in this chapter; and
  - i. The director shall review applications for the construction of accessory structures which are less than 120 square feet within special flood hazard areas by means of a Type I procedure, as governed by Section 18.390.030 subject to compliance with all of the standards in this chapter; and
  - j. The director shall review applications for any land formations involving up to 10 cubic yards of material within special flood hazard areas by means of a Type I procedure, as governed by Section 18.390.030 subject to compliance with all of the standards in this chapter.
2. The responsible community development division shall approve, approve with conditions, or deny an application for a development permit, as described above, based on the standards set forth in Sections 18.775.050, 18.775.070, and 18.775.080.
- F. Sensitive lands permits issued by the director.
- 1. The director shall have the authority to issue a sensitive lands permit in the following areas by means of a Type II procedure, as governed in Section 18.390.040, using approval criteria contained in Section 18.775.070:
    - a. Drainageways;
    - b. Slopes that are 25% or greater or unstable ground; and

- c. Wetland areas which are not regulated by other local, state, or federal agencies and are designated as significant wetlands on the City of Tigard “Wetland and Streams Corridors Map.”
2. Sensitive lands permits shall be required for the areas in paragraph 1 of this subsection F when any of the following circumstances apply:
- a. Ground disturbance(s) or land form alterations involving more than 50 cubic yards of material;
  - b. Repair, reconstruction, or improvement of an existing structure or utility, the cost of which equals or exceeds 50% of the market value of the structure prior to the improvement or the damage requiring reconstruction;
  - c. Residential and nonresidential structures intended for human habitation; and
  - d. Accessory structures which are greater than 528 square feet in size, outside floodway areas.

G. Sensitive lands permits issued by the hearings officer.

- 1. The hearings officer shall have the authority to issue a sensitive lands permit in the special flood hazard area~~100-year floodplain~~ by means of a Type IIIA procedure, as governed by Section 18.390.050, using approval criteria contained in Section 18.775.070.
- 2. Sensitive lands permits shall be required in the ~~100-year floodplain~~special flood hazard area when any of the following circumstances apply:
  - a. Ground disturbance(s) or landform alterations in all floodway areas;
  - b. Ground disturbance(s) or landform alterations in floodway fringe locations involving more than 50 cubic yards of material;
  - c. Repair, reconstruction, or improvement of an existing structure or utility, the cost of which equals or exceeds 50% of the market value of the structure prior to the improvement or the damage requiring reconstruction provided no development occurs in the floodway;
  - d. Structures intended for human habitation; and
  - e. Accessory structures which are greater than 528 square feet in size, outside of floodway areas.

H. Other uses. Except as explicitly authorized by other provisions of this chapter, all other uses are prohibited on sensitive land areas.

I. Nonconforming uses. A use established prior to the adoption of this title, which would be prohibited by this chapter or which would be subject to the limitations and controls imposed by this chapter, shall be considered a nonconforming use. Nonconforming uses shall be subject to the provisions of Chapter 18.760. (Ord. 09-13; Ord. 06-20)

**18.775.030 Administrative Provisions**

- A. Interagency coordination. The appropriate approval authority shall review all sensitive lands permit applications to determine that all necessary permits shall be obtained from those federal, state, or local governmental agencies from which prior approval is also required.

As governed by CWS “Design and Construction Standards,” the necessary permits for all “development,” as defined in Section 18.775.020.A, shall include a CWS service provider letter, which specifies the conditions and requirements necessary, if any, for an applicant to comply with CWS water quality protection standards and for the agency to issue a stormwater connection permit.

- B. Alteration or relocation of water course.

1. The director shall notify communities adjacent to the affected area and the State Department of Land Conservation and Development prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration;
2. The director shall require that maintenance is provided within the altered or relocated portion of a watercourse so that the flood-carrying capacity is not diminished.

- C. Apply standards. The appropriate approval authority shall apply the standards set forth in Sections 18.775.040 and 18.775.070 when reviewing an application for a sensitive lands permit.

- D. Elevation and floodproofing certification. The appropriate approval authority shall require that the elevations and floodproofing certification required in subsection E of this section be provided prior to permit issuance and verification upon occupancy and final approval.

- E. Maintenance of records.

1. Where base flood elevation data is provided through the flood insurance study, the building official shall obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement;
2. For all new or substantially improved floodproofed structures, the building official shall:
  - a. Verify and record the actual elevation (in relation to mean sea level); and
  - b. Maintain the floodproofing certifications required in this chapter.
3. The director shall maintain for public inspection all other records pertaining to the provisions in this chapter.

#### **18.775.040 General Provisions for ~~Floodplain~~Special Flood Hazard Areas**

- A. Permit review. The appropriate approval authority shall review all permit applications to determine whether proposed building sites will minimize the potential for flood damage.
- B. Special flood hazard. The areas of special flood hazard identified by ~~the Federal Insurance Administration~~FEMA in a scientific and engineering report entitled “The Flood Insurance Study of ~~the City for~~Washington County, Oregon and Incorporated Areas of Tigard,” effective February 18, 2005 dated ~~effective~~ November 4, 2016” with accompanying ~~Flood Insurance rate maps~~ Map

~~effective February 18, 2005, is hereby adopted by reference and declared to be a part of this chapter ordinance. This flood insurance study is on file at the Tigard Civic Center.~~

- C. Base flood elevation data. When base flood elevation data has not been provided in accordance with subsection B of this section, the director shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, in order to administer subsections M and N of this section.
- D. Test of reasonableness. Where elevation data is not available either through the flood insurance study or from another authoritative source, applications for building permits shall be reviewed to assure that the potential for flood damage to the proposed construction will be minimized. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available. Failure to elevate at least two feet above grade in these sensitive land areas may result in higher insurance rates.
- E. Resistant to flood damage. All new construction and substantial improvements, including manufactured homes, shall be constructed with materials and utility equipment resistant to flood damage.
- F. Minimize flood damage. All new construction and substantial improvements, including manufactured homes, shall be constructed using methods and practices that minimize flood damage.
- G. Equipment protection. Electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- H. Water supply systems. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwater into the system.
- I. Anchoring. All new construction, all manufactured homes and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.
- J. Sanitary sewerage systems. New and replacement sanitary sewerage systems shall be designed to minimize or eliminate infiltration of floodwater into the systems and discharge from the systems into floodwater.
- K. On-site water disposal systems. On-site water disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
- L. Residential construction.
  1. New construction and substantial improvement of any residential structure, including manufactured homes, shall have the lowest floor, including the basement, elevated at least one foot above base flood elevation;
  2. Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must either be certified by a registered professional engineer or architect, or must meet or exceed the following minimum criteria:

- a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;
  - b. The bottom of all openings shall be no higher than one foot above grade; and
  - c. Openings may be equipped with screens, louvers, or other coverings or devices, provided that they permit the automatic entry and exit of flood waters.
3. Manufactured homes shall be securely anchored to an adequately anchored permanent foundation system. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors.
- M. Nonresidential construction. New construction and substantial improvement of any commercial, industrial, or other nonresidential structure shall either have the lowest floor, including basement, elevated to the level of the base flood elevation, or together with attendant utility and sanitary facilities, shall:
1. Be floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water;
  2. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;
  3. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications and plans. Such certifications shall be provided to the building official as set forth in 18.775.030.E.2; and
  4. Nonresidential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described in paragraph L.2 of this section. Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g., a building constructed to the base flood level will be rated as one foot below that level).
- N. Subdivisions and partitions in 400-year floodplains~~in 400-year floodplains~~ ***special flood hazard areas***. Subdivisions and partitions in the ~~400-year floodplains~~ ***special flood hazard area*** shall meet the following criteria:
1. The design shall minimize the potential for flood damage;
  2. Public utilities and facilities such as sewer, gas, electrical, and water systems shall be located and constructed so as to minimize flood damage;
  3. Adequate drainage shall be provided to reduce exposure to flood damage; and
  4. For subdivisions or partitions which contain more than 50 lots or five acres and where base flood elevation data is not available from the Federal Emergency Management Agency (FEMA) or another authoritative source, the applicant shall generate base flood elevation data to be reviewed as part of the application.

- O. Recreational vehicles. Recreational vehicles placed on sites within Zones A1-A30, AH, and AE on the community's flood insurance rate map either:
1. Are on the site for fewer than 180 consecutive days;
  2. Are fully licensed and ready for highway use:
    - a. Are on wheels or jacking system,
    - b. Are attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached additions, or
    - c. Meet the requirements of subsections E, F, I, and L of this section and the elevation and anchoring requirements for manufactured homes. (Ord. 05-01)

**P. Construction of new critical facilities shall be, to the extent possible, located outside of the limits of the special flood hazard area. Construction of new critical facilities shall be permissible within the special flood hazard area if no feasible alternative site is available. Critical facilities constructed within the special flood hazard area shall have the lowest floor elevated three feet above base flood elevation or to the height of the 500-year flood, whichever is higher. Access to and from the critical facility should also be protected to the height utilized above. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the level of the base flood elevation shall be provided to all critical facilities to the extent possible.**

**O. Severability. If any section, clause, sentence, or phrase of the ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.**

**R. Definitions. The following definitions are only applicable to this section:**

1. **DEVELOPMENT means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.**
2. **FLOOD INSURANCE RATE MAP (FIRM) means an official map of a community, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).**
3. **FLOOD INSURANCE STUDY (FIS) means the official report provided by the Federal Insurance Administration that includes flood profiles, the Flood Boundary-Floodway Map, and the water surface elevation of the base flood.**
4. **LOWEST FLOOR means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; Provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of § 60.3.**

5. MANUFACTURED HOME means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term “manufactured” home does not include a “recreational vehicle”.
  6. NEW CONSTRUCTION means, for the purposes of determining insurance rates, structures for which the “start of construction” commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, new construction means structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.
  7. RECREATIONAL VEHICLE means a vehicle which is: (a) Built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) Designed to be self-propelled or permanently towable by a light duty truck; and (d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.
  8. START OF CONSTRUCTION includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure, whether or not that alteration affects the external dimensions of the building.
  9. STRUCTURE means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.
  10. SUBSTANTIAL DAMAGE means damage of any origin sustained by a structure whereby the cost of restoring the structure to it’s before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.
  11. VIOLATION means the failure of a structure or other development to be fully compliant with the community’s flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in § 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.
- S. Disclaimer of Liability. This section provides a reasonable degree of flood protection but does not imply total flood protection.

**T. Greater Restriction. This section shall not in any way impair/remove the necessity of compliance with any other applicable laws, ordinances, regulations, etc. Where this section imposes a greater restriction, the provisions of this section shall control.**

**18.775.050 General Provisions for Wetlands**

- A. Code compliance requirements. Wetland regulations apply to those areas classified as significant on the City of Tigard “Wetland and Streams Corridors Map,” and to a vegetated corridor ranging from 25 to 200 feet wide, measured horizontally, from the defined boundaries of the wetland, per “Table 3.1, Vegetated Corridor Widths,” and “Appendix C, Natural Resource Assessments,” of the CWS “Design and Construction Standards.” Wetland locations may include but are not limited to those areas identified as wetlands in “Wetland Inventory and Assessment for the City of Tigard, Oregon,” Fishman Environmental Services, 1994.
- B. Delineation of wetland boundaries. Precise boundaries may vary from those shown on wetland maps; specific delineation of wetland boundaries may be necessary. Wetland delineation will be done by qualified professionals at the applicant’s expense.

**18.775.060 Expiration of Approval—Standards for Extension of Time**

- A. Voiding of permit. Approval of a sensitive lands permit shall be void if:
1. Substantial construction of the approved plan has not begun within a one-and-one-half year period; or
  2. Construction on the site is a departure from the approved plan.
- B. Granting of extension. The director shall, upon written request by the applicant and payment of the required fee, grant an extension of the approval period not to exceed one year, provided that:
1. No changes are made on the original plan as approved by the approval authority;
  2. The applicant can show intent of initiating construction of the site within the one year extension period; and
  3. There have been no changes to the applicable comprehensive plan policies and ordinance provisions on which the approval was based.
- C. Notice of the decision. Notice of the decision shall be provided to the applicant. The director’s decision may be appealed by the applicant as provided by 18.390.040.G and H.

**18.775.070 Sensitive Land Permits**

- A. Permits required. An applicant, who wishes to develop within a sensitive area, as defined in Chapter 18.775, must obtain a permit in certain situations. Depending on the nature and intensity of the proposed activity within a sensitive area, either a Type II or Type III permit is required, as delineated in 18.775.020.F and G. The approval criteria for various kinds of sensitive areas, e.g., special flood hazard area floodplain, are presented in subsections B through E of this section.

