

# Exhibit F-1

## ORDINANCE No. 183269

\* Readopt affirmed and unchallenged portions of the *Northwest District Plan*; Repeal Ordinance 177920 (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. Portland's *Comprehensive Plan* was adopted on October 16, 1980, acknowledged for compliance with Statewide Planning Goals on May 3, 1981; and on January 25, 2000 an updated version of Portland's *Comprehensive Plan* was acknowledged for compliance with the Statewide Planning Goals at the conclusion of the City's first periodic review.
2. The *Northwest District Policy Plan*, adopted in 1975 and revised in 1977, was incorporated into Portland's *Comprehensive Plan* in 1980. The *Northwest District Plan* is intended to replace the *Northwest District Policy Plan*.
3. The *Central City Plan* was adopted as an element of Portland's *Comprehensive Plan* in 1988.
4. The *Guild's Lake Industrial Sanctuary Plan* was adopted as an element of Portland's *Comprehensive Plan* in 2000.
5. The Northwest Plan District was adopted a chapter of the City Planning and Zoning Code in 2001.
6. Oregon Revised Statutes (ORS) 197.628 requires cities and counties to review their comprehensive plans and land use regulations periodically and make changes necessary to keep plans and regulations up-to-date and in compliance with Statewide Planning Goals and State laws. Portland is also required to coordinate its review and update of the *Comprehensive Plan* and land use regulations with State plans and programs.
7. Portland *Comprehensive Plan* Goal 10, Plan Review and Administration, states that the *Comprehensive Plan* will undergo periodic review to ensure that it remains an up-to-date and workable framework for land use development.
8. Portland *Comprehensive Plan* Policy 10.2, Comprehensive Plan Map Review, establishes a community and neighborhood planning process for the review and update of the Portland Comprehensive Plan Map.
9. Portland *Comprehensive Plan* Goal 3, Neighborhoods, calls for preserving and reinforcing the stability, diversity, residential quality, and economic vitality of the City's neighborhoods, while allowing for increased density.

10. Portland *Comprehensive Plan* Policy 3.6, Neighborhood Plan, encourages the creation of neighborhood plans to address issues and opportunities at a scale which is more refined and more responsive to neighborhood needs than can be attained under the broad outlines of the City's *Comprehensive Plan*.
11. Neighborhood and district plans serve as components of the *Comprehensive Plan* and are intended to promote patterns of land use, urban design, infrastructure facilities and services that encourage and contribute to the economic, social, and physical health, welfare, and safety of the neighborhood and the city.
12. In November 1999, the Northwest District Association Board of Directors adopted the Northwest District Neighborhood Plan, intending it to serve as an update of the 1977 City-adopted *Northwest District Policy Plan*. In June 2000, City Council directed the Bureau of Planning to review the Northwest District Neighborhood Plan and take it through the formal City adoption process. The *Northwest District Plan* is the result of that process. The Northwest District Neighborhood Plan served as a major input in the crafting of the *Northwest District Plan*.
13. The Bureau of Planning developed *the Northwest District Plan* with participation from interested neighborhood and business associations, property owners, business persons and citizens and with cooperation from other bureaus and agencies.
14. Public involvement and outreach activities included regular consultation with Citizen and Technical Advisory Committees, neighborhood walks, urban design workshops and an open house. Staff also attended numerous neighborhood and business association meetings and convened special-purpose advisory groups to assist in crafting and evaluating plan proposals.
15. The *Northwest District Plan* includes an urban design concept and implementation action charts, which are adopted by resolution. The action charts represent a commitment from public and private groups to help implement the *Northwest District Plan*.
16. The *Northwest District Plan* provisions implement, or are consistent with, the Statewide Planning Goals, the Region 2040 Growth Concept, the Metro Urban Growth Management Functional Plan, the Portland *Comprehensive Plan*, the *Central City Plan*, and the *Guild's Lake Industrial Sanctuary Plan*, as described in the findings included in Exhibit C, which is made a part of this Ordinance by this reference.
17. The Notice of Proposed Action and two copies of the *Northwest District Plan* were mailed to the Oregon Department of Land Conservation and Development as required by ORS 197.610 on October 8, 2002.

