

ORDINANCE NO. 476

AN ORDINANCE APPROVING A MINOR AMENDMENT TO THE TEXT OF THE COMPREHENSIVE PLAN APPLYING TO THE WILLAMETTE RIVER GREENWAY, CLARIFYING THAT THE CONDITIONAL USE PERMIT REQUIREMENT WAS NOT INTENDED TO APPLY TO UNDERGROUND UTILITIES OR PUBLIC RIGHTS OF WAY IN OPEN SPACES OUTSIDE THE DESIGNATED WILLAMETTE RIVER GREENWAY BOUNDARY, POLICY 3.8.4, AND DECLARING AN EMERGENCY. 96PC14

WHEREAS, the City of Wilsonville makes the following Findings:

(1) The City has used its municipal authority to construct and install roads, trails, storm drains, sanitary sewers, and other waterlines and pipelines in City rights-of-way and easements.

(2) All underground private and public utilities, including municipal water and sewer lines, are exempt from development permit requirements under the City's zoning code, WC 4.005(6), and specifically from conditional use permits under WC 4.177(2).

(3) The Comprehensive Plan, adopted in 1981, which is implemented through the City's zoning code, has been acknowledged by LCDC and also received periodic review approval by LCDC in 1988.

(4) For more than 15 years the City has constructed streets, trails and underground utilities and private utility companies have installed underground utilities, including the installation of utilities in primary and secondary open space, without any development permit, under the interpretation of the City's code provisions, which implements the City's Comprehensive Plan. This practice included placement of the Boeckman Creek sanitary sewer trunk line in the primary open space along Boeckman Creek shortly after the Comprehensive Plan and implementing code were acknowledged by LCDC in 1988.

(5) Comprehensive Plan policy 3.8.4 calls for a conditional use permit for all development in the Willamette River Greenway. The City has understood that the generally accepted description of Willamette River Greenway is in terms of 150' feet

from the ordinary low water mark of the river, but the City has designated lands beyond this boundary to include Memorial Park and Boones Ferry Park, some of which are designated primary and secondary open space. The City never intended the language of policy 3.8.4 to apply outside the expanded Willamette River Greenway boundary as designated by the City of Wilsonville. The reference ", and designated open spaces" was to Memorial Park and Boones Ferry Park and the comma was misplaced and should have occurred after the term "designated open spaces." Additionally, the policies in 4.5.1 apply to primary and secondary open spaces outside the Willamette Greenways boundaries and support the construction of underground utilities without requiring a Conditional Use Permit. The prior placement of the Boeckman Creek trunk line was consistent with this interpretation.

(6) Because the language of policy 3.8.4 has been interpreted by the Clackamas County Circuit Court in *City of Wilsonville v. Campbell* to apply to the Boeckman Creek primary open space on the Campbell property and potentially to all open space in the City, the City finds it is necessary to clarify its practice and intent by deleting the language the Court construed and by adding clarifying language, even though the city interprets Sections 4.117(2) and 4.005(6) of the Code and the Willamette River Greenway protection policies of 3.8.4 and 4.5.1, when read together, to exempt the construction of underground utilities and public streets and trails from development permit requirements in the City, outside the Willamette River Greenway.

(7) This amendment has been initiated by the City and presented to the Planning Commission at its regular meeting on December 11, 1996, said initiation having occurred 60 days prior to the Planning Commission meeting.

(8) The Planning Commission, upon due public notice and hearing finds:

- a. The proposed amendment is in conformance with the text portions of the Plan not being considered for amendment, as such text distinguishes utilities and facilities as serving development and the amendment is consistent therewith.

b. The granting of the amendment is in the public interest, having balanced the policy needs for public circulation and underground utilities, including sewers to prevent water pollution and contamination, with the policy needs for regulating utility and facility construction practices. It has been noted that a failure to provide cost-effective facilities and utilities will result in the continuing contamination of groundwater and surface waters, including various streams and the Willamette River. It has been further noted that there are regulatory standards such as Public Works Standards, Building and Other Specialty Code Standards, Engineering and Construction Standards, the Oregon Department of Environmental Quality Standards and Public Utilities Standards, which also govern the proper construction of utilities.