- B. ~~Within the 100-year floodplain~~ **special flood hazard area**. The hearings officer shall approve, approve with conditions or deny an application request within the ~~100-year floodplain~~ **special flood hazard area** based upon findings that all of the following criteria have been satisfied:
1. Compliance with all of the applicable requirements of this title;
  2. Land form alterations shall preserve or enhance the ~~100-year floodplain~~ **special flood hazard area** storage function and maintenance of the zero-foot rise floodway shall not result in any encroachments, including fill, new construction, substantial improvements and other development unless certified by a registered professional engineer that the encroachment will not result in any increase in flood levels during the base flood discharge;
  3. Land form alterations or developments within the ~~100-year floodplain~~ **special flood hazard area** shall be allowed only in areas designated as commercial or industrial on the comprehensive plan land use map, except that alterations or developments associated with community recreation uses, utilities, or public support facilities as defined in Chapter 18.120 of the community development code shall be allowed in areas designated residential subject to applicable zoning standards;
  4. Where a land form alteration or development is permitted to occur within the ~~100-year floodplain~~ **special flood hazard area** it will not result in any increase in the water surface elevation of the 100-year flood;
  5. The land form alteration or development plan includes a pedestrian/bicycle pathway in accordance with the adopted pedestrian/bicycle pathway plan, unless the construction of said pathway is deemed by the hearings officer as untimely;
  6. Pedestrian/bicycle pathway projects within the ~~100-year floodplain~~ **special flood hazard area** shall include a wildlife habitat assessment that shows the proposed alignment minimizes impacts to significant wildlife habitat while balancing the community's recreation and environmental educational goals;
  7. The necessary U.S. Army Corps of Engineers and State of Oregon Land Board, Division of State Lands, and CWS permits and approvals shall be obtained; and
  8. Where land form alterations and/or development are allowed within and adjacent to the ~~100-year floodplain~~ **special flood hazard area**, the city shall require the consideration of dedication of sufficient open land area within and adjacent to the ~~100-year floodplain~~ **special flood hazard area** in accordance with the comprehensive plan. This area shall include portions of a suitable elevation for the construction of a pedestrian/bicycle pathway within the ~~100-year floodplain~~ **special flood hazard area** in accordance with the adopted pedestrian/bicycle pathway plan.
- C. With steep slopes. The appropriate approval authority shall approve, approve with conditions or deny an application request for a sensitive lands permit on slopes of 25% or greater or unstable ground based upon findings that all of the following criteria have been satisfied:
1. Compliance with all of the applicable requirements of this title;
  2. The extent and nature of the proposed land form alteration or development will not create site disturbances to an extent greater than that required for the use;

3. The proposed land form alteration or development will not result in erosion, stream sedimentation, ground instability, or other adverse on-site and off-site effects or hazards to life or property;
  4. The structures are appropriately sited and designed to ensure structural stability and proper drainage of foundation and crawl space areas for development with any of the following soil conditions: wet/high water table; high shrink-swell capability; compressible/organic; and shallow depth-to-bedrock; and
  5. Where natural vegetation has been removed due to land form alteration or development, the areas not covered by structures or impervious surfaces will be replanted to prevent erosion in accordance with Chapter 18.745, Landscaping and Screening.
- D. Within drainageways. The appropriate approval authority shall approve, approve with conditions or deny an application request for a sensitive lands permit within drainageways based upon findings that all of the following criteria have been satisfied:
1. Compliance with all of the applicable requirements of this title;
  2. The extent and nature of the proposed land form alteration or development will not create site disturbances to an extent greater than that required for the use;
  3. The proposed land form alteration or development will not result in erosion, stream sedimentation, ground instability, or other adverse on-site and off-site effects or hazards to life or property;
  4. The water flow capacity of the drainageway is not decreased;
  5. Where natural vegetation has been removed due to land form alteration or development, the areas not covered by structures or impervious surfaces will be replanted to prevent erosion in accordance with Chapter 18.745, Landscaping and Screening;
  6. The drainageway will be replaced by a public facility of adequate size to accommodate maximum flow in accordance with the adopted 1981 Master Drainage Plan;
  7. The necessary U.S. Army Corps of Engineers and State of Oregon Land Board, Division of State Lands, and CWS approvals shall be obtained;
  8. Where land form alterations and/or development are allowed within and adjacent to the special flood hazard area~~100-year floodplain~~, the city shall require the consideration of dedication of sufficient open land area within and adjacent to the special flood hazard area~~floodplain~~ in accordance with the comprehensive plan. This area shall include portions of a suitable elevation for the construction of a pedestrian/bicycle pathway within the special flood hazard area~~floodplain~~ in accordance with the adopted pedestrian bicycle pathway plan.
- E. Within wetlands. The director shall approve, approve with conditions or deny an application request for a sensitive lands permit within wetlands based upon findings that all of the following criteria have been satisfied:
1. Compliance with all of the applicable requirements of this title;

2. The proposed land form alteration or development is neither on wetland in an area designated as significant wetland on the comprehensive plan ~~*special flood hazard area*~~ floodplain and wetland map nor is within the vegetative corridor established per “Table 3.1 Vegetative Corridor Widths” and “Appendix C: Natural Resources Assessments” of the CWS “Design and Construction Standards,” for such a wetland;
3. The extent and nature of the proposed land form alteration or development will not create site disturbances to an extent greater than the minimum required for the use;
4. Any encroachment or change in on-site or off-site drainage which would adversely impact wetland characteristics have been mitigated;
5. Where natural vegetation has been removed due to land form alteration or development, erosion control provisions of the Surface Water Management program of Washington County must be met and areas not covered by structures or impervious surfaces will be replanted in like or similar species in accordance with Chapter 18.745, Landscaping and Screening;
6. All other sensitive lands requirements of this chapter have been met;
7. The necessary U.S. Army Corps of Engineers and State of Oregon Land Board, Division of State Lands, and CWS approvals shall be obtained;
8. The provisions of Chapter 18.790, Tree Removal, shall be met;
9. Physical limitations and natural hazards, ~~*special flood hazard area*~~ floodplains and wetlands, natural areas, and parks, recreation and open space policies of the comprehensive plan have been satisfied. (Ord. 12-09 §1; Ord. 09-11)

#### **18.775.080 Application Submission Requirements**

All applications for uses and activities identified in 18.775.020.A through G shall be made on forms provided by the director and must include the following information in graphic, tabular and/or narrative form. The specific information on each of the following is available from the director:

- A. A CWS stormwater connection permit;
- B. A site plan;
- C. A grading plan;
- D. An urban forestry plan per Chapter 18.790 (for 18.775.020.F and G); and
- E. A landscaping plan. (Ord. 12-09 §1)

#### **18.775.090 Special Provisions for Development within Locally Significant Wetlands and Along the Tualatin River, Fanno Creek, Ball Creek, and the South Fork of Ash Creek**

- A. In order to address the requirements of Statewide Planning Goal 5 (Natural Resources) and the safe harbor provisions of the Goal 5 administrative rule (OAR 666-023-0030) pertaining to wetlands, all wetlands classified as significant on the City of Tigard “Wetlands and Streams Corridors Map” are

protected. No land form alterations or developments are allowed within or partially within a significant wetland, except as allowed/approved pursuant to Section 18.775.130.

- B. In order to address the requirements of Statewide Planning Goal 5 (Natural Resources) and the safe harbor provisions of the Goal 5 administrative rule (OAR 660-023-0030) pertaining to riparian corridors, a standard setback distance or vegetated corridor area, measured horizontally from and parallel to the top of the bank, is established for the Tualatin River, Fanno Creek, Ball Creek, and the South Fork of Ash Creek.
1. The standard width for “good condition” vegetated corridors along the Tualatin River is 75 feet, unless wider in accordance with CWS “Design and Construction Standards,” or modified in accordance with Section 18.775.130. If all or part of a locally significant wetland (a wetland identified as significant on the City of Tigard “Wetlands and Streams Corridors Map”) is located within the 75-foot setback area, the vegetated corridor is measured from the upland edge of the associated wetland.
  2. The standard width for “good condition” vegetated corridors along Fanno Creek, Ball Creek, and the South Fork of Ash Creek is 50 feet, unless wider in accordance with CWS “Design and Construction Standards”, or modified in accordance with Section 18.775.130. If all or part of a locally significant wetland (a wetland identified as significant on the City of Tigard “Wetlands and Streams Corridors Map”) is located within the 50-foot setback area, the vegetated corridor is measured from the upland edge of the associated wetland.
  3. The minimum width for “marginal or degraded condition” vegetated corridors along the Tualatin River, Fanno Creek, Ball Creek, and the South Fork of Ash Creek is 50% of the standard width, unless wider in accordance with CWS “Design and Construction Standards,” or modified in accordance with Section 18.775.130.
  4. The determination of corridor condition shall be based on the natural resource assessment guidelines contained in the CWS “Design and Construction Standards.”
  5. The standard setback distance or vegetated corridor area applies to all development proposed on property located within or partially within the vegetated corridors, except as allowed below:
    - a. Roads, pedestrian or bike paths crossing the vegetated corridor from one side to the other in order to provide access to the sensitive area or across the sensitive area, as approved by the city per Section 18.775.070 and by CWS “Design and Construction Standards”;
    - b. Utility/service provider infrastructure construction (i.e. storm, sanitary sewer, water, phone, gas, cable, etc.), if approved by the city and CWS;
    - c. A pedestrian or bike path, not exceeding 10 feet in width and meeting the CWS “Design and Construction Standards”;
    - d. Grading for the purpose of enhancing the vegetated corridor, as approved by the city and CWS;
    - e. Measures to remove or abate hazards, nuisances, or fire and life safety violations, as approved by the regulating jurisdiction;
    - f. Enhancement of the vegetated corridor for water quality or quantity benefits, fish, or wildlife habitat, as approved by the city and CWS;

- g. Measures to repair, maintain, alter, remove, add to, or replace existing structures, roadways, driveways, utilities, accessory uses, or other developments provided they are consistent with city and CWS regulations, and do not encroach further into the vegetated corridor or sensitive area than allowed by the CWS “Design and Construction Standards.”
6. Land form alterations or developments located within or partially within the Goal 5 safeharbor setback or vegetated corridor areas established for the Tualatin River, Fanno Creek, Ball Creek, and the South Fork of Ash Creek that meet the jurisdictional requirements and permit criteria of the CWS, U.S. Army Corps of Engineers, Division of State Lands, and/or other federal, state, or regional agencies, are not subject to the provisions of this subsection B, except where the:
- a. Land form alterations or developments are located within or partially within a good condition vegetated corridor, as defined in paragraphs 1 and 2 of this subsection B;
  - b. Land form alterations or developments are located within or partially within the minimum width area established for marginal or a degraded condition vegetated corridor, as defined in paragraph 3 of this subsection B.

These exceptions reflect instances of the greater protection of riparian corridors provided by the safe harbor provisions of the Goal 5 administrative rule.

#### **18.775.100 Adjustments to Underlying Zone Standards**

Adjustments to dimensional standards of the underlying zone district may be approved by the Planning Director when necessary to further the purpose of this section.

- A. Adjustment option. The planning director may approve up to 50% adjustment to any dimensional standard (e.g., setback height or lot area) of the underlying zone district to allow development consistent with the purposes of this section. The purpose of the adjustment process is to reduce adverse impacts on wetlands, stream corridors, fish and wildlife habitat, water quality and the potential for slope of flood hazards.
- B. Adjustment criteria. A special adjustment to the standards in the underlying zoning district may be requested under Type II procedure when development is proposed within or adjacent to the vegetated corridor area or within or adjacent to areas designated as “strictly limit” or “moderately limit” on the City of Tigard “Significant Habitat Areas Map.” Verification of significant habitat boundaries shall be done in accordance with the procedures described in Section 18.775.140. In order for the director to approve a dimensional adjustment to standards in the underlying zoning district, the applicant shall demonstrate that all the following criteria are fully satisfied:
  - 1. The adjustment is the minimum necessary to allow a permitted use, while at the same time minimizing disturbance to a water resource, riparian setback area or water quality buffer;
  - 2. Explicit consideration has been given to maximizing vegetative cover, minimizing excavation and minimizing impervious surface area on buildable land;
  - 3. Design options have been considered to reduce the impacts of development, including but not limited to multi-story construction, siting of the residence close to the street to reduce driveway distance, maximizing the use of native landscaping materials, minimizing parking areas, minimizing hydrologic impacts and garage space;

4. In no case shall the impervious surface area as a single-family residence (including the building footprint, driveway and parking areas, accessory structures, swimming pools and patios) exceed 3,000 square feet of a vegetated corridor area;
  5. Assurances are in place to guarantee that future development will not encroach further on land under the same ownership within the vegetated corridor area;
  6. Protected vegetated corridor, significant habitat areas and adjacent buffer areas must be:
    - a. Placed in a non-buildable tract or protected with a restrictive easement;
    - b. Restoration and enhancement of habitat and buffer areas required, including monitoring for five years.
- C. Reduction to minimum density requirements for developments that include inventoried significant habitat areas. The minimum number of units required by Section 18.510.040 (Density Calculation) may be waived if necessary to ensure that impacts on habitat areas are minimized.
1. Approval criteria. Reduction requests will be approved if the review body finds that the applicant has shown that the following criteria are met:
    - a. An area of the property lot or parcel to be developed has been identified on the “Significant Habitat Areas Map.” Verification of significant habitat boundaries shall be done in accordance with the procedures described in Section 18.775.140.
    - b. The proposal will be consistent with the character of the neighboring area.
    - c. This provision may only be applied to properties that were inside the Metro Urban Growth Boundary (UGB) on January 1, 2002.
    - d. The proposal will directly result in the protection of significant habitat areas through placement in a non-buildable tract or protected with a restrictive easement.
  2. Procedure.
    - a. The amount of reduction in the minimum density shall be calculated by subtracting the number of square feet of inventoried significant habitat that is permanently protected from the total number of square feet used to calculate the minimum density requirement.
    - b. Requests for a reduction are processed as Type II procedure along with the development proposal for which the application has been filed.

The planning director may impose any reasonable condition necessary to mitigate identified impacts resulting from development on otherwise unbuildable land. (Ord. 06-20)

#### **18.775.110 Density Transfer**

Density may be transferred from vegetated corridor areas as provided in Sections 18.715.020 through 18.715.030.

**18.775.120 Variances to Section 18.775.090 Standards**

Variances to the use provisions of Section 18.775.090 are not permitted. Variances from measurable (dimensional) provisions of this section shall be discouraged and may be considered only as a last resort.

- A. Type II variance option. The hearings officer shall hear and decide variances from dimensional provisions of this chapter under Type III procedure, in accordance with the criteria in Chapter 18.370 of the zoning ordinance.
- B. Additional criteria. In addition to the general variance criteria described in Chapter 18.370, all the following additional criteria must be met to grant a variance to any dimensional provision of this chapter:
1. The variance is necessary to allow reasonable economic use of the subject parcel of land, which is owned by the applicant, and which was not created after the effective date of this chapter;
  2. Strict application of the provisions of this chapter would otherwise result in the loss of a buildable site for a use that is permitted outright in the underlying zoning district, and for which the applicant has submitted a formal application;
  3. The applicant has exhausted all options available under this chapter to relieve the hardship;
  4. Based on review of all required studies identical to those described in Section 3.02.5.c Tier 2 Alternatives Analysis of the CWS “Design and Construction Standards,” the variance is the minimum necessary to afford relief, considering the potential for increased flood and erosion hazard, and potential adverse impacts on native vegetation, fish and wildlife habitat, and water quality;
  5. Based on review of all required studies identical to those described in Section 3.02.5 of the CWS “Design and Construction Standards,” no significant adverse impacts on water quality, erosion or slope stability will result from approval of this hardship variance, or these impacts have been mitigated to the greatest extent possible;
  6. Loss of vegetative cover shall be minimized. Any lost vegetative cover shall be replaced on-site, on a square foot for square foot basis, by native vegetation.