18. A general notification of the November 26, 2002 Portland Planning Commission and November 21, 2002 Portland Design Commission public hearings on the Proposed *Northwest District Plan* was sent to 1,060 interested parties on October 18, 2002. Measure 56 notification of the November 26, 2002 Planning Commission and November 21, 2002 Design Commission public hearings on the Proposed *Northwest District Plan* was sent to all property owners potentially affected by proposed zoning map, zoning code, and design-related changes on October 18, 2002. .
19. On November 21 and December 5, 2002 and January 9 and 16, 2003, the Portland Design Commission held public hearings on the Proposed *Northwest District Plan*. The Design Commission recommended that City Council adopt the design-related provisions of the *Northwest District Plan* as amended.
20. On November 26, 2002, the Portland Planning Commission held a public hearing on the Proposed *Northwest District Plan*. The Planning Commission discussed the Plan on December 5, 2002, January 14, January 28, and April 8, 2003. On April 8, the Planning Commission recommended that City Council adopt the Recommended *Northwest District Plan*.
21. A general notification of the May 21, 2003 City Council public hearing on the Recommended *Northwest District Plan* was sent to individuals who testified at the Planning Commission and Design Commission hearings and other interested individuals on April 18, 2003. A Measure 56 notification of the May 21, 2003 City Council public hearing on the Recommended *Northwest District Plan* was sent to all property owners potentially affected by Planning Commission recommended zoning map and code amendments (where such recommended amendments differed from the October 2002 Proposed *Northwest District Plan*) on April 18, 2003.
22. The Portland City Council adopted the *Northwest District Plan* by Ordinance 177920 on September 24, 2003. This ordinance made the *Northwest District Plan* part of Portland's *Comprehensive Plan* through a new Policy 3.10. Ordinance 177920 also amended the zoning code by amending the Northwest Plan District, redesignated and rezoned additional industrial land to mixed use between NW Pettygrove and NW Vaughn, and amended the *Comprehensive Plan Map* designations (but not the zone map) for some industrial land north of NW Vaughn for future mixed-use.
23. On September 24, 2003 the Portland City Council enacted companion measures to Ordinance 177920. Ordinance 177921 amended the property tax exemption for new transit supportive residential and mixed use development within a portion of the Northwest Plan District, while Resolution 376171 adopted the *Northwest District Plan* urban design concept and action charts.

24. The Portland City Council adopted further companion measures on October 24, 2004. Ordinance 178020 amended the *Northwest District Plan* to allow commercial parking structures on six residential sites and amended the Northwest Plan District to regulate this allowed parking. Council also adopted Ordinance 177993 which established a new Northwest Transportation Fund designed to mitigate the traffic generating effects of Floor Area Ratio bonuses for development north of NW Pettygrove.
25. All four ordinances and the resolution were appealed to the Oregon Land Use Board of Appeals (LUBA). The petitioners' primary challenges were directed to Ordinance No. 177920 (adopting the Northwest District Plan) and Ordinance No. 178020 (adopting parking provisions). LUBA issued a decision denying all but one of the assignments of error in *NWDA v City of Portland*, 47 Or LUBA 533 (2004) (*NWDA I*). LUBA's decision was appealed to the Oregon Court of Appeals, which affirmed most of LUBA's decision but remanded so an additional assignment could be reconsidered in *NWDA v. City of Portland*, 198 Or App 286 (2005) (*NWDA II*). Upon reconsideration, LUBA remanded Ordinance No. 177920 for the reasons expressed in its original opinion and affirmed the remaining ordinances and resolution in *NWDA v. City of Portland*, 50 Or LUBA 310 (2005) (*NWDA III*).
26. LUBA remanded Ordinance 177920 because it found the City had not meet its evidentiary burden under Statewide Planning Goal 12, Transportation, and Oregon Administrative Rules 660-0012-0060, Transportation Planning, to show that *Comprehensive Plan Map* redesignations and rezones north of NW Pettygrove and *Comprehensive Plan Map* redesignations north of NW Vaughn would not have significant adverse traffic impacts on NW Vaughn Street or the NW Vaughn and 23<sup>rd</sup> intersection.
27. On March 31, 2009, LUBA upheld a City Council decision approving a proposed parking garage for one of the sites identified in the affirmed and acknowledged Ordinance 178020 in *NWDA v. City of Portland*, LUBA No. 2008-212 [3/31/2009 (*NWDA IV*)]. In a footnote, LUBA provided the following guidance to the City concerning readoption of the affirmed or unchallenged portions of the Northwest District Plan that were originally adopted by Ordinance No. 177920: "If it is possible to separate the part of the NDP that was affected by our remand in *NWDA III* from the part that was not, an ordinance that readopted the parts of the NDP that was unaffected by *NWDA III* would almost certainly be invulnerable in any appeal\*\*\*\*." In its opinion, LUBA also stated that as a result of its 2005 decision remanding Ordinance No. 177920, any claim that some or all of the regulations adopted by that ordinance remain effective is "almost certainly wrong" and opined that these regulations "are no longer effective;"

