



## ANALYSIS AND FINDINGS

Case #: ANN 22-0003

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Location:	9300 SW Norwood Road; Tax ID 2S135D000108
Owner:	9300 SW Norwood Road OR LLC
Applicant:	Vista Residential Partners, Lee Novak
Representative:	AKS Engineering & Forestry, LLC, Melissa Slotemaker, AICP

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### I. INTRODUCTION

#### A. Applicable Criteria

Annexations are reviewed under Tualatin Development Code (TDC) Chapter 33.010, *Annexations*. This code refers to Metro Code 3.09, *Local Government Boundary Changes*, and the applicable provisions of ORS Chapter 222, which also govern annexations.

#### B. Project Description

The subject territory is a 1.0-acre parcel and is located at 9300 SW Norwood Road, Tax Lot: 2S135D000108. The land is within Tualatin's Urban Planning Area and is designated as Medium Low-Density Residential (RML). The subject territory is located south of Norwood Road and east of SW Boones Ferry Road. The subject territory is within unincorporated Washington County, and is bordered to the north, east, south and west by the existing City of Tualatin City Limits.

The property owner has petitioned for annexation into the City of Tualatin. The scope of this review is limited to the suitability of annexing the property into the City of Tualatin. The subject territory is already within the Tualatin Valley Fire and Rescue District, TriMet Service District, and the Sherwood School District. The annexation would prompt withdrawal from the Washington County Enhanced Sheriff Patrol District and the Washington County Urban Road Maintenance District.

This application does not approve new development or construction of any buildings, it is solely an annexation application. If annexed, future development would be subject to all applicable requirements of the Tualatin Municipal and Development Codes.

#### C. Site Description

The subject territory is rectangular 1.0-acre property and is bordered on the north, east, west and south by City of Tualatin's City Limits. The property has an existing detached single-family home on the site. The subject territory is bordered by Institutional uses to the east, west and south and Medium Low-Density Residential uses to the north.

## **Exhibits**

Exhibit A: Application, Petition and Supporting Materials

Exhibit B: Comprehensive Plan Map 8-1 (Functional Classification and Traffic Signal Plan)

Exhibit C: Comprehensive Plan Map 9-1 (Water System Master Plan)

Exhibit D: Comprehensive Plan Map 9-2 (Sewer System Master Plan)

Exhibit E: Comprehensive Plan Map 10-1 (Zoning)

Exhibit F: Public Comments

Exhibit G: Combined Noticing Materials

## II. FINDINGS

Findings reference the Tualatin Development Code, unless otherwise noted.

### Chapter 32: Procedures

[...]

#### Section 32.010 – Purpose and Applicability.

[...]

**(2) Applicability of Review Procedures.** All land use and development permit applications and decisions, will be made by using the procedures contained in this Chapter. The procedure “type” assigned to each application governs the decision-making process for that permit or application. There are five types of permit/application procedures as described in subsections (a) through (e) below. Table 32-1 lists the City’s land use and development applications and corresponding review procedure(s).

[...]

**(d) Type IV-A Procedure (Quasi-Judicial Review—City Council Public Hearing).** Type IV-A procedure is used when the standards and criteria require discretion, interpretation, or policy or legal judgment and is the procedure used for site-specific land use actions initiated by an applicant. Type IV-A decisions are made by the City Council and require public notice and a public hearing. Appeals of Type IV-A decisions are heard by the Land Use Board of Appeals (LUBA).

[...]

**(3) Determination of Review Type.** Unless specified in Table 32-1, the City Manager will determine whether a permit or application is processed as Type I, II, III, IV-A or IV-B based on the descriptions above. Questions regarding the appropriate procedure will be resolved in favor of the review type providing the widest notice and opportunity to participate. An applicant may choose to elevate a Type I or II application to a higher numbered review type, provided the applicant pays the appropriate fee for the selected review type.

**Table 32-1—Applications Types and Review Procedures**

Application/Action	Procedure Type	Decision Body*	Appeal Body*	Pre-Application Conference Required	Neighborhood/Developer Mtg Required	Applicable Code Chapter
<b>Annexations</b>						
• Quasi-judicial	TDC 32.260	CC	LUBA	Yes	Yes	TDC 33.010
• Legislative		CC	LUBA	No	No	TDC 33.010

[...]