**18.775.130 Plan Amendment Option**

Any owner of property affected by the Goal 5 safeharbor (1) protection of significant wetlands and/or (2) vegetated areas established for the Tualatin River, Fanno Creek, Ball Creek, and the South Fork of Ash Creek may apply for a quasi-judicial comprehensive plan amendment under Type IV procedure. This amendment must be based on a specific development proposal. The effect of the amendment would be to remove Goal 5 protection from the property, but not to remove the requirements related to the CWS Stormwater Connection Permit, which must be addressed separately through an alternatives analysis, as described in Section 3.02.5 of the CWS “Design and Construction Standards.” The applicant shall demonstrate that such an amendment is justified by either of the following:

- A. ESEE analysis. The applicant may prepare an environmental, social, economic and energy (ESEE) consequences analysis prepared in accordance with OAR 660-23-040.

1. The analysis shall consider the ESEE consequences of allowing the proposed conflicting use, considering both the impacts on the specific resource site and the comparison with other comparable sites within the Tigard Planning Area;
  2. The ESEE analysis must demonstrate to the satisfaction of the Tigard City Council that the adverse economic consequences of not allowing the conflicting use are sufficient to justify the loss, or partial loss, of the resource;
  3. In particular, ESEE analysis must demonstrate why the use cannot be located on buildable land, consistent with the provisions of this chapter, and that there are no other sites within the Tigard Planning Area that can meet the specific needs of the proposed use;
  4. The ESEE analysis shall be prepared by a team consisting of a wildlife biologist or wetlands ecologist and a land use planner or land use attorney, all of whom are qualified in their respective fields and experienced in the preparation of Goal 5 ESEE analysis;
  5. If the application is approved, then the ESEE analysis shall be incorporated by reference into the Tigard Comprehensive Plan, and the “Tigard Wetland and Stream Corridor Map” shall be amended to remove the site from the inventory.
- B. Determination of “insignificance.” In this case, the applicant must demonstrate that the sensitive area site(s) no longer meet(s) the applicable significance threshold defined by the Goal 5 administrative rule, relative to other comparable resources within the Tigard Planning Area.
1. Significance thresholds are described and applied in the addendum to the City of Tigard Local Wetlands Inventory adopted by reference as part of this chapter.
  2. In considering this claim, the city council shall determine that the decline in identified resource values did not result from a violation of this chapter or any other provision of the Tigard Community Development Code.

#### **18.775.140 Significant Habitat Areas Map Verification Procedures**

The significant habitat areas map shall be the basis for determining the general location of significant habitat areas on or adjacent to the site.

- A. Applicants who concur that the significant habitat areas map is accurate shall submit the following information to serve as the basis for verifying the boundaries of inventoried habitat areas:
1. Submission requirements.
    - a. A detailed property description;
    - b. A scale map of the property showing the locations of significant habitat areas, any existing built area, wetlands or water bodies, Clean Water Services’ vegetated corridor, the special flood hazard area ~~100-year floodplain~~, the 1996 flood inundation line, and contour lines (two-foot intervals for slope less than 15% and 10-foot intervals for slopes 15% or greater); and
    - c. A current aerial photograph of the property.

2. Decision process. The planning director’s decision shall be based on consideration of submitted information, site visit information, and other factual information. Should the applicant disagree with the planning director’s determination on the location of significant habitat areas on the property, the precise boundaries shall be verified by the applicant in accordance with the detailed delineation methodology outlined in subsection B of this section.
- B. Applicants who believe that the map is inaccurate shall submit a detailed delineation conducted by a qualified professional in accordance with the following methodology to verify the precise boundaries of the inventoried habitat areas by means of a Type II procedure.
1. Verifying boundaries of inventoried riparian habitat. Locating habitat and determining its riparian habitat class is a four-step process:
    - a. Locate the water feature that is the basis for identifying riparian habitat.
      - i. Locate the top of bank of all streams, rivers, and open water within 200 feet of the property.
      - ii. Locate the ***special flood hazard area*** ~~100-year floodplain~~ or 1996 flood inundation line, whichever is greater, within 100 feet of the property.
      - iii. Locate all wetlands within 150 feet of the property. Identified wetlands on the property shall be further delineated consistent with methods currently accepted by the Oregon Division of State Lands and the U.S. Army Corps of Engineers.
    - b. Identify the vegetative cover status of all areas on the property that are within 200 feet of the top of bank of streams, rivers, and open water, are wetlands or are within 150 feet of wetlands, and are flood areas and within 100 feet of flood areas.
      - i. Vegetative cover status shall be as identified on the metro vegetative cover map.
      - ii. The vegetative cover status of a property may be adjusted only if (a) the property was developed prior to the time the regional program was approved; or (b) an error was made at the time the vegetative cover status was determined. To assert the latter type of error, applicants shall submit an analysis of the vegetative cover on their property using summer 2002 aerial photographs and the following definition of vegetative cover types in Table 18.775.1.

**Table 18.775.1  
Definitions of Vegetative Cover Types**

<b>Type</b>	<b>Definition</b>
Low structure vegetation or open soils	Areas that are part of a contiguous area one acre or larger of grass, meadow, croplands, or areas of open soils located within 300 feet of a surface stream (low structure vegetation areas may include areas of shrub vegetation less than one acre in size if they are contiguous with areas of grass, meadow, croplands, orchards, Christmas tree farms, holly farms, or areas of open soils located within 300 feet of a surface stream and together form an area of one acre in size or larger).
Woody vegetation	Areas that are part of a contiguous area one acre or larger of shrub or open or scattered forest canopy (less than 60% crown closure) located within 300 feet of a surface stream.

Forest canopy	Areas that are part of a contiguous grove of trees one acre or larger in area with approximately 60% or greater crown closure, irrespective of whether the entire grove is within 200 feet of the relevant water feature.
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- c. Determine whether the degree that the land slope upward from all streams, rivers, and open water within 200 feet of the property is greater than or less than 25% (using the vegetated corridor measurement methodology as described in Clean Water Services Design and Construction Standards); and
- d. Identify the riparian habitat classes applicable to all areas on the property using Table 18.775.2 and Table 18.775.3.

**Table 18.775.2  
Method for Locating Boundaries of Class I and II Riparian Areas**

Distance in feet from water feature	Development/Vegetation Status <sup>1</sup>			
	Developed areas not providing vegetative cover	Low structure vegetation or open soils	Woody vegetation (shrub and scattered forest canopy)	Forest canopy (closed to open forest canopy)
<b>Surface streams</b>				
0-50	Class II	Class I	Class I	Class I
50-100		Class II <sup>2</sup>	Class I	Class I
100-150		Class II <sup>2</sup> if slope > 25%	Class II <sup>2</sup> if slope > 25%	Class II <sup>2</sup>
150-200		Class II <sup>2</sup> if slope > 25%	Class II <sup>2</sup> if slope > 25%	Class II <sup>2</sup> if slope > 25%
<b>Wetlands (Wetland feature itself is a Class I Riparian Area)</b>				
0-100		Class II <sup>2</sup>	Class I	Class I
100-150				Class II <sup>2</sup>
<b>Flood Areas (Undeveloped portion of flood area is a Class I Riparian Area)</b>				
0-100			Class II <sup>2</sup>	Class II <sup>2</sup>

<sup>1</sup> The vegetative cover type assigned to any particular area was based on two factors: the type of vegetation observed in aerial photographs and the size of the overall contiguous area of vegetative cover to which a particular piece of vegetation belonged. As an example of how the categories were assigned, in order to qualify as a “forest canopy” the forested area had to be part of a larger patch of forest land at least one acre in size.

<sup>2</sup> Areas that have been identified as habitats of concern, as designated on the Metro Habitats of Concern Map (on file in the Metro Council office), shall be treated as Class I riparian habitat areas in all cases, subject to the provision of additional information that establishes that they do not meet the criteria used to identify habitats of concern as described in Metro’s Technical Report for Fish and Wildlife. Examples of habitats of concern include: Oregon white oak woodlands, bottomland hardwood forests, wetlands, native grasslands, riverine islands or deltas, and important wildlife migration corridors.

**Table 18.775.3  
Tualatin Basin “Limit” Decision**

Resource Category	Conflicting Use Category			
	High Intensity Urban	Other Urban	Future Urban (2002 and 2004 additions)	Non-Urban (outside UGB)
Class I & II Riparian Inside Vegetated Corridor	Moderately Limit	Strictly Limit	Strictly Limit	N/A
Class I & II Riparian Outside Vegetated Corridor	Moderately Limit	Moderately Limit	Moderately Limit	Moderately Limit
All other Resource Areas	Lightly Limit	Lightly Limit	Lightly Limit	Lightly Limit
Inner Impact Area	Lightly Limit	Lightly Limit	Lightly Limit	Lightly Limit

Outer Impact Area	Lightly Limit	Lightly Limit	Lightly Limit	Lightly Limit
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\* Vegetated corridor standards are applied consistently throughout the District; in HIU areas they supersede the “limit” decision.

2. Verifying boundaries of inventoried upland habitat was identified based on the existence of contiguous patches of forest canopy, with limited canopy openings. The “forest canopy” designation is made based on analysis of aerial photographs as part of determining the vegetative cover status of land within the region. Upland habitat shall be as identified on the Significant Habitat Areas Map unless corrected as provided in this subsection.
  - a. Except as provided below, vegetative cover status shall be as identified on the Metro Vegetative Cover Map used to inventory habitat (available from the Metro Data Resource Center, 600 N.E. Grand Ave., Portland, OR 97232).
  - b. The only allowed corrections to the vegetative cover status of a property area as follows:
    - i. To correct errors made when the vegetative status of an area was determined based on analysis of the aerial photographs used to inventory the habitat. The perimeter of an area delineated as “forest canopy” on the Metro Vegetative Cover Map may be adjusted to more precisely indicate the dripline of the trees within the canopied area provided that no areas providing greater than 60% canopy crown closure are de-classified from the “forest canopy” designation. To assert such errors, applicants shall submit an analysis of the vegetative habitat cover on their property using the aerial photographs that were used to inventory the habitat and the definitions of the different vegetative cover types provided in Table 18.775.1; and
    - ii. To remove tree orchards and Christmas tree farms from inventoried habitat; provided, however, that Christmas tree farms where the trees were planted prior to 1975 and have not been harvested for sale as Christmas trees shall not be removed from the habitat inventory.
  - c. If the vegetative cover status of any area identified as upland habitat is corrected pursuant to subparagraph A.2.b.i of this section to change the status of an area originally identified as “forest canopy,” then such area shall not be considered upland habitat unless it remains part of a forest canopy opening less than one acre in area completely surrounded by an area of contiguous forest canopy. (Ord. 06-20) ■

## Exhibit B

Staff added the language “except in special flood hazard areas when meeting the definition of development in 18.775.040.R.1” to these two sections. This change makes it clear that any activities that meet the FEMA definition of “development” require a permit.

Excerpt from Chapter 18.120

### **18.120 Definitions**

#### **18.120.030 Meaning of Specific Words and Terms**

86. Flood-related definitions:

- a. “Base flood” - The flood having a one percent chance of being equaled or exceeded in any given year. Also referred to as the “100-year flood.”
- b. “Critical facility”- A facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to schools; nursing homes; hospitals; police, fire, and emergency response installations; and installations which produce, use or store hazardous materials or hazardous waste.
- c. “Floodway” - The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.
- d. “Floodway fringe” - The area of the special flood hazard area lying outside of the floodway.
- e. “Special Flood Hazard Area”- The land area covered by the floodwaters of the base flood is the Special Flood Hazard Area (SFHA) on NFIP maps. The SFHA is the area where the National Flood Insurance Program's (NFIP's) floodplain management regulations must be enforced and the area where the mandatory purchase of flood insurance applies. The SFHA includes Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1-30, VE, and V. Also referred to as the “100-year floodplain.”

**Chapter 18.775  
SENSITIVE LANDS**

**Sections:**

<b>18.775.010</b>	<b>Purpose</b>
<b>18.775.020</b>	<b>Applicability of Uses: Permitted, Prohibited, and Nonconforming</b>
<b>18.775.030</b>	<b>Administrative Provisions</b>
<b>18.775.040</b>	<b>General Provisions for Special Flood Hazard Areas</b>
<b>18.775.050</b>	<b>General Provisions for Wetlands</b>
<b>18.775.060</b>	<b>Expiration of Approval: Standards for Extension of Time</b>
<b>18.775.070</b>	<b>Sensitive Land Permits</b>
<b>18.775.080</b>	<b>Application Submission Requirements</b>
<b>18.775.090</b>	<b>Special Provisions for Development within Locally Significant Wetlands and Along the Tualatin River, Fanno Creek, Ball Creek, and the South Fork of Ash Creek</b>
<b>18.775.100</b>	<b>Adjustments to Underlying Zone Standards</b>
<b>18.775.110</b>	<b>Density Transfer</b>
<b>18.775.120</b>	<b>Variances to Section 18.775.090 Standards</b>
<b>18.775.130</b>	<b>Plan Amendment Option</b>
<b>18.775.140</b>	<b>Significant Habitat Areas Map Verification Procedures</b>

**18.775.010 Purpose**

- A. Maintain integrity of rivers, streams, and creeks. Sensitive land regulations contained in this chapter are intended to maintain the integrity of the rivers, streams, and creeks in Tigard by minimizing erosion, promoting bank stability, maintaining and enhancing water quality, and fish and wildlife habitats, and preserving scenic quality and recreation potential.
- B. Implement comprehensive plan and floodplain management program. The regulations of this chapter are intended to implement the comprehensive plan and the city's floodplain management program as required by the Federal Emergency Management Agency (FEMA) through the National Flood Insurance Program, to help to preserve sensitive land areas from encroaching use, and to maintain the November 4, 2016, zero-foot rise floodway elevation.
- C. Implement Clean Water Service (CWS) design and construction standards. The regulations of this chapter are intended to protect the beneficial uses of water within the Tualatin River Basin in accordance with the CWS "Design and Construction Standards," as adopted February 7, 2000.
- D. Implement the Metro Urban Growth Management Functional Plan. The regulations of this chapter are intended to protect the beneficial water uses and functions and values of resources within water quality and flood management areas and to implement the performance standards of the Metro Urban Growth Management Functional Plan.
- E. Implement Statewide Planning Goal 5 (Natural Resources). The regulations in this chapter are intended to address the requirements of Statewide Planning Goal 5 (Natural Resources) and the safe harbor provisions of the Goal 5 administrative rule pertaining to wetland and riparian corridors.
- F. Protect public health, safety, and welfare. Sensitive land areas are designated as such to protect the public health, safety, and welfare of the community through the regulation of these sensitive land areas.