28. On June 12, 2009, the Portland Bureau of Planning and Sustainability forwarded provided a “Notice of Proposed Amendment” to the Oregon Department of Land Conservation and Development. This notice stated the City’s intent to readopt the portions of the Northwest District Plan adopted by Ordinance No. 177920 that were unchallenged or affirmed by LUBA in *NWDA III*. The notice was received by the Department on June 15, 2009. This notice anticipated a July 22, 2009 Portland City Council hearing, but the hearing was postponed to July 29, 2009, then to September 23, 2009, and again to October 21, 2009. The Portland Bureau of Planning and Sustainability provided supplemental notices to the Department on August 13, 2009 and September 18, 2009 describing the rescheduled hearing dates.
29. On July 8, 2009 the Oregon Court of Appeals affirmed LUBA’s March 31, 2009 opinion. This appellant judgment was filed on September on September 9, 2009, and the City received the Notice of Appellant Judgment from the Oregon Board of Appeals on September 18, 2009. Because Ordinance No. 177920 did not contain a severability clause the entire ordinance became invalid and unenforceable.
30. On August 19, 2009 the Portland City Council, in anticipation of final appellant judgment, adopted Resolution No. 36724 that:
- Recognized that Ordinance No. 177920 was no longer effective or enforceable;
  - Recognized that all land use plans, maps, codes, guidelines, and regulations in effect on November 7, 2003, (the day before Ordinance No. 177920 became effective on November 8, 2003) are the effective and enforceable versions, unless amended or replaced by a final land use decision made after September 24, 2003; and
  - Directed City staff to correct the relevant land use plans, maps, codes, guidelines, and regulations to be consistent with Resolution No. 36724.
31. A general notification of the City Council public hearing on the remanded *Northwest District Plan* was mailed on August 7, 2009; and a more detailed follow-up notice was mailed to the same individuals, organizations and parties on October 7, 2001 stating the exact time and place of the October 21, 2009 hearing. Additional “Measure 56” notification of the October 21, 2009 City Council public hearing on the remanded *Northwest District Plan* was sent to potentially affected property owners on September 30, 2009. Potentially affected owners are all owners whose zones would change from the zones effective on November 7, 2003 to zones the same as those that became effective on November 8, 2003 but became ineffective upon remand.

32. On considering Ordinance No. 177920 on remand the City Council determines that is possible to separate the parts of the Northwest District Plan identified as deficient in *NWDA III* from the parts that were not. Separation is possible because the remand was based on a single assignment of error limited to modeled traffic generation from *Comprehensive Plan Map* redesignations from Industrial to Employment and corresponding rezones (IG1 to EXd) north of NW Pettygrove and from *Comprehensive Plan Map* redesignations from Industrial to Employment north of NW Vaughn.
33. This ordinance is limited in scope and readopts only those portions of the Northwest District Plan that were either unchallenged or affirmed by LUBA in its review of Ordinance No. 177920 in its decisions in *NWDA I* and *NWDA III*. Council consideration of the transportation issues that were the basis for LUBA's remand in *NWDA I* and *III* will be the subject of a subsequent public hearing for which public notice will be provided and public testimony will be accepted.
34. The Vision Statement, Policies, Objectives, Master Street Plan, design review provisions and zoning measures of the readopted *Northwest District Plan* will serve as an official guide to public and private decision-making and investment in the plan area.
35. It is in the public interest that the recommendations contained in the *Northwest District Plan* be readopted to direct change in the study area. These recommendations are consistent with Statewide Planning Goals, Metro's Functional Plan and the City's Comprehensive Plan for the reasons stated in the findings in Exhibit A.

NOW, THEREFORE, the Council directs:

- a. The commentary in Exhibits A, B and D and the Findings in Exhibit C, are adopted as further findings and as legislative intent, and are made a part of this Ordinance by this reference.
- b. Exhibit A, the *Planning Commission Recommended Northwest District Plan*, dated April 2003, as amended in Exhibit D, *Council Amendments to the Recommended Northwest District Plan*, dated September 2003, is adopted as the *Northwest District Plan*. By this reference, Exhibits A and D are made a part of this Ordinance.
- c. The Portland *Comprehensive Plan* is amended by adopting the Vision, Policies, Objectives and Master Street Plan of the *Northwest District Plan* and a new Policy 3.10, as shown in Exhibit A, and as amended by Exhibit D.
- d. The Portland *Comprehensive Plan* is amended by repealing the 1975 *Northwest District Policy Plan* and the 1977 amendments to the *Northwest District Policy Plan*. All references to the *Northwest District Policy Plan* in the *Comprehensive Plan* are replaced by references to the *Northwest District Plan*. The *Northwest District Plan* supersedes the *Northwest District Policy Plan*.