\* City Council (CC); Planning Commission (PC); Architectural Review Board (ARB); City Manager or designee (CM); Land Use Board of Appeals (LUBA).

**Finding:**

*The proposed Annexation application is subject to the Type IV-A Procedure Type according to Table 32-1. It has been processed according to the applicable code for Type IV-A procedures. Any future development or construction will be reviewed under a separate land use application. This standard is met.*

**Section 32.110 – Pre-Application Conference.**

**(1) Purpose of Pre-Application Conferences.** Pre-application conferences are intended to familiarize applicants with the requirements of the TDC; to provide applicants with an opportunity discuss proposed projects in detail with City staff; and to identify approval criteria, standards, and procedures prior to filing a land use application. The pre-application conference is intended to be a tool to assist applicants in navigating the land use process, but is not intended to be an exhaustive review that identifies or resolves all potential issues, and does not bind or preclude the City from enforcing any applicable regulations or from applying regulations in a manner differently than may have been indicated at the time of the pre-application conference.

**(2) When Mandatory.** Pre-application conferences are mandatory for all land use actions identified as requiring a pre-application conference in Table 32-1. An applicant may voluntarily request a pre-application conference for any land use action even if it is not required.

**(3) Timing of Pre-Application Conference.** A pre-application conference must be held with City staff before an applicant submits an application and before an applicant conducts a Neighborhood/Developer meeting.

**(4) Application Requirements for Pre-Application Conference.**

**(a) Application Form.** Pre-application conference requests must be made on forms provided by the City Manager.

**(b) Submittal Requirements.** Pre-application conference requests must include:

**(i) A completed application form;**

**(ii) Payment of the application fee;**

**(iii) The information required, if any, for the specific pre-application conference sought; and**

**(iv) Any additional information the applicant deems necessary to demonstrate the nature and scope of the proposal in sufficient detail to allow City staff to review and comment.**

**(5) Scheduling of Pre-Application Conference.** Upon receipt of a complete application, the City Manager will schedule the pre-application conference. The City Manager will coordinate the involvement of city departments, as appropriate, in the pre-application conference. Pre-application conferences are not open to the general public.

**(6) Validity Period for Mandatory Pre-Application Conferences; Follow-Up Conferences.** A follow-up conference is required for those mandatory pre-application conferences that have previously been held when:

**(a) An application relating to the proposed development that was the subject of the pre-application conference has not been submitted within six (6) months of the pre-application conference;**

**(b) The proposed use, layout, and/or design of the proposal have significantly changed; or**

**(c) The owner and/or developer of a project changes after the pre-application conference and prior to application submittal.**

**Finding:**

*A Pre-Application meeting is mandatory. The applicant participated in a Pre-Application meeting on July 13, 2022 and submitted their application approximately four months later on November 16, 2022. These standards are met.*

**Section 32.120 – Neighborhood/Developer Meetings.**

**(1) Purpose.** The purpose of this meeting is to provide a means for the applicant and surrounding property owners to meet to review a development proposal and identify issues regarding the proposal so they can be considered prior to the application submittal. The meeting is intended to allow the developer and neighbors to share information and concerns regarding the project. The applicant may consider whether to incorporate solutions to these issues prior to application submittal.

**(2) When Mandatory.** Neighborhood/developer meetings are mandatory for all land use actions identified in Table 32-1 as requiring a neighborhood/developer meeting. An applicant may voluntarily conduct a neighborhood/developer meeting even if it is not required and may conduct more than one neighborhood/developer meeting at their election.

**(3) Timing.** A neighborhood/developer meeting must be held after a pre-application meeting with City staff, but before submittal of an application.

**(4) Time and Location.** Required neighborhood/developer meetings must be held within the city limits of the City of Tualatin at the following times:

**(a)** If scheduled on a weekday, the meeting must begin no earlier than 6:00 p.m.

**(b)** If scheduled on a weekend, the meeting must begin between 10:00 a.m. and 6:00 p.m.

**(5) Notice Requirements.**

**(a)** The applicant must provide notice of the meeting at least 14 calendar days and no more than 28 calendar days before the meeting. The notice must be by first class mail providing the date, time, and location of the meeting, as well as a brief description of the proposal and its location. The applicant must keep a copy of the notice to be submitted with their land use application.