G. Location. Sensitive lands are lands potentially unsuitable for development because of their location within:

1. The special flood hazard area or 1996 flood inundation line, whichever is greater;
2. Natural drainageways;
3. Wetland areas which are regulated by the other agencies including the U.S. Army Corps of Engineers and the Division of State Lands, or are designated as significant wetland on the City of Tigard “Wetland and Stream Corridors Map”;
4. Steep slopes of 25% or greater and unstable ground; and
5. Significant fish and wildlife habitat areas designated on the City of Tigard “Significant Habitat Areas Map.” (Ord. 06-20, Ord. 05-01)

#### **18.775.020 Applicability of Uses—Permitted, Prohibited, and Nonconforming**

A. CWS stormwater connection permit. All proposed development must obtain a stormwater connection permit from CWS pursuant to its design and construction standards.

B. Outright permitted uses with no permit required. Except as provided below and by subsections D, F, and G of this section, the following uses are outright permitted uses within drainageways, slopes that are 25% or greater, and unstable ground when the use does not involve paving. For the purposes of this chapter, the word “structure” shall exclude: children’s play equipment, picnic tables, sand boxes, grills, basketball hoops and similar recreational equipment.

1. Accessory uses such as lawns, gardens, or play areas; except in a water quality sensitive area or vegetated corridor, as defined in the CWS “Design and Construction Standards” or the Statewide Goal 5 vegetated corridor established for the Tualatin River, as defined in Section 18.775.090.
2. Farm uses conducted without locating a structure within the sensitive land area; except in a water quality sensitive area or vegetative corridor, as defined in CWS “Design and Construction Standards” or the Statewide Goal 5 vegetated corridor established for the Tualatin River, as defined in Section 18.775.090.
3. Community recreation uses, excluding structures; except in a water quality sensitive area or vegetated corridor, as defined in the CWS “Design and Construction Standards” or the Statewide Goal 5 vegetated corridor established for the Tualatin River, as defined in Section 18.775.090.
4. Public and private conservation areas for water, soil, open space, forest, and wildlife resources.
5. Removal of poison oak, tansy ragwort, blackberry, English ivy, or other noxious vegetation.
6. Maintenance of floodway excluding re-channeling; except in a water quality sensitive area or vegetated corridor, as defined in the CWS “Design and Construction Standards” or the Statewide Goal 5 vegetated corridor established for the Tualatin River, as defined in Section 18.775.090.
7. Fences; except in the floodway area; a water quality sensitive area or vegetated corridor, as defined in the CSW “Design and Construction Standards”; or the Statewide Goal 5 vegetated corridor established for the Tualatin River, as defined in Section 18.775.090.

8. Accessory structures which are less than 120 square feet in size; except in the floodway area; a water quality sensitive area or vegetated corridor, as defined in the CSW “Design and Construction Standards”; or the Statewide Goal 5 vegetated corridor established for the Tualatin River, as defined in Section 18.775.090.
  9. Land form alterations involving up to 10 cubic yards of material; except in the floodway area; a water quality sensitive area or vegetated corridor, as defined in the CSW “Design and Construction Standards”; or the Statewide Goal 5 vegetated corridor established for the Tualatin River, as defined in Section 18.775.090.
- C. Exemptions. When performed under the direction of the city, and in compliance with the provisions of the City of Tigard Standards and Specifications for Riparian Area Management, on file in the engineering division, the following shall be exempt from the provisions of this section:
1. Responses to public emergencies, including emergency repairs to public facilities;
  2. Stream and wetlands restoration and enhancement programs, except in special flood hazard areas when meeting the definition of development in 18.775.040.R.1;
  3. Non-native vegetation removal;
  4. Planting of native plant species; and
  5. Routine maintenance or replacement of existing public facilities projects, except in special flood hazard areas when meeting the definition of development in 18.775.040.R.1.
- D. Jurisdictional wetlands. Landform alterations or developments which are only within wetland areas that meet the jurisdictional requirements and permit criteria of the U.S. Army Corps of Engineers, Division of State Lands, CWS, and/or other federal, state, or regional agencies, and are not designated as significant wetlands on the City of Tigard “Wetland and Streams Corridors Map,” do not require a sensitive lands permit. The city shall require that all necessary permits from other agencies are obtained. All other applicable city requirements must be satisfied, including sensitive land permits for areas within the special flood hazard area, slopes of 25% or greater or unstable ground, drainageways, and wetlands which are not under state or federal jurisdiction.
- E. Administrative sensitive lands review.
1. Administrative sensitive lands permits in the special flood hazard area, drainageway, slopes that are 25% or greater, and unstable ground shall be obtained from the appropriate community development division for the following:
    - a. The city engineer shall review the installation of public support facilities by means of a Type I procedure, as governed by Section 18.390.030 subject to compliance with all of the standards in this chapter;
    - b. The city engineer shall review minimal ground disturbance(s) or landform alterations involving 10 to 50 cubic yards of material, except in the floodway area, for land that is within public easements and rights-of-way by means of a Type I procedure, as governed by Section 18.390.030 subject to compliance with all of the standards in this chapter;

- c. The director shall review minimal ground disturbance(s) or landform alterations involving 10 to 50 cubic yards of material, except in the floodway area by means of a Type I procedure, as governed by Section 18.390.030 subject to compliance with all of the standards in this chapter;
  - d. The director shall review the repair, reconstruction, or improvement of an existing structure or utility, the cost of which is less than 50% of the market value of the structure prior to the improvement or the damage requiring reconstruction provided no development occurs in the floodway by means of a Type I procedure, as governed by Section 18.390.030 subject to compliance with all of the standards in this chapter;
  - e. The building official shall review building permits for accessory structures which are 120 to 528 square feet in size, except in the floodway area; and
  - f. The director shall review applications for paving on private property, except in the floodway area by means of a Type I procedure, as governed by Section 18.390.030 subject to compliance with all of the standards in this chapter; and
  - g. The director shall review applications for maintenance of floodway excluding re-channeling; within special flood hazard areas, by means of a Type I procedure, as governed by Section 18.390.030 subject to compliance with all of the standards in this chapter; and
  - h. The director shall review applications for the construction of fences within special flood hazard areas by means of a Type I procedure, as governed by Section 18.390.030 subject to compliance with all of the standards in this chapter; and
  - i. The director shall review applications for the construction of accessory structures which are less than 120 square feet within special flood hazard areas by means of a Type I procedure, as governed by Section 18.390.030 subject to compliance with all of the standards in this chapter; and
  - j. The director shall review applications for any land formations involving up to 10 cubic yards of material within special flood hazard areas by means of a Type I procedure, as governed by Section 18.390.030 subject to compliance with all of the standards in this chapter.
2. The responsible community development division shall approve, approve with conditions, or deny an application for a development permit, as described above, based on the standards set forth in Sections 18.775.050, 18.775.070, and 18.775.080.
- F. Sensitive lands permits issued by the director.
- 1. The director shall have the authority to issue a sensitive lands permit in the following areas by means of a Type II procedure, as governed in Section 18.390.040, using approval criteria contained in Section 18.775.070:
    - a. Drainageways;
    - b. Slopes that are 25% or greater or unstable ground; and

- c. Wetland areas which are not regulated by other local, state, or federal agencies and are designated as significant wetlands on the City of Tigard “Wetland and Streams Corridors Map.”
2. Sensitive lands permits shall be required for the areas in paragraph 1 of this subsection F when any of the following circumstances apply:
    - a. Ground disturbance(s) or land form alterations involving more than 50 cubic yards of material;
    - b. Repair, reconstruction, or improvement of an existing structure or utility, the cost of which equals or exceeds 50% of the market value of the structure prior to the improvement or the damage requiring reconstruction;
    - c. Residential and nonresidential structures intended for human habitation; and
    - d. Accessory structures which are greater than 528 square feet in size, outside floodway areas.

G. Sensitive lands permits issued by the hearings officer.

1. The hearings officer shall have the authority to issue a sensitive lands permit in the special flood hazard area by means of a Type IIIA procedure, as governed by Section 18.390.050, using approval criteria contained in Section 18.775.070.
2. Sensitive lands permits shall be required in the special flood hazard area when any of the following circumstances apply:
  - a. Ground disturbance(s) or landform alterations in all floodway areas;
  - b. Ground disturbance(s) or landform alterations in floodway fringe locations involving more than 50 cubic yards of material;
  - c. Repair, reconstruction, or improvement of an existing structure or utility, the cost of which equals or exceeds 50% of the market value of the structure prior to the improvement or the damage requiring reconstruction provided no development occurs in the floodway;
  - d. Structures intended for human habitation; and
  - e. Accessory structures which are greater than 528 square feet in size, outside of floodway areas.

H. Other uses. Except as explicitly authorized by other provisions of this chapter, all other uses are prohibited on sensitive land areas.

I. Nonconforming uses. A use established prior to the adoption of this title, which would be prohibited by this chapter or which would be subject to the limitations and controls imposed by this chapter, shall be considered a nonconforming use. Nonconforming uses shall be subject to the provisions of Chapter 18.760. (Ord. 09-13; Ord. 06-20)

**18.775.030 Administrative Provisions**

- A. Interagency coordination. The appropriate approval authority shall review all sensitive lands permit applications to determine that all necessary permits shall be obtained from those federal, state, or local governmental agencies from which prior approval is also required.

As governed by CWS “Design and Construction Standards,” the necessary permits for all “development,” as defined in Section 18.775.020.A, shall include a CWS service provider letter, which specifies the conditions and requirements necessary, if any, for an applicant to comply with CWS water quality protection standards and for the agency to issue a stormwater connection permit.

- B. Alteration or relocation of water course.

1. The director shall notify communities adjacent to the affected area and the State Department of Land Conservation and Development prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration;
2. The director shall require that maintenance is provided within the altered or relocated portion of a watercourse so that the flood-carrying capacity is not diminished.

- C. Apply standards. The appropriate approval authority shall apply the standards set forth in Sections 18.775.040 and 18.775.070 when reviewing an application for a sensitive lands permit.

- D. Elevation and floodproofing certification. The appropriate approval authority shall require that the elevations and floodproofing certification required in subsection E of this section be provided prior to permit issuance and verification upon occupancy and final approval.

- E. Maintenance of records.

1. Where base flood elevation data is provided through the flood insurance study, the building official shall obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement;
2. For all new or substantially improved floodproofed structures, the building official shall:
  - a. Verify and record the actual elevation (in relation to mean sea level); and
  - b. Maintain the floodproofing certifications required in this chapter.
3. The director shall maintain for public inspection all other records pertaining to the provisions in this chapter.

#### **18.775.040 General Provisions for Special Flood Hazard Areas**

- A. Permit review. The appropriate approval authority shall review all permit applications to determine whether proposed building sites will minimize the potential for flood damage.
- B. Special flood hazard. The areas of special flood hazard identified by FEMA in a scientific and engineering report entitled “The Flood Insurance Study for Washington County, Oregon and Incorporated Areas effective November 4, 2016” with accompanying Flood Insurance Map is hereby adopted by reference and declared to be a part of this ordinance.

- C. Base flood elevation data. When base flood elevation data has not been provided in accordance with subsection B of this section, the director shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, in order to administer subsections M and N of this section.
- D. Test of reasonableness. Where elevation data is not available either through the flood insurance study or from another authoritative source, applications for building permits shall be reviewed to assure that the potential for flood damage to the proposed construction will be minimized. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available. Failure to elevate at least two feet above grade in these sensitive land areas may result in higher insurance rates.
- E. Resistant to flood damage. All new construction and substantial improvements, including manufactured homes, shall be constructed with materials and utility equipment resistant to flood damage.
- F. Minimize flood damage. All new construction and substantial improvements, including manufactured homes, shall be constructed using methods and practices that minimize flood damage.
- G. Equipment protection. Electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- H. Water supply systems. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwater into the system.
- I. Anchoring. All new construction, all manufactured homes and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.
- J. Sanitary sewerage systems. New and replacement sanitary sewerage systems shall be designed to minimize or eliminate infiltration of floodwater into the systems and discharge from the systems into floodwater.
- K. On-site water disposal systems. On-site water disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
- L. Residential construction.
1. New construction and substantial improvement of any residential structure, including manufactured homes, shall have the lowest floor, including the basement, elevated at least one foot above base flood elevation;
  2. Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must either be certified by a registered professional engineer or architect, or must meet or exceed the following minimum criteria:
    - a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;
    - b. The bottom of all openings shall be no higher than one foot above grade; and

- c. Openings may be equipped with screens, louvers, or other coverings or devices, provided that they permit the automatic entry and exit of flood waters.
3. Manufactured homes shall be securely anchored to an adequately anchored permanent foundation system. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors.
- M. Nonresidential construction. New construction and substantial improvement of any commercial, industrial, or other nonresidential structure shall either have the lowest floor, including basement, elevated to the level of the base flood elevation, or together with attendant utility and sanitary facilities, shall:
1. Be floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water;
  2. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;
  3. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications and plans. Such certifications shall be provided to the building official as set forth in 18.775.030.E.2; and
  4. Nonresidential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described in paragraph L.2 of this section. Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g., a building constructed to the base flood level will be rated as one foot below that level).
- N. Subdivisions and partitions in special flood hazard areas. Subdivisions and partitions in the special flood hazard area shall meet the following criteria:
1. The design shall minimize the potential for flood damage;
  2. Public utilities and facilities such as sewer, gas, electrical, and water systems shall be located and constructed so as to minimize flood damage;
  3. Adequate drainage shall be provided to reduce exposure to flood damage; and
  4. For subdivisions or partitions which contain more than 50 lots or five acres and where base flood elevation data is not available from the Federal Emergency Management Agency (FEMA) or another authoritative source, the applicant shall generate base flood elevation data to be reviewed as part of the application.
- O. Recreational vehicles. Recreational vehicles placed on sites within Zones A1-A30, AH, and AE on the community's flood insurance rate map either:
1. Are on the site for fewer than 180 consecutive days;

2. Are fully licensed and ready for highway use:
  - a. Are on wheels or jacking system,
  - b. Are attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached additions, or
  - c. Meet the requirements of subsections E, F, I, and L of this section and the elevation and anchoring requirements for manufactured homes. (Ord. 05-01)
  
- P. Construction of new critical facilities shall be, to the extent possible, located outside of the limits of the special flood hazard area . Construction of new critical facilities shall be permissible within the special flood hazard area if no feasible alternative site is available. Critical facilities constructed within the special flood hazard area shall have the lowest floor elevated three feet above base flood elevation or to the height of the 500-year flood, whichever is higher. Access to and from the critical facility should also be protected to the height utilized above. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the level of the base flood elevation shall be provided to all critical facilities to the extent possible.
  