c. As used in the Comprehensive Plan, the word "development" applies to the construction of structures above the ground and not to facilities or utilities located on or below the surface of the ground (underground utilities, streets, trails).

d. Due to the Circuit Court's recent decision as recited above, the need to complete the Boeckman Creek Trunk line extension, which contract has been let, and the potential issue raised by the Court's decision that all utilities in any open space might require a conditional use permit, the potential for added cost and delay that the conditional use process would impose on both private and public utilities and in turn, rate payers within the City, and the need to protect the City's groundwater, stream water and Willamette River water, the public interest is best served by the amendment at this time.

e. The Plan references ORS 215.055 factors to be considered in amending its plan. ORS 215.055 applied to counties and has been repealed. The amendment being considered simply clarifies Plan language to conform to the City's interpretation and implementation over 15 years of not requiring permits for public streets, trails and underground utilities, including prior placement in the Boeckman Creek primary open space. The factors described were considered. The amendment is not a change of circumstances which significantly impacts these factors.

(9) There is a need to balance the environmental impacts of allowing the construction of underground utilities, streets and trails within open space areas against the economic, energy, and social consequences of delaying or denying these projects. This ordinance, combined with Ordinance No. 482, amending public works standards, strikes this balance by increasing environmental protection without unnecessarily delaying construction projects.

(10) Given the fact that the season when most construction projects are undertaken is now beginning, and the fact that the City is currently involved in litigation that may be affected by this Ordinance, an emergency exists which warrants having this Ordinance take effect immediately upon adoption.

NOW, THEREFORE, THE WILSONVILLE CITY COUNCIL ORDAINS AS FOLLOWS:

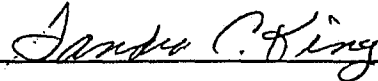
1. The above recited findings are incorporated by reference herein;
2. The language of Policy 3.8.4 which reads: "All development within Willamette River Greenway, and designated open spaces shall be controlled through a conditional use permit and shall be subject to Design Review approval" shall be changed to read as follows:

"All development within the Willamette River Greenway boundary, including Memorial Park and Boones Ferry Park, shall be controlled through a conditional use permit and shall be subject to Development Review approval. Underground utilities, and public streets and trails in primary and secondary open spaces outside the Willamette River Greenway boundary shall be permitted uses and not subject to a conditional use permit or Development Review approval. Provided, however, that development in secondary open spaces to be served by underground utilities shall provide utility plans which shall be governed by Public Works standards and engineering conditions, and which may be

referenced in planned development permit conditions or other conditions of approval for the development. The construction of utilities in primary and secondary open spaces shall be subject to applicable Public Works standards and engineering conditions, including inspection by the City's Engineering Division, where required by the City Engineer.

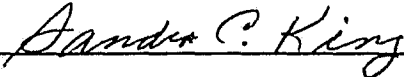
3. The matters herein concern the public health, safety and welfare, and in consideration that the construction season has commenced, and in view of prevailing economic conditions, an emergency is declared to exist, and this Ordinance shall take effect immediately upon its adoption by the City Council.

SUBMITTED to the Wilsonville City Council and read for the first and second time at a regular meeting of the City Council on the 21st day of April, 1997, commencing at the hour of 7 p.m. at the Community Development Annex.



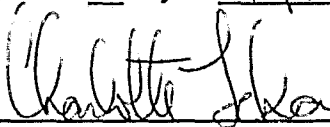
Sandra C. King, CMC, City Recorder

ENACTED by the City Council on the 21st day of April, 1997, by the following votes: YEAS: -5- Nays: -0-



Sandra C. King, CMC, City Recorder

DATED and signed by the Mayor this 22nd day of April, 1997.



CHARLOTTE LEHAN, Mayor

SUMMARY OF VOTES:

Mayor Lehan	<u>Yes</u>
Councilor MacDonald	<u>Yes</u>
Councilor Luper	<u>Yes</u>
Councilor Helser	<u>Yes</u>
Councilor Barton	<u>Yes</u>