**(b)** The applicant must mail notice of a neighborhood/developer meeting to the following persons:

**(i)** All property owners within 1,000 feet measured from the boundaries of the subject property;

**(ii)** All property owners within a platted residential subdivision that is located within 1,000 feet of the boundaries of the subject property. The notice area includes the entire subdivision and not just those lots within 1,000 feet. If the residential subdivision is one of two or more individually platted phases sharing a single subdivision name, the notice area need not include the additional phases; and

**(iii)** All designated representatives of recognized Citizen Involvement Organizations as established in TMC Chapter 11-9.

**(c)** The City will provide the applicant with labels for mailing for a fee.

**(d)** Failure of a property owner to receive notice does not invalidate the neighborhood/developer meeting proceedings.

**(6) Neighborhood/Developer Sign Posting Requirements.** The applicant must provide and post on the subject property, at least 14 calendar days before the meeting. The sign must conform to the design and placement standards established by the City for signs notifying the public of land use actions in TDC 32.150.

**(7) Neighborhood/Developer Meeting Requirements.** The applicant must have a sign-in sheet for all attendees to provide their name, address, telephone number, and email address and keep a copy of the sign-in sheet to provide with their land use application. The applicant must prepare meeting notes identifying the persons attending, those commenting and the substance of the comments expressed, and the major points that were discussed. The applicant must keep a copy of the meeting notes for submittal with their land use application.

**Finding:**

*The applicant has provided evidence that a Neighborhood/Developer meeting was held on October 25, 2022. The applicant has provided documentation of sign posting and notification in compliance with this section in Exhibit A. These standards are met.*

**Section 32.130 – Initiation of Applications.**

**(1) Type I, Type II, Type III, and Type IV-A Applications.** Type I, Type II, Type III, and Type IV-A applications may be submitted by one or more of the following persons:

- (a) The owner of the subject property;
- (b) The contract purchaser of the subject property, when the application is accompanied by proof of the purchaser’s status as such and by the seller’s written consent;
- (c) A lessee in possession of the property, when the application is accompanied by the owners’ written consent; or
- (d) The agent of any of the foregoing, when the application is duly authorized in writing by a person authorized to submit an application by paragraphs (a), (b) or (c) of this subsection, and accompanied by proof of the agent’s authority.

[...]

**Finding:**

*The applicant has provided a title report within Exhibit A showing 9300 SW Norwood Road OR LLC to be the current owner of the subject site. The application has been signed by the owner of the subject property. This standard is met.*

**Section 32.140 – Application Submittal.**

**(1) Submittal Requirements.** Land use applications must be submitted on forms provided by the City. A land use application may not be accepted in partial submittals. All information supplied on the application form and accompanying the application must be complete and correct as to the applicable facts. Unless otherwise specified, all of the following must be submitted to initiate completeness review under TDC 32.160:

- (a) A completed application form. The application form must contain, at a minimum, the following information:
  - (i) The names and addresses of the applicant(s), the owner(s) of the subject property, and any authorized representative(s) thereof;
  - (ii) The address or location of the subject property and its assessor’s map and tax lot number;

- (iii) The size of the subject property;
  - (iv) The comprehensive plan designation and zoning of the subject property;
  - (v) The type of application(s);
  - (vi) A brief description of the proposal; and
  - (vii) Signatures of the applicant(s), owner(s) of the subject property, and/or the duly authorized representative(s) thereof authorizing the filing of the application(s).
- (b) A written statement addressing each applicable approval criterion and standard;
  - (c) Any additional information required under the TDC for the specific land use action sought;
  - (d) Payment of the applicable application fee(s) pursuant to the most recently adopted fee schedule;
  - (e) Recorded deed/land sales contract with legal description.
  - (f) A preliminary title report or other proof of ownership.
  - (g) For those applications requiring a neighborhood/developer meeting:
    - (i) The mailing list for the notice;
    - (ii) A copy of the notice;
    - (iii) An affidavit of the mailing and posting;
    - (iv) The original sign-in sheet of participants; and
    - (v) The meeting notes described in TDC 32.120(7).
  - (h) A statement as to whether any City-recognized Citizen Involvement Organizations (CIOs) whose boundaries include, or are adjacent to, the subject property were contacted in advance of filing the application and, if so, a summary of the contact. The summary must include the date when contact was made, the form of the contact and who it was with (e.g. phone conversation with neighborhood association chairperson, meeting with land use committee, presentation at neighborhood association meeting), and the result;
  - (i) Any additional information, as determined by the City Manager, that may be required by another provision, or for any other permit elsewhere, in the TDC, and any other information that may be required to adequately review and analyze the proposed development plan as to its conformance to the applicable criteria;
- (2) **Application Intake.** Each application, when received, must be date-stamped with the date the application was received by the City, and designated with a receipt number and a notation of the staff person who received the application.
- (3) **Administrative Standards for Applications.** The City Manager is authorized to establish administrative standards for application forms and submittals, including but not limited to plan details, information detail and specificity, number of copies, scale, and the form of submittal.