- Q. Severability. If any section, clause, sentence, or phrase of the ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.
  
- R. Definitions. The following definitions are only applicable to this section:
  1. DEVELOPMENT means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.
  2. FLOOD INSURANCE RATE MAP (FIRM) means an official map of a community, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).
  3. FLOOD INSURANCE STUDY (FIS) means the official report provided by the Federal Insurance Administration that includes flood profiles, the Flood Boundary-Floodway Map, and the water surface elevation of the base flood.
  4. LOWEST FLOOR means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; *Provided*, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of § 60.3.
  5. MANUFACTURED HOME means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured" home does not include a "recreational vehicle".

6. NEW CONSTRUCTION means, for the purposes of determining insurance rates, structures for which the “start of construction” commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, *new construction* means structures for which the *start of construction* commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.
  7. RECREATIONAL VEHICLE means a vehicle which is: (a) Built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) Designed to be self-propelled or permanently towable by a light duty truck; and (d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.
  8. START OF CONSTRUCTION includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure, whether or not that alteration affects the external dimensions of the building.
  9. STRUCTURE means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.
  10. SUBSTANTIAL DAMAGE means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.
  11. VIOLATION means the failure of a structure or other development to be fully compliant with the community’s flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in § 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.
- S. Disclaimer of Liability. This section provides a reasonable degree of flood protection but does not imply total flood protection.
- T. Greater Restriction. This section shall not in any way impair/remove the necessity of compliance with any other applicable laws, ordinances, regulations, etc. Where this section imposes a greater restriction, the provisions of this section shall control.

#### 18.775.050 General Provisions for Wetlands

- A. Code compliance requirements. Wetland regulations apply to those areas classified as significant on the City of Tigard “Wetland and Streams Corridors Map,” and to a vegetated corridor ranging from 25 to 200 feet wide, measured horizontally, from the defined boundaries of the wetland, per “Table 3.1, Vegetated Corridor Widths,” and “Appendix C, Natural Resource Assessments,” of the CWS “Design and Construction Standards.” Wetland locations may include but are not limited to those areas identified as wetlands in “Wetland Inventory and Assessment for the City of Tigard, Oregon,” Fishman Environmental Services, 1994.
- B. Delineation of wetland boundaries. Precise boundaries may vary from those shown on wetland maps; specific delineation of wetland boundaries may be necessary. Wetland delineation will be done by qualified professionals at the applicant’s expense.

#### **18.775.060 Expiration of Approval—Standards for Extension of Time**

- A. Voiding of permit. Approval of a sensitive lands permit shall be void if:
1. Substantial construction of the approved plan has not begun within a one-and-one-half year period; or
  2. Construction on the site is a departure from the approved plan.
- B. Granting of extension. The director shall, upon written request by the applicant and payment of the required fee, grant an extension of the approval period not to exceed one year, provided that:
1. No changes are made on the original plan as approved by the approval authority;
  2. The applicant can show intent of initiating construction of the site within the one year extension period; and
  3. There have been no changes to the applicable comprehensive plan policies and ordinance provisions on which the approval was based.
- C. Notice of the decision. Notice of the decision shall be provided to the applicant. The director’s decision may be appealed by the applicant as provided by 18.390.040.G and H.

#### **18.775.070 Sensitive Land Permits**

- A. Permits required. An applicant, who wishes to develop within a sensitive area, as defined in Chapter 18.775, must obtain a permit in certain situations. Depending on the nature and intensity of the proposed activity within a sensitive area, either a Type II or Type III permit is required, as delineated in 18.775.020.F and G. The approval criteria for various kinds of sensitive areas, e.g., special flood hazard area, are presented in subsections B through E of this section.
- B. Within the special flood hazard area. The hearings officer shall approve, approve with conditions or deny an application request within the special flood hazard area based upon findings that all of the following criteria have been satisfied:
1. Compliance with all of the applicable requirements of this title;
  2. Land form alterations shall preserve or enhance the special flood hazard area storage function and maintenance of the zero-foot rise floodway shall not result in any encroachments, including

- fill, new construction, substantial improvements and other development unless certified by a registered professional engineer that the encroachment will not result in any increase in flood levels during the base flood discharge;
3. Land form alterations or developments within the special flood hazard area shall be allowed only in areas designated as commercial or industrial on the comprehensive plan land use map, except that alterations or developments associated with community recreation uses, utilities, or public support facilities as defined in Chapter 18.120 of the community development code shall be allowed in areas designated residential subject to applicable zoning standards;
  4. Where a land form alteration or development is permitted to occur within the special flood hazard area it will not result in any increase in the water surface elevation of the 100-year flood;
  5. The land form alteration or development plan includes a pedestrian/bicycle pathway in accordance with the adopted pedestrian/bicycle pathway plan, unless the construction of said pathway is deemed by the hearings officer as untimely;
  6. Pedestrian/bicycle pathway projects within the special flood hazard area shall include a wildlife habitat assessment that shows the proposed alignment minimizes impacts to significant wildlife habitat while balancing the community's recreation and environmental educational goals;
  7. The necessary U.S. Army Corps of Engineers and State of Oregon Land Board, Division of State Lands, and CWS permits and approvals shall be obtained; and
  8. Where land form alterations and/or development are allowed within and adjacent to the special flood hazard area, the city shall require the consideration of dedication of sufficient open land area within and adjacent to the special flood hazard area in accordance with the comprehensive plan. This area shall include portions of a suitable elevation for the construction of a pedestrian/bicycle pathway within the special flood hazard area in accordance with the adopted pedestrian/bicycle pathway plan.
- C. With steep slopes. The appropriate approval authority shall approve, approve with conditions or deny an application request for a sensitive lands permit on slopes of 25% or greater or unstable ground based upon findings that all of the following criteria have been satisfied:
1. Compliance with all of the applicable requirements of this title;
  2. The extent and nature of the proposed land form alteration or development will not create site disturbances to an extent greater than that required for the use;
  3. The proposed land form alteration or development will not result in erosion, stream sedimentation, ground instability, or other adverse on-site and off-site effects or hazards to life or property;
  4. The structures are appropriately sited and designed to ensure structural stability and proper drainage of foundation and crawl space areas for development with any of the following soil conditions: wet/high water table; high shrink-swell capability; compressible/organic; and shallow depth-to-bedrock; and

5. Where natural vegetation has been removed due to land form alteration or development, the areas not covered by structures or impervious surfaces will be replanted to prevent erosion in accordance with Chapter 18.745, Landscaping and Screening.
- D. Within drainageways. The appropriate approval authority shall approve, approve with conditions or deny an application request for a sensitive lands permit within drainageways based upon findings that all of the following criteria have been satisfied:
1. Compliance with all of the applicable requirements of this title;
  2. The extent and nature of the proposed land form alteration or development will not create site disturbances to an extent greater than that required for the use;
  3. The proposed land form alteration or development will not result in erosion, stream sedimentation, ground instability, or other adverse on-site and off-site effects or hazards to life or property;
  4. The water flow capacity of the drainageway is not decreased;
  5. Where natural vegetation has been removed due to land form alteration or development, the areas not covered by structures or impervious surfaces will be replanted to prevent erosion in accordance with Chapter 18.745, Landscaping and Screening;
  6. The drainageway will be replaced by a public facility of adequate size to accommodate maximum flow in accordance with the adopted 1981 Master Drainage Plan;
  7. The necessary U.S. Army Corps of Engineers and State of Oregon Land Board, Division of State Lands, and CWS approvals shall be obtained;
  8. Where land form alterations and/or development are allowed within and adjacent to the special flood hazard area, the city shall require the consideration of dedication of sufficient open land area within and adjacent to the special flood hazard area in accordance with the comprehensive plan. This area shall include portions of a suitable elevation for the construction of a pedestrian/bicycle pathway within the special flood hazard area in accordance with the adopted pedestrian bicycle pathway plan.
- E. Within wetlands. The director shall approve, approve with conditions or deny an application request for a sensitive lands permit within wetlands based upon findings that all of the following criteria have been satisfied:
1. Compliance with all of the applicable requirements of this title;
  2. The proposed land form alteration or development is neither on wetland in an area designated as significant wetland on the comprehensive plan special flood hazard area and wetland map nor is within the vegetative corridor established per “Table 3.1 Vegetative Corridor Widths” and “Appendix C: Natural Resources Assessments” of the CWS “Design and Construction Standards,” for such a wetland;
  3. The extent and nature of the proposed land form alteration or development will not create site disturbances to an extent greater than the minimum required for the use;

4. Any encroachment or change in on-site or off-site drainage which would adversely impact wetland characteristics have been mitigated;
5. Where natural vegetation has been removed due to land form alteration or development, erosion control provisions of the Surface Water Management program of Washington County must be met and areas not covered by structures or impervious surfaces will be replanted in like or similar species in accordance with Chapter 18.745, Landscaping and Screening;
6. All other sensitive lands requirements of this chapter have been met;
7. The necessary U.S. Army Corps of Engineers and State of Oregon Land Board, Division of State Lands, and CWS approvals shall be obtained;
8. The provisions of Chapter 18.790, Tree Removal, shall be met;
9. Physical limitations and natural hazards, special flood hazard area and wetlands, natural areas, and parks, recreation and open space policies of the comprehensive plan have been satisfied. (Ord. 12-09 §1; Ord. 09-11)

#### **18.775.080 Application Submission Requirements**

All applications for uses and activities identified in 18.775.020.A through G shall be made on forms provided by the director and must include the following information in graphic, tabular and/or narrative form. The specific information on each of the following is available from the director:

- A. A CWS stormwater connection permit;
- B. A site plan;
- C. A grading plan;
- D. An urban forestry plan per Chapter 18.790 (for 18.775.020.F and G); and
- E. A landscaping plan. (Ord. 12-09 §1)

#### **18.775.090 Special Provisions for Development within Locally Significant Wetlands and Along the Tualatin River, Fanno Creek, Ball Creek, and the South Fork of Ash Creek**

- A. In order to address the requirements of Statewide Planning Goal 5 (Natural Resources) and the safe harbor provisions of the Goal 5 administrative rule (OAR 666-023-0030) pertaining to wetlands, all wetlands classified as significant on the City of Tigard “Wetlands and Streams Corridors Map” are protected. No land form alterations or developments are allowed within or partially within a significant wetland, except as allowed/approved pursuant to Section 18.775.130.
- B. In order to address the requirements of Statewide Planning Goal 5 (Natural Resources) and the safe harbor provisions of the Goal 5 administrative rule (OAR 660-023-0030) pertaining to riparian corridors, a standard setback distance or vegetated corridor area, measured horizontally from and parallel to the top of the bank, is established for the Tualatin River, Fanno Creek, Ball Creek, and the South Fork of Ash Creek.

1. The standard width for “good condition” vegetated corridors along the Tualatin River is 75 feet, unless wider in accordance with CWS “Design and Construction Standards,” or modified in accordance with Section 18.775.130. If all or part of a locally significant wetland (a wetland identified as significant on the City of Tigard “Wetlands and Streams Corridors Map”) is located within the 75-foot setback area, the vegetated corridor is measured from the upland edge of the associated wetland.
2. The standard width for “good condition” vegetated corridors along Fanno Creek, Ball Creek, and the South Fork of Ash Creek is 50 feet, unless wider in accordance with CWS “Design and Construction Standards”, or modified in accordance with Section 18.775.130. If all or part of a locally significant wetland (a wetland identified as significant on the City of Tigard “Wetlands and Streams Corridors Map”) is located within the 50-foot setback area, the vegetated corridor is measured from the upland edge of the associated wetland.
3. The minimum width for “marginal or degraded condition” vegetated corridors along the Tualatin River, Fanno Creek, Ball Creek, and the South Fork of Ash Creek is 50% of the standard width, unless wider in accordance with CWS “Design and Construction Standards,” or modified in accordance with Section 18.775.130.
4. The determination of corridor condition shall be based on the natural resource assessment guidelines contained in the CWS “Design and Construction Standards.”
5. The standard setback distance or vegetated corridor area applies to all development proposed on property located within or partially within the vegetated corridors, except as allowed below:
  - a. Roads, pedestrian or bike paths crossing the vegetated corridor from one side to the other in order to provide access to the sensitive area or across the sensitive area, as approved by the city per Section 18.775.070 and by CWS “Design and Construction Standards”;
  - b. Utility/service provider infrastructure construction (i.e. storm, sanitary sewer, water, phone, gas, cable, etc.), if approved by the city and CWS;
  - c. A pedestrian or bike path, not exceeding 10 feet in width and meeting the CWS “Design and Construction Standards”;
  - d. Grading for the purpose of enhancing the vegetated corridor, as approved by the city and CWS;
  - e. Measures to remove or abate hazards, nuisances, or fire and life safety violations, as approved by the regulating jurisdiction;
  - f. Enhancement of the vegetated corridor for water quality or quantity benefits, fish, or wildlife habitat, as approved by the city and CWS;
  - g. Measures to repair, maintain, alter, remove, add to, or replace existing structures, roadways, driveways, utilities, accessory uses, or other developments provided they are consistent with city and CWS regulations, and do not encroach further into the vegetated corridor or sensitive area than allowed by the CWS “Design and Construction Standards.”
6. Land form alterations or developments located within or partially within the Goal 5 safeharbor setback or vegetated corridor areas established for the Tualatin River, Fanno Creek, Ball Creek, and the South Fork of Ash Creek that meet the jurisdictional requirements and permit criteria of

the CWS, U.S. Army Corps of Engineers, Division of State Lands, and/or other federal, state, or regional agencies, are not subject to the provisions of this subsection B, except where the:

- a. Land form alterations or developments are located within or partially within a good condition vegetated corridor, as defined in paragraphs 1 and 2 of this subsection B;
- b. Land form alterations or developments are located within or partially within the minimum width area established for marginal or a degraded condition vegetated corridor, as defined in paragraph 3 of this subsection B.