- e. The *Portland Comprehensive Plan Map* and the *Zoning Map of the City of Portland* are amended as shown in Exhibit A, and as amended by Exhibit D, except as provided in directives below.
- f. The *Central City Plan* is amended as shown in Exhibit A, and as amended by Exhibit D.
- g. The *Central City Fundamental Design Guidelines* are amended as shown in Exhibit A and as amended by Exhibit D.
- h. The *Goose Hollow Design Guidelines* are amended as shown in Exhibit A and as amended by Exhibit D.
- i. The Guild’s Lake Industrial Sanctuary Plan is amended as shown in Exhibit A and as amended by Exhibit D.
- j. The *Community Design Guidelines* are amended as shown in Exhibit A. The Desired Characteristics and Traditions statements included in Exhibit A and as amended in Exhibit D shall be used by design review bodies as extensions of Community Design Guideline P1, “Plan Area Character,” for the portion of the *Northwest District Plan* area that is outside the *Central City Plan* area.
- k. Title 33, Planning and Zoning, of the *Municipal Code of the City of Portland, Oregon*, is amended as shown in Exhibit A and as amended by Exhibit D, except:
  - Section 33.562.130, Commercial Parking in Multi-Dwelling Zones, is not adopted.
  - Section 33.562.290, Use of Accessory Parking for Commercial Parking, is not adopted.
  - Section 33.562.300, Northwest Master Plan, as enacted by Ordinance 175877, as effective on September 21, 2001, is not deleted from the *Municipal Code of the City of Portland, Oregon*. Paragraph B of Section 33.562.300 provides that the regulations of the section apply to sites zoned EX within “Subdistrict B”. For the purpose of Section 33.562.300, “Subdistrict B” shall mean those parts of the Northwest Plan District both North of NW Pettygrove and east of NW 23<sup>rd</sup> Avenue, not the referenced Map 562-1. Section 33.562.300 is included in Exhibit E. By this reference Exhibit is made a part of this Ordinance.
  - Map 562-3; is not adopted
  - Section 33.815.308, Commercial Parking in Multi-Dwelling Zones in the Northwest Plan District; is not adopted.
  - Chapter 33.910, Definitions, any definitions related to codes not adopted by this ordinance are not adopted; and
  - All references to the chapters, sections, maps and definitions not adopted by this ordinance in the Table of Contents and Chapter Headings are not adopted.

- l. The *Portland Comprehensive Plan Map* and the *Zoning Map of the City of Portland* are amended as shown in Exhibit A of Ordinance 177920, and as amended by Exhibit D of Ordinance 177920 except:
  - EXd zones and corresponding *Comprehensive Plan Map* designations depicted east of NW 23<sup>rd</sup> Avenue, North of NW Pettygrove Street, and South of NW Vaughn Street, which are not also depicted on the December 21, 2001 versions of Zone Maps 2827, 2828, 2927 are not adopted. The December 21, 2001 versions of Zone Maps 2827, 2828, 2927 are included in Exhibit F. By this reference, Exhibit F is made a part of this Ordinance.
  - The Mixed Employment “(ME)” *Comprehensive Plan Map* designations on sites zoned IG1 and IH north of NW Vaughn are not adopted.
- m. Ordinance 177920 is repealed.
- n. No part of this Ordinance repeals or supersedes Ordinance 178020, or any final land use decision that became effective after November 8, 2003.
- o. If any section, subsection, sentence, clause, phrase, diagram or drawing contained in this ordinance, or the plan, map or code it adopts or amends, is held to be deficient, invalid or unconstitutional, that shall not affect the validity of the remaining portions. The Council declares that it would have adopted the plan, map, or code and each section, subsection, sentence, clause, phrase, diagram and drawing thereof, regardless of the fact that any one or more sections, subsections, sentences, clauses, phrases, diagrams or drawings contained in this Ordinance, may be found to be deficient, invalid or unconstitutional.

Section 2. The Council declares that an emergency exists because it is imperative to provide immediate certainty about which Northwest District Plan provisions first adopted by Ordinance 177920 continue to apply to applications for new development, and which provisions no longer apply. Therefore, this ordinance shall be in full force and effect from and after its passage by the Council.

Passed by the Council: October 21, 2009

Mayor Adams

Prepared by: Al Burns

Date Prepared: October 7, 2009

**LaVonne Griffin-Valade**

Auditor of the City of Portland

By

Deputy