**Finding:**

*The applicant submitted an application for ANN22-0003 on November 16, 2022. The application was deemed complete on December 22, 2022. The general land use submittal requirements were included with this application. These standards are met.*

**Section 32.150 - Sign Posting.**

- (1) **When Signs Posted.** Signs in conformance with these standards must be posted as follows:
  - (a) Signs providing notice of an upcoming neighborhood/developer meeting must be posted prior to a required neighborhood/developer meeting in accordance with Section 32.120(6); and
  - (b) Signs providing notice of a pending land use application must be posted after land use application has been submitted for Type II, III and IV-A applications.

**(2) Sign Design Requirements.** The applicant must provide and post a sign(s) that conforms to the following standards:

- (a) Waterproof sign materials;**
- (b) Sign face must be no less than eighteen (18) inches by twenty-four (24) inches (18" x 24"); and**
- (c) Sign text must be at least two (2) inch font.**

**(3) On-site Placement.** The applicant must place one sign on their property along each public street frontage of the subject property. (Example: If a property adjoins four public streets, the applicant must place a sign at each of those public street frontages for a total of four signs). The applicant cannot place the sign within public right of way.

**(4) Removal.** If a sign providing notice of a pending land use application disappears prior to the final decision date of the subject land use application, the applicant must replace the sign within forty-eight (48) hours of discovery of the disappearance or of receipt of notice from the City of its disappearance, whichever occurs first. The applicant must remove the sign no later than fourteen (14) days after:

- (a) The meeting date, in the case of signs providing notice of an upcoming neighborhood/developer meeting; or**
- (b) The City makes a final decision on the subject land use application, in the case of signs providing notice of a pending land use application.**

**Finding:**

*The applicant provided certification within Exhibit A that signs in conformance with this section were placed on site in accordance with this section. These standards are met.*

**Section 32.160 – Completeness Review.**

**(1) Duration.** Except as otherwise provided under ORS 227.178, the City Manager must review an application for completeness within 30 days of its receipt.

**(2) Considerations.** Determination of completeness will be based upon receipt of the information required under TDC 32.140 and will not be based on opinions as to quality or accuracy. Applications that do not respond to relevant code requirements or standards can be deemed incomplete. A determination that an application is complete indicates only that the application is ready for review on its merits, not that the City will make a favorable decision on the application.

**(3) Complete Applications.** If an application is determined to be complete, review of the application will commence.

**(4) Incomplete Applications.** If an application is determined to be incomplete, the City Manager must provide written notice to the applicant identifying the specific information that is missing and allowing the applicant the opportunity to submit the missing information. An application which has been determined to be incomplete must be deemed complete for purposes of this section upon receipt of:

- (a) All of the missing information;**
- (b) Some of the missing information and written notice from the applicant that no other information will be provided; or**
- (c) Written notice from the applicant that none of the missing information will be provided.**

**(5) Vesting.** If an application was complete at the time it was first submitted, or if the applicant submits additional required information within 180 days of the date the application was first submitted, approval or denial of the application must be based upon the standards and criteria that were in effect at the time the application was first submitted.



**(6) Void Applications.** An application is void if the application has been on file with the City for more than 180 days and the applicant has not provided the missing information or otherwise responded, as provided in subsection (4) of this section.

[...]

**Finding:**

*The applicant submitted an application for ANN 22-0003 on December 16, 2022. The application was then deemed complete on December 22, 2022. These standards are met.*

**Section 32.240 - Type IV-A Procedure (Quasi-Judicial Review—City Council Public Hearing)**

Type IV-A decisions are quasi-judicial decisions made by the City Council after a public hearing. A hearing under these procedures provides a forum to apply standards to a specific set of facts to determine whether the facts conform to the applicable criteria and the resulting determination will directly affect only a small number of identifiable persons. Except as otherwise provided, the procedures set out in this section must be followed when the subject matter of the evidentiary hearing would result in a quasi-judicial decision. City Council decisions may be appealed to the state Land Use Board of Appeals pursuant to ORS 197.805—197.860.