These exceptions reflect instances of the greater protection of riparian corridors provided by the safe harbor provisions of the Goal 5 administrative rule.

### **18.775.100 Adjustments to Underlying Zone Standards**

Adjustments to dimensional standards of the underlying zone district may be approved by the Planning Director when necessary to further the purpose of this section.

- A. Adjustment option. The planning director may approve up to 50% adjustment to any dimensional standard (e.g., setback height or lot area) of the underlying zone district to allow development consistent with the purposes of this section. The purpose of the adjustment process is to reduce adverse impacts on wetlands, stream corridors, fish and wildlife habitat, water quality and the potential for slope of flood hazards.
- B. Adjustment criteria. A special adjustment to the standards in the underlying zoning district may be requested under Type II procedure when development is proposed within or adjacent to the vegetated corridor area or within or adjacent to areas designated as “strictly limit” or “moderately limit” on the City of Tigard “Significant Habitat Areas Map.” Verification of significant habitat boundaries shall be done in accordance with the procedures described in Section 18.775.140. In order for the director to approve a dimensional adjustment to standards in the underlying zoning district, the applicant shall demonstrate that all the following criteria are fully satisfied:
  1. The adjustment is the minimum necessary to allow a permitted use, while at the same time minimizing disturbance to a water resource, riparian setback area or water quality buffer;
  2. Explicit consideration has been given to maximizing vegetative cover, minimizing excavation and minimizing impervious surface area on buildable land;
  3. Design options have been considered to reduce the impacts of development, including but not limited to multi-story construction, siting of the residence close to the street to reduce driveway distance, maximizing the use of native landscaping materials, minimizing parking areas, minimizing hydrologic impacts and garage space;
  4. In no case shall the impervious surface area as a single-family residence (including the building footprint, driveway and parking areas, accessory structures, swimming pools and patios) exceed 3,000 square feet of a vegetated corridor area;
  5. Assurances are in place to guarantee that future development will not encroach further on land under the same ownership within the vegetated corridor area;
  6. Protected vegetated corridor, significant habitat areas and adjacent buffer areas must be:

- a. Placed in a non-buildable tract or protected with a restrictive easement;
  - b. Restoration and enhancement of habitat and buffer areas required, including monitoring for five years.
- C. Reduction to minimum density requirements for developments that include inventoried significant habitat areas. The minimum number of units required by Section 18.510.040 (Density Calculation) may be waived if necessary to ensure that impacts on habitat areas are minimized.
- 1. Approval criteria. Reduction requests will be approved if the review body finds that the applicant has shown that the following criteria are met:
    - a. An area of the property lot or parcel to be developed has been identified on the “Significant Habitat Areas Map.” Verification of significant habitat boundaries shall be done in accordance with the procedures described in Section 18.775.140.
    - b. The proposal will be consistent with the character of the neighboring area.
    - c. This provision may only be applied to properties that were inside the Metro Urban Growth Boundary (UGB) on January 1, 2002.
    - d. The proposal will directly result in the protection of significant habitat areas through placement in a non-buildable tract or protected with a restrictive easement.
  - 2. Procedure.
    - a. The amount of reduction in the minimum density shall be calculated by subtracting the number of square feet of inventoried significant habitat that is permanently protected from the total number of square feet used to calculate the minimum density requirement.
    - b. Requests for a reduction are processed as Type II procedure along with the development proposal for which the application has been filed.

The planning director may impose any reasonable condition necessary to mitigate identified impacts resulting from development on otherwise unbuildable land. (Ord. 06-20)

#### **18.775.110 Density Transfer**

Density may be transferred from vegetated corridor areas as provided in Sections 18.715.020 through 18.715.030.

#### **18.775.120 Variances to Section 18.775.090 Standards**

Variances to the use provisions of Section 18.775.090 are not permitted. Variances from measurable (dimensional) provisions of this section shall be discouraged and may be considered only as a last resort.

- A. Type II variance option. The hearings officer shall hear and decide variances from dimensional provisions of this chapter under Type III procedure, in accordance with the criteria in Chapter 18.370 of the zoning ordinance.

- B. Additional criteria. In addition to the general variance criteria described in Chapter 18.370, all the following additional criteria must be met to grant a variance to any dimensional provision of this chapter:
1. The variance is necessary to allow reasonable economic use of the subject parcel of land, which is owned by the applicant, and which was not created after the effective date of this chapter;
  2. Strict application of the provisions of this chapter would otherwise result in the loss of a buildable site for a use that is permitted outright in the underlying zoning district, and for which the applicant has submitted a formal application;
  3. The applicant has exhausted all options available under this chapter to relieve the hardship;
  4. Based on review of all required studies identical to those described in Section 3.02.5.c Tier 2 Alternatives Analysis of the CWS “Design and Construction Standards,” the variance is the minimum necessary to afford relief, considering the potential for increased flood and erosion hazard, and potential adverse impacts on native vegetation, fish and wildlife habitat, and water quality;
  5. Based on review of all required studies identical to those described in Section 3.02.5 of the CWS “Design and Construction Standards,” no significant adverse impacts on water quality, erosion or slope stability will result from approval of this hardship variance, or these impacts have been mitigated to the greatest extent possible;
  6. Loss of vegetative cover shall be minimized. Any lost vegetative cover shall be replaced on-site, on a square foot for square foot basis, by native vegetation.

#### **18.775.130 Plan Amendment Option**

Any owner of property affected by the Goal 5 safeharbor (1) protection of significant wetlands and/or (2) vegetated areas established for the Tualatin River, Fanno Creek, Ball Creek, and the South Fork of Ash Creek may apply for a quasi-judicial comprehensive plan amendment under Type IV procedure. This amendment must be based on a specific development proposal. The effect of the amendment would be to remove Goal 5 protection from the property, but not to remove the requirements related to the CWS Stormwater Connection Permit, which must be addressed separately through an alternatives analysis, as described in Section 3.02.5 of the CWS “Design and Construction Standards.” The applicant shall demonstrate that such an amendment is justified by either of the following:

- A. ESEE analysis. The applicant may prepare an environmental, social, economic and energy (ESEE) consequences analysis prepared in accordance with OAR 660-23-040.
1. The analysis shall consider the ESEE consequences of allowing the proposed conflicting use, considering both the impacts on the specific resource site and the comparison with other comparable sites within the Tigard Planning Area;
  2. The ESEE analysis must demonstrate to the satisfaction of the Tigard City Council that the adverse economic consequences of not allowing the conflicting use are sufficient to justify the loss, or partial loss, of the resource;

3. In particular, ESEE analysis must demonstrate why the use cannot be located on buildable land, consistent with the provisions of this chapter, and that there are no other sites within the Tigard Planning Area that can meet the specific needs of the proposed use;
  4. The ESEE analysis shall be prepared by a team consisting of a wildlife biologist or wetlands ecologist and a land use planner or land use attorney, all of whom are qualified in their respective fields and experienced in the preparation of Goal 5 ESEE analysis;
  5. If the application is approved, then the ESEE analysis shall be incorporated by reference into the Tigard Comprehensive Plan, and the “Tigard Wetland and Stream Corridor Map” shall be amended to remove the site from the inventory.
- B. Determination of “insignificance.” In this case, the applicant must demonstrate that the sensitive area site(s) no longer meet(s) the applicable significance threshold defined by the Goal 5 administrative rule, relative to other comparable resources within the Tigard Planning Area.
1. Significance thresholds are described and applied in the addendum to the City of Tigard Local Wetlands Inventory adopted by reference as part of this chapter.
  2. In considering this claim, the city council shall determine that the decline in identified resource values did not result from a violation of this chapter or any other provision of the Tigard Community Development Code.

#### **18.775.140 Significant Habitat Areas Map Verification Procedures**

The significant habitat areas map shall be the basis for determining the general location of significant habitat areas on or adjacent to the site.

- A. Applicants who concur that the significant habitat areas map is accurate shall submit the following information to serve as the basis for verifying the boundaries of inventoried habitat areas:
1. Submission requirements.
    - a. A detailed property description;
    - b. A scale map of the property showing the locations of significant habitat areas, any existing built area, wetlands or water bodies, Clean Water Services’ vegetated corridor, the special flood hazard area, the 1996 flood inundation line, and contour lines (two-foot intervals for slope less than 15% and 10-foot intervals for slopes 15% or greater); and
    - c. A current aerial photograph of the property.
  2. Decision process. The planning director’s decision shall be based on consideration of submitted information, site visit information, and other factual information. Should the applicant disagree with the planning director’s determination on the location of significant habitat areas on the property, the precise boundaries shall be verified by the applicant in accordance with the detailed delineation methodology outlined in subsection B of this section.
- B. Applicants who believe that the map is inaccurate shall submit a detailed delineation conducted by a qualified professional in accordance with the following methodology to verify the precise boundaries of the inventoried habitat areas by means of a Type II procedure.

1. Verifying boundaries of inventoried riparian habitat. Locating habitat and determining its riparian habitat class is a four-step process:
  - a. Locate the water feature that is the basis for identifying riparian habitat.
    - i. Locate the top of bank of all streams, rivers, and open water within 200 feet of the property.
    - ii. Locate the special flood hazard area or 1996 flood inundation line, whichever is greater, within 100 feet of the property.
    - iii. Locate all wetlands within 150 feet of the property. Identified wetlands on the property shall be further delineated consistent with methods currently accepted by the Oregon Division of State Lands and the U.S. Army Corps of Engineers.
  - b. Identify the vegetative cover status of all areas on the property that are within 200 feet of the top of bank of streams, rivers, and open water, are wetlands or are within 150 feet of wetlands, and are flood areas and within 100 feet of flood areas.
    - i. Vegetative cover status shall be as identified on the metro vegetative cover map.
    - ii. The vegetative cover status of a property may be adjusted only if (a) the property was developed prior to the time the regional program was approved; or (b) an error was made at the time the vegetative cover status was determined. To assert the latter type of error, applicants shall submit an analysis of the vegetative cover on their property using summer 2002 aerial photographs and the following definition of vegetative cover types in Table 18.775.1.

**Table 18.775.1  
Definitions of Vegetative Cover Types**

<b>Type</b>	<b>Definition</b>
Low structure vegetation or open soils	Areas that are part of a contiguous area one acre or larger of grass, meadow, croplands, or areas of open soils located within 300 feet of a surface stream (low structure vegetation areas may include areas of shrub vegetation less than one acre in size if they are contiguous with areas of grass, meadow, croplands, orchards, Christmas tree farms, holly farms, or areas of open soils located within 300 feet of a surface stream and together form an area of one acre in size or larger).
Woody vegetation	Areas that are part of a contiguous area one acre or larger of shrub or open or scattered forest canopy (less than 60% crown closure) located within 300 feet of a surface stream.
Forest canopy	Areas that are part of a contiguous grove of trees one acre or larger in area with approximately 60% or greater crown closure, irrespective of whether the entire grove is within 200 feet of the relevant water feature.

- c. Determine whether the degree that the land slope upward from all streams, rivers, and open water within 200 feet of the property is greater than or less than 25% (using the vegetated corridor measurement methodology as described in Clean Water Services Design and Construction Standards); and

- d. Identify the riparian habitat classes applicable to all areas on the property using Table 18.775.2 and Table 18.775.3.

**Table 18.775.2  
Method for Locating Boundaries of Class I and II Riparian Areas**

Distance in feet from water feature	Development/Vegetation Status <sup>1</sup>			
	Developed areas not providing vegetative cover	Low structure vegetation or open soils	Woody vegetation (shrub and scattered forest canopy)	Forest canopy (closed to open forest canopy)
<b>Surface streams</b>				
0-50	Class II	Class I	Class I	Class I
50-100		Class II <sup>2</sup>	Class I	Class I
100-150		Class II <sup>2</sup> if slope > 25%	Class II <sup>2</sup> if slope > 25%	Class II <sup>2</sup>
150-200		Class II <sup>2</sup> if slope > 25%	Class II <sup>2</sup> if slope > 25%	Class II <sup>2</sup> if slope > 25%
<b>Wetlands (Wetland feature itself is a Class I Riparian Area)</b>				
0-100		Class II <sup>2</sup>	Class I	Class I
100-150				Class II <sup>2</sup>
<b>Flood Areas (Undeveloped portion of flood area is a Class I Riparian Area)</b>				
0-100			Class II <sup>2</sup>	Class II <sup>2</sup>

<sup>1</sup> The vegetative cover type assigned to any particular area was based on two factors: the type of vegetation observed in aerial photographs and the size of the overall contiguous area of vegetative cover to which a particular piece of vegetation belonged. As an example of how the categories were assigned, in order to qualify as a “forest canopy” the forested area had to be part of a larger patch of forest land at least one acre in size.

<sup>2</sup> Areas that have been identified as habitats of concern, as designated on the Metro Habitats of Concern Map (on file in the Metro Council office), shall be treated as Class I riparian habitat areas in all cases, subject to the provision of additional information that establishes that they do not meet the criteria used to identify habitats of concern as described in Metro’s Technical Report for Fish and Wildlife. Examples of habitats of concern include: Oregon white oak woodlands, bottomland hardwood forests, wetlands, native grasslands, riverine islands or deltas, and important wildlife migration corridors.

**Table 18.775.3  
Tualatin Basin “Limit” Decision**

Resource Category	Conflicting Use Category			
	High Intensity Urban	Other Urban	Future Urban (2002 and 2004 additions)	Non-Urban (outside UGB)
Class I & II Riparian Inside Vegetated Corridor	Moderately Limit	Strictly Limit	Strictly Limit	N/A
Class I & II Riparian Outside Vegetated Corridor	Moderately Limit	Moderately Limit	Moderately Limit	Moderately Limit
All other Resource Areas	Lightly Limit	Lightly Limit	Lightly Limit	Lightly Limit
Inner Impact Area	Lightly Limit	Lightly Limit	Lightly Limit	Lightly Limit
Outer Impact Area	Lightly Limit	Lightly Limit	Lightly Limit	Lightly Limit

\* Vegetated corridor standards are applied consistently throughout the District; in HIU areas they supersede the “limit” decision.

- Verifying boundaries of inventoried upland habitat was identified based on the existence of contiguous patches of forest canopy, with limited canopy openings. The “forest canopy” designation is made based on analysis of aerial photographs as part of determining the vegetative

cover status of land within the region. Upland habitat shall be as identified on the Significant Habitat Areas Map unless corrected as provided in this subsection.

- a. Except as provided below, vegetative cover status shall be as identified on the Metro Vegetative Cover Map used to inventory habitat (available from the Metro Data Resource Center, 600 N.E. Grand Ave., Portland, OR 97232).
- b. The only allowed corrections to the vegetative cover status of a property area as follows:
  - i. To correct errors made when the vegetative status of an area was determined based on analysis of the aerial photographs used to inventory the habitat. The perimeter of an area delineated as “forest canopy” on the Metro Vegetative Cover Map may be adjusted to more precisely indicate the dripline of the trees within the canopied area provided that no areas providing greater than 60% canopy crown closure are de-classified from the “forest canopy” designation. To assert such errors, applicants shall submit an analysis of the vegetative habitat cover on their property using the aerial photographs that were used to inventory the habitat and the definitions of the different vegetative cover types provided in Table 18.775.1; and
  - ii. To remove tree orchards and Christmas tree farms from inventoried habitat; provided, however, that Christmas tree farms where the trees were planted prior to 1975 and have not been harvested for sale as Christmas trees shall not be removed from the habitat inventory.
- c. If the vegetative cover status of any area identified as upland habitat is corrected pursuant to subparagraph A.2.b.i of this section to change the status of an area originally identified as “forest canopy,” then such area shall not be considered upland habitat unless it remains part of a forest canopy opening less than one acre in area completely surrounded by an area of contiguous forest canopy. (Ord. 06-20) ■

**Chapter 18.735  
MARIJUANA FACILITIES**

**Sections:**

- 18.735.010 Purpose**  
**18.735.020 Applicability**  
**18.735.030 Compliance and Enforcement**  
**18.735.040 Development Standards**

**18.735.010 Purpose**

The purpose of this chapter is to:

- A. Protect the general health, safety, property, and welfare of the public;
- B. Balance the right of individuals to produce and access marijuana and marijuana derivatives consistent with state law, with the need to minimize adverse impacts to nearby properties that may result from the production, storage, distribution, sale, and/or use of marijuana and derivatives;
- C. Prevent or reduce criminal activity that may result in harm to persons or property;
- D. Prevent or reduce diversion of state-licensed marijuana and marijuana derivatives to minors; and
- E. Minimize impacts to the city's public safety services by reducing calls for service. (Ord. 15-07 §3)

**18.735.020 Applicability**

- A. Relationship to other standards. The regulations within this chapter are in addition to base zone standards. Sites with overlay zones, plan districts, inventoried hazards, and/or sensitive lands are subject to additional regulations. Specific uses or development types may also be subject to regulations set forth elsewhere in this title.
- B. When provisions apply. The provisions of this chapter shall apply to all marijuana facilities requiring a state license or registration. (Ord. 15-07 §3)

**18.735.030 Compliance and Enforcement**

- A. Procedure. All marijuana facilities requiring a state license or registration, and public places of assembly where marijuana is consumed, shall demonstrate minimal compliance with these standards through a Type I procedure as set forth in Section 18.390.030 of this title, using approval criteria set forth in subsection B of this section.
- B. Approval criteria. Development subject to the provisions of this chapter shall demonstrate compliance with all standards set forth in Section 18.735.040 of this chapter.
- C. Documentation. The following provisions shall apply at the time of minimum compliance review or a request for enforcement:
  - 1. When processing a minimum compliance review, the city may accept an evaluation and explanation certified by a registered engineer or architect, as appropriate, that the proposed

development will meet the off-site odor impact standard. The evaluation and explanation shall provide a description of the use or activity, equipment, processes and the mechanisms, or equipment used to avoid or mitigate off-site impacts.

2. If the city does not have the equipment or expertise to measure and evaluate a specific complaint regarding off-site impacts, it may request assistance from another agency or may contract with an independent expert to perform the necessary measurements. The city may accept measurements made by an independent expert hired by the controller or operator of the off-site impact source. (Ord. 15-07 §3)

#### **18.735.040 Development Standards**

Development subject to the provisions of this chapter shall demonstrate compliance with all of the following standards:

- A. The proposed development complies with all applicable state requirements.
- B. The proposed use is allowed in the underlying zone and complies with all applicable requirements of this title.
- C. The proposed development meets all of the following site location restrictions. All distances shall be measured at the closest property lines between the proposed site and nearest lot or parcel containing the specified use or characteristic.
  1. Marijuana facilities are prohibited within the MU-CBD zone.
  2. The proposed development is not within 1,000 feet of a public or private elementary school, secondary school, or career school attended primarily by minors.
  3. Sale-oriented retail and wholesale sales uses open to the public shall be subject to the following restrictions:
    - a. Must be located on a lots or parcel with frontage along Pacific Highway (Oregon Route 99W);
    - b. Shall not be located within 1,000 feet of another state-licensed retail or wholesale marijuana facility within or outside of city limits; and
    - c. Shall not be located within 500 feet of a public library or Tigard parks and recreation zone.
  4. Non-retail uses and wholesale sales uses not open to the public shall not be located within 500 feet of one or more of the following zones or facilities:
    - a. Residential zone;
    - b. Parks and recreation zone;
    - c. Public library.
- D. Hours of commercial operation shall be limited to the hours between 10:00 am and 8:00 pm. General industrial uses with no on-site retail activity are exempt from this restriction.

- E. Primary entrances shall be clearly visible from Pacific Highway (Oregon Route 99W).
- F. The proposed development shall be located inside a permanent building and may not be located within a trailer, shipping container, cargo container, tent, or motor vehicle. Outdoor storage of merchandise, plants, or other materials is not allowed.
- G. Parking lots, primary entrances, and exterior walkways shall be illuminated with downward facing security lighting to provide after-dark visibility to employees and patrons. Fixtures shall be located so that light patterns overlap at a height of seven feet with a minimum illumination level of 1.0 footcandles at the darkest spot on the ground surface.
- H. Drive-through marijuana facilities are prohibited.
- I. The proposed development shall confine all marijuana odors and other objectionable odors to levels undetectable at the property line.
- J. Marijuana or marijuana product shall not be visible from the exterior of the building or structure. (Ord. 15-07 §3) ■

**AIS-2703**

**5.**

**Business Meeting**

**Meeting Date:** 09/27/2016

**Length (in minutes):** 15 Minutes

**Agenda Title:** Consider Approval of a Resolution of Necessity for Hunziker Infrastructure Right of Way

**Submitted By:** Lloyd Purdy, Community Development

**Item Type:** Resolution

**Meeting Type:** Council Business Meeting - Main

**Public Hearing:** No

**Publication Date:**

**Information**

**ISSUE**

The City of Tigard needs to acquire right of way for the first phase of the Hunziker Infrastructure Project in order to construct a road segment from Hunziker Road to the rail road tracks and a road segment at Tech Center Drive.

**STAFF RECOMMENDATION / ACTION REQUEST**

Pass a Resolution of Necessity as part of the right-of-way acquisition process for the Hunziker Infrastructure project authorizing City staff, including the City Attorney, to negotiate in good faith with the owners and other persons holding an interest in the real property described in the Resolution of Necessity. If the City Manager or her designee determines that a satisfactory agreement for acquisition of any property or interest therein is not likely to be reached in a timely manner, then the City Attorney is authorized to obtain immediate possession and to file and take all such actions as are necessary to pursue eminent domain proceedings in the name of the City of Tigard for acquisition of such property.

**KEY FACTS AND INFORMATION SUMMARY**

Property acquisition for right-of-way, temporary construction easements and public utility easements are a necessary step in the Hunziker Infrastructure Project. With 30% design of the road alignment complete, staff have the legal description of the property needed for public infrastructure. For the first phase of the project, the city will need an estimated 153,416 square feet of right-of-way (ROW) from three property owners. The majority of this ROW (estimated 107,0829 square feet) will be dedicated by the developer (TC Tigard LLC) or the property owner (Fields Trust) as part of their site development requirements.

The city will need to negotiate acquisition for the remaining ROW and easements from adjacent property owners from tax lots 2S1010001600, 2S101CA00200 and 2S101DC04500. City staff met with property owners in advance of preliminary appraisals. As of May 2016, preliminary appraised values include:

- 2S1010001600 - \$67,500
- 2S101CA00200 - \$243,000
- 2S101DC04500 - \$94,000

Funding for property acquisition can be reimbursed as a capital expense from the \$1.5M appropriation from the State of Oregon's Capital Construction Fund. This will be a reimbursement in calendar year 2017.

The City of Tigard is investing in public infrastructure that encourages private sector investment and job creation. Tigard's Hunziker Industrial Core includes 138 acres of industrial/commercial zoned property; home to more than 90 firms located three-quarters of a mile from Hwy 217 and I-5 access. In this employment area, 96 acres are underutilized. Forty-two acres are undeveloped and limited in their economic potential due to a lack of site access and insufficient public infrastructure. The Hunziker Infrastructure project includes \$8 million of roadway, water, sewer, and storm water investments that will support an estimated \$32 million initial private sector investment. Development of employment lands like this typically supports 150 to 300 jobs depending upon the magnitude of private sector investment and tenant mix.

## **OTHER ALTERNATIVES**

Abandon the property acquisition process or attempt to negotiate for right-of-way without a Resolution of Necessity.

## **COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS**

Investment in infrastructure in the Hunziker Industrial Core supports economic development consistent with Tigard's Comprehensive Goal 9, the city's 2011 Economic Opportunity Analysis and the city's strategic vision for a more interconnected community, specifically Goal #2 – ensuring development supports the strategic vision.

## **DATES OF PREVIOUS COUNCIL CONSIDERATION**

May 11, 2016 ROW Executive Session Discussion

March 3, 2016 Hunziker Infrastructure Update

January 1, 2016 Executive Session Discussion

December 12, 2015 Hunziker Infrastructure Contract Review

September 22, 2015 US Department of Commerce Grant

June 16, 2015 Hunziker Infrastructure Project Update

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## **Fiscal Impact**

### **Fiscal Information:**

Cost of property acquisition is eligible for reimbursement as a capital expense from the State of Oregon appropriation of \$1.5 million. Funds are expected in spring 2017.

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## **Attachments**

Resolution

Hunziker Infrastructure ROW Overview

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CITY OF TIGARD, OREGON  
TIGARD CITY COUNCIL  
RESOLUTION NO. 16-

A RESOLUTION DECLARING THE NEED TO ACQUIRE PROPERTY FOR THE PURPOSE OF CONSTRUCTING STREET, PUBLIC UTILITY AND RELATED IMPROVEMENTS ALONG SW WALL STREET FROM HUNZIKER ROAD TO TECH CENTER DRIVE and AUTHORIZING EMINENT DOMAIN AND IMMEDIATE POSSESSION IF NECESSARY

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WHEREAS, the City Charter grants the City of Tigard (“City”) the authority to acquire land for public purposes; and

WHEREAS, the City is authorized by ORS 223.005 et seq. and ORS 35.015 et seq. to purchase, acquire, condemn, use, and enter upon property within or without its corporate limits as provided for by law; and

WHEREAS, the construction of Wall Street Improvement Project CIP 95047, is in the public interest and is an approved capital improvement project identified in the City of Tigard Capital Improvement Plan (the “Project”); and

WHEREAS, to accomplish the project or projects set forth above, it is necessary to acquire easements for street and public utilities, and related temporary construction easements and may be necessary to obtain immediate possession of property to complete the Project in a timely manner,

NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that;

SECTION 1: It is in the public interest and necessary to acquire public right of way for road purposes, utility easements, temporary construction easements and related property interests as shown in the Exhibits A through E attached hereto and incorporated herein so as to locate and construct the Wall Street Improvement Project CIP 95047.

SECTION 2: The public improvements as shown in the 30% design documents for the Project dated have been planned, designed, located and will be constructed in a manner that will be most compatible with the greatest public benefit and the least private injury or damage;

SECTION 3: City staff, including the City Attorney, are authorized and directed to negotiate in good faith with the owners and other persons holding an interest in the real property described in the attached Exhibits A through E. If the City Manager or her designee determines that a satisfactory agreement for acquisition of any property or interest therein is not likely to be reached in a timely manner, then the City Attorney is authorized to obtain immediate possession and to file and take all such actions as are necessary to pursue eminent domain proceedings in the name of the City of Tigard for acquisition of such property.

SECTION 4: This resolution is effective immediately upon passage.

PASSED: This \_\_\_\_\_ day of \_\_\_\_\_ 2016.

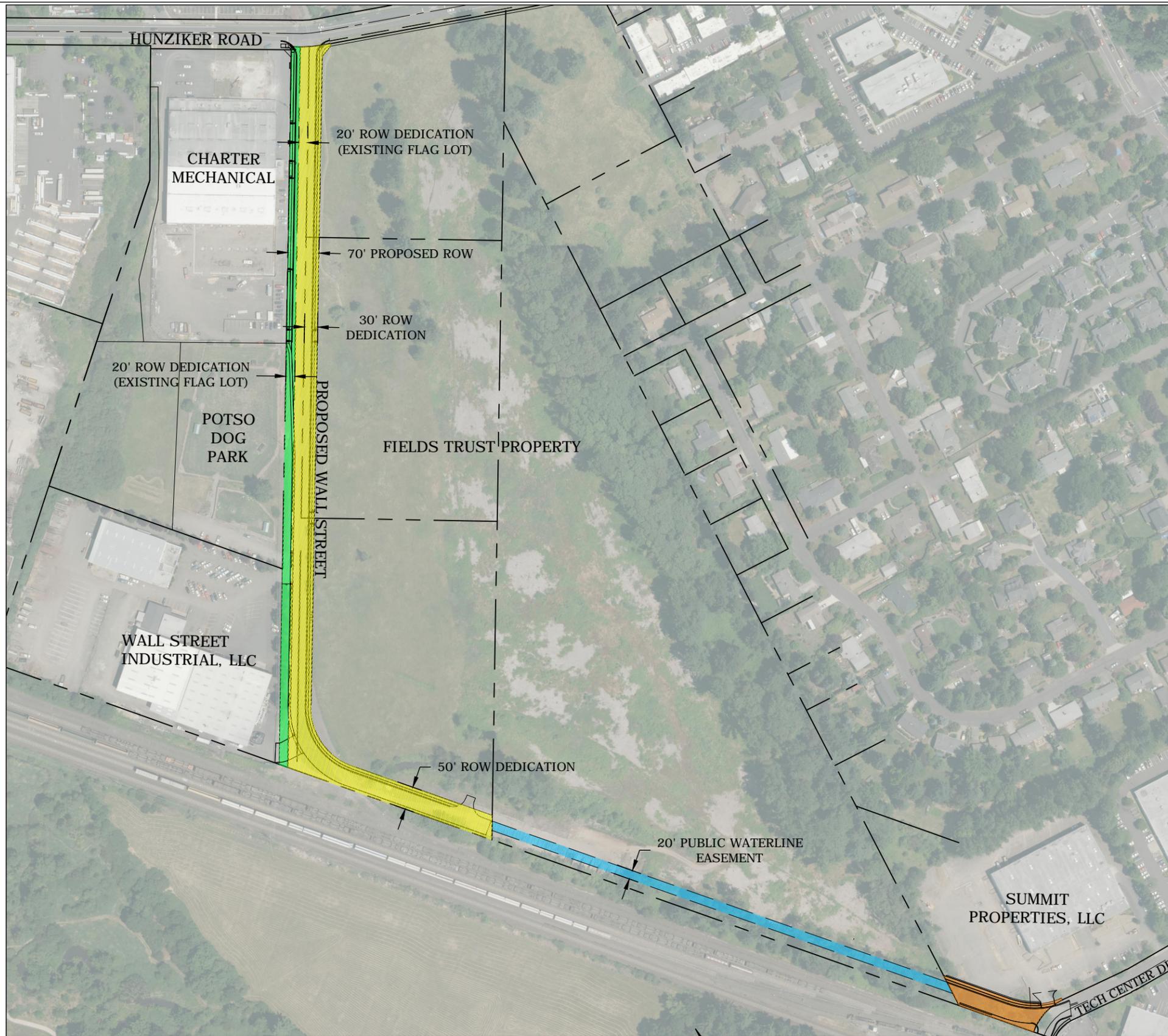
\_\_\_\_\_  
Mayor-City of Tigard

ATTEST:

\_\_\_\_\_  
City Recorder – City of Tigard

**Description of Exhibits, Impacted Parcels & ROW**

Property Description	Right-of-Way		Public Utility Easement	Temporary Construction Easement	Notes
	Acquisition	Dedication			
Summit Properties Inc. T.L. 4500 (Map 2S101DC)	•		•	•	Exhibit 'A'
Meritage Five LLC T.L. 400 (Map 2S101CA)				•	Exhibit 'B'
Wall Street Industrial LLC T.L. 200 (Map 2S101DC)	•			•	Exhibit 'C'
Fields Trust T.L. 100, 800, & 1100 (Map 2S101CA)	•	•	•		Exhibit 'D'
Fields Trust T.L. 1600 (Map 2S101CA)			•		Exhibit 'E'
Trimet Westside Express Service T.L. 1500 (Map 2S101)					Railroad
<b>Totals</b>	<b>3</b>	<b>1</b>	<b>3</b>	<b>3</b>	

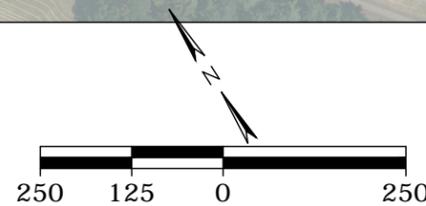


**LEGEND**

- TL 2S101DC04500 (SUMMIT PROPERTIES, INC. - SEE EXHIBIT A2) ROW DEDICATION AREA. TOTAL AREA= 13,488 SQ. FT.
- TL 2S101CA00200 (WALL STREET INDUSTRIAL, LLC - SEE EXHIBIT C2) ROW DEDICATION AREA. TOTAL AREA=32,239 SQ. FT.
- TL 2S101CA00800, 2S101CA00100, 2S1010001100 (FIELDS TRUST PROPERTY - SEE EXHIBIT D2) ROW DEDICATION AREA. TOTAL AREA= 107,829 SQ. FT.
- 2S1010001600 (FIELDS TRUST PROPERTY - SEE EXHIBIT E2) PUBLIC WATERLINE EASEMENT. TOTAL AREA=21,822 SQ. FT.

NOTE: MAP SHOWS RIGHT-OF-WAY AND PUBLIC WATERLINE EASEMENTS ONLY. PUBLIC UTILITY EASEMENTS AND TEMPORARY CONSTRUCTION EASEMENTS ARE NOT SHOWN.

**SEPTEMBER 13, 2016**



**ENGINEERING DIVISION  
PUBLIC WORKS DEPARTMENT**  
 13125 S.W. HALL BLVD.  
 TIGARD, OREGON 97223  
 VOICE: 503-639-4171  
 FAX: 503-624-0752  
 WWW.TIGARD-OR.GOV

**HUNZIKER INFRASTRUCTURE  
RIGHT-OF-WAY EXHIBIT  
EXHIBIT ROW-1**

**FIGURE  
ROW-1**  
  
**FILE NO  
95047**



community from the currently undeveloped property.

This neighborhood park is a need in an area that qualifies for CDBG funds, having low-to-moderate-income households in the service area.

### **CDBG Program**

Since its inception in the early 1970's, Tigard has been a member of the Washington County Community Development Block Grant (CDBG) Consortium. Through the Consortium, the county, cities, and service providers have received Federal CDBG money for public facilities (such as senior centers and parks), infrastructure improvements (such as streets and sidewalks), public services (such as transportation, medical and legal assistance, counseling and employment training), and for low- and moderate-income housing. The CDBG program is funded by the United States Department of Housing and Urban Development. The program is directed by federal law and local policies.

The CDBG program is administered locally by the Washington County Board of Commissioners and their Policy Advisory Board, together with Washington County Office of Community Development. Each year, program funding is allocated to the following categories:

- Public Facilities – 40%
- Infrastructure – 30%
- Housing – 30%

Potential program funding for program year 2017-18 is estimated to be just under \$500,000, with the consortium typically funding 2-3 projects.

This application will be submitted to Washington County in the Public Facilities category. In the past, the city has been successful in receiving CDBG funding for similar projects, including Bonita Park in 2002 and the Senior Center Remodel in 2007-2008.

### **Council Authorization**

CDBG application procedures require council authorization to submit an application for funding. The City's internal grant procedures state that during the application phase, City Council is to receive notification of submittal of applications for grants in excess of \$100,000, including grants that create the need to add full-time staff upon award which is not currently anticipated.

The proposed project would be matched with Parks System Development Charges, and if authorized and awarded funds included for consideration in the FY 2017-18 Capital Improvement Plan. The project would start in fiscal year 2017-18, and be matched by Parks System Development funds in an amount up to \$100,000. Currently the project is estimated to cost between \$300-400k.

### **OTHER ALTERNATIVES**

Council could recommend modifications to the proposed project, suggest another project, elect not to apply, and/or adjust the amount or source of match currently recommended.

### **COUNCIL OR CCDA GOALS, POLICIES, MASTER PLANS**

This project supports Goal 2 “Ensure development advances the vision” by investing in public spaces and leveraging desirable development.

### **DATES OF PREVIOUS CONSIDERATION**

NA.

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### **Fiscal Impact**

**Cost:**

**Budgeted (yes or no):** No

**Where budgeted?:**

**Additional Fiscal Notes:**

This application is expected to request in excess of \$200,000 in federal grant funds through the Washington County CDBG Public Infrastructure Program. The project would start in fiscal year 2017-18, and be matched by Parks SDC funds in an amount up to \$100,000. The Bagan Park development project is not currently funded in the 5 year CIP, and will go through the CIP development process for fiscal year 2017-18 including evaluation by the Parks and Recreation Advisory Board, inclusion in the Requested CIP, and subsequent CIP development processes.

When the park is fully developed, the park will need to be maintained. Under TMC 3.75.050.B.2 Parks and Recreation Fee - Determination of Parks and Recreation Fee, the Public Works Director is charged with annually reporting new maintenance costs due to development of parks and its impact on the Park and Recreation Fee. This impact would be included with any CPI related increase to the Park and Recreation Fee and will be considered annually with the Master Fees and Charges.

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### **Attachments**

Excerpt from Bagan Park Master Plan

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# MASTER PLAN

Design efforts were guided initially by goals established in the City’s Park System Master Plan, which identifies recreation needs based on demographics and forecasts of population growth. The findings of the Master Plan informed decisions about the kinds of recreational amenities that should be considered for the Bagan Property. The two public open houses provided a forum for neighborhood members to help tailor the master plan goals to the Bagan Property.

An important goal noted early in the design process was to create a passive-use park appropriate to the neighborhood character. The less manicured meadow grass areas south of the main path will complement the more refined character of the proposed improvements north of the path. The understated nature of park elements will encourage use by neighborhood residents and create less of an attractor for undesirable activities.

The site analysis process identified three dominant traits of the site: natural resource areas that are to remain undisturbed and that provide wildlife viewing opportunity, open meadow, and a mature grove of trees at the west end of the site. These site characteristics, and the desire to keep park improvements understated, greatly influenced the layout of park amenities including activity areas, viewpoint, and path layout.

The design development process yielded a plan with four distinct functional areas arranged in a linear configuration along a walking path running the length of the park (see Master Plan enlargement, page 10). A small off-street parking area is shown at the park entry off of SW Greenburg Road, nestled into the existing tree grove. A play area is located near the parking to take advantage of convenient access and the shade provided by the tree grove. The



Master Plan

play area is supported by picnic tables and a small lawn area immediately east. Community gardens occupy the remaining developable site area. A trellis feature with benches separates the community garden from other park uses, and provides an attractive focal point for the park. The trellis/seating area is oriented to take advantage of views to the pond. All park improvements are designed to comply with accessibility guidelines of the Americans with Disabilities Act.

The design team considered appropriate activities, noise levels, age groups, hours of operation, and accommodations such as site furnishings, and how these concerns are balanced with meeting recreational needs within the park system as a whole. Through the conceptual design process, it was determined that the site was best suited to small group activity and passive recreation.

### *Security Concerns*

Vagrants have been observed living at the site. Based on experience with similar developments, the incidence of vagrancy is greatly reduced or eliminated by increased activity at the site.

The City has noted that park operation hours will be from dawn to dusk. The proposed parking area is near the park entry, and will be easily monitored from SW Greenburg Road.





*Bagan Park Master Plan*

AIS-2836

7.

**Business Meeting**

**Meeting Date:** 09/27/2016

**Length (in minutes):** 5 Minutes

**Agenda Title:** Local Contract Review Board Discussion on Upcoming Contract

**Prepared For:** Joseph Barrett

**Submitted By:** Joseph Barrett, Finance and Information Services

**Item Type:** Public Hearing - Informational      **Meeting Type:** Consent Agenda - LCRB

**Public Hearing** No

**Newspaper Legal Ad Required?:**

**Public Hearing Publication**

**Date in Newspaper:**

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**Information**

**ISSUE**

Staff will discuss an upcoming contract with the Local Contract Review Board.

**STAFF RECOMMENDATION / ACTION REQUEST**

Staff is seeking the Local Contract Review Board's direction on any additional information or direction they would like to see in preparation of an award decision for the proposed contract.

**KEY FACTS AND INFORMATION SUMMARY**

**Canterbury Lane Storm Line Upgrade**

An existing 12” storm line in Canterbury Lane and 109<sup>th</sup> Avenue was constructed in the late 1960s without regard to future maintenance accessibility. This is due to several blind tee connections and 45 degree bends within the line where no access or visual inspection can occur. It also limits the ability to complete TV inspections on this line to determine their condition and if any cleaning is required.

With this project, a 12” storm line with manholes and catch basins will be constructed meeting the City’s Public Improvement Design Standards and Clean Water Services requirements. This will allow a fully accessible and maintainable system which will also meet the MS4 permit requirements. A water quality manhole will also be placed for treatment of the stormwater runoff. The project will also see 1,180 linear feet of new 12” storm line will be placed on Canterbury Lane and 305 linear feet on 109<sup>th</sup> Avenue.

The City issued an Invitation to Bid for the work in early August and received bids from eight (8) contractors. The contractors and their bids were as follows:

- D&T Excavation - \$398,000
- Trench Line Excavation Inc. - \$398,202
- Pacific Excavation - \$407,000
- Titan Utilities, LLC - \$416,882
- C&M Excavation & Utilities, LLC - \$431,086
- Tapani, Inc. - \$432,070
- James W Fowler Company - \$468,450
- Valley Pacific Construction, Inc. - \$431,841

Staff has reviewed D&T's bid and vetted the company through the Contractors Construction Board and the Bureau of Labor and Industries for any disqualifying sanctions. Finding a sound bid proposal and no disqualifying sanctions, staff is recommending the Local Contract Review Board award a contract for this project to D&T Excavation in the amount of \$398,000.

### **OTHER ALTERNATIVES**

The Local Contract Review Board may reject this contract award and direct staff to resolicit the work or the LCRB could reject this contract award and direct staff to stop the project.

### **COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS**

### **DATES OF PREVIOUS COUNCIL CONSIDERATION**

This is the first time the contract has been presented to the Local Contract Review Board.

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#### **Fiscal Impact**

**Cost:** \$398,000

**Budgeted (yes or no):** Yes

**Where budgeted?:** Stormwater Fund

#### **Additional Fiscal Notes:**

The 2016-2017 Stormwater Fund fiscal year budget has \$322,500 allocated for this project. The required additional funding for this project will come from either anticipated cost reductions on other projects in the fund or, if necessary due to unforeseen circumstances, a future supplemental budget action. If a supplemental budget action is needed, the Stormwater Fund's Contingency of \$200,000 is adequate to fund the contract.

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#### **Attachments**

*No file(s) attached.*

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