- (1) *Submittal Requirements.*** Type IV-A applications must include the submittal information required by TDC 32.140(1).
- (2) *Determination of Completeness.*** After receiving an application for filing, the City Manager will review the application will for completeness in accordance with TDC 32.160.
- (3) *Written Notice of Public Hearing—Type IV-A.*** Once the application has been deemed complete, the City must mail by regular first class mail Notice of a Public Hearing to the following individuals and agencies no fewer than 20 days before the hearing.
  - (a) Recipients:**
    - (i)** The applicant and, the owners of the subject property;
    - (ii)** All property owners within 1,000 feet measured from the boundaries of the subject property;
    - (iii)** All property owners within a platted residential subdivision that is located within 1,000 feet of the boundaries of the subject property. The notice area includes the entire subdivision and not just those lots within 1,000 feet. If the residential subdivision is one of two or more individually platted phases sharing a single subdivision name, the notice area need not include the additional phases;
    - (iv)** All recognized neighborhood associations within 1,000 feet from the boundaries of the subject property;
    - (v)** All designated representatives of recognized Citizen Involvement Organizations as established in TMC Chapter 11-9;
    - (vi)** Any person who submits a written request to receive a notice;
    - (vii)** Any governmental agency that is entitled to notice under an intergovernmental agreement entered into with the City and any other affected agencies, including but not limited to: school districts; fire district; where the project either adjoins or directly affects a state highway, the Oregon Department of Transportation; and where the project site would access a County road or otherwise be subject to review by the County, then the County; and Clean Water Services; Tri Met; and, ODOT Rail Division and the railroad company if a railroad-highway grade crossing provides or will provide the only access to

- the subject property. The failure of another agency to respond with written comments on a pending application does not invalidate an action or permit approval made by the City under this Code;
- (viii) Utility companies (as applicable); and,
  - (ix) Members of the City Council.
- (b) The Notice of a Public Hearing, at a minimum, must contain all of the following information:
- (i) The names of the applicant(s), any representative(s) thereof, and the owner(s) of the subject property;
  - (ii) The street address if assigned, if no street address has been assigned then Township, Range, Section, Tax Lot or Tax Lot ID;
  - (iii) The type of application and a concise description of the nature of the land use action;
  - (iv) A list of the approval criteria by TDC section for the decision and other ordinances or regulations that apply to the application at issue;
  - (v) Brief summary of the local decision making process for the land use decision being made and a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings;
  - (vi) The date, time and location of the hearing;
  - (vii) Disclosure statement indicating that if any person fails to address the relevant approval criteria with enough detail, he or she may not be able to appeal to the Land Use Board of Appeals on that issue, and that only comments on the relevant approval criteria are considered relevant evidence;
  - (viii) The name of a City representative to contact and the telephone number where additional information may be obtained;
  - (ix) Statement that the application and all documents and evidence submitted to the City are in the public record and available for review, and that copies can be obtained at a reasonable cost from the City; and
  - (x) Statement that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing and will be provided at reasonable cost.
- (c) Failure of a person or agency to receive a notice, does not invalidate any proceeding in connection with the application, provided the City can demonstrate by affidavit that required notice was given.

**Finding:**

*After submittal and completeness review as required by this section, notice of public hearing for the Type IV-A application for ANN 22-0003 was mailed by city staff on January 9, 2023 and contained the information required by this section, as attached in Exhibit A. Public comments have been received and included in Exhibit F. These standards are met.*

- (5) **Conduct of the Hearing—Type IV-A.** The Mayor (or Mayor Pro Tem) must follow the order of proceedings set forth below. These procedures are intended to provide all interested persons a reasonable opportunity to participate in the hearing process and to provide for a full and impartial hearing on the application before the body. Questions concerning the propriety or the conduct of a hearing will be addressed to the chair with a request for a ruling. Rulings from the Mayor must, to the extent possible, carry out the stated intention of these procedures. A ruling given by the Mayor on such question may be modified or reversed by a majority of those

members of the decision body present and eligible to vote on the application before the body. The procedures to be followed by the Mayor in the conduct of the hearing are as follows:

- (a) At the commencement of the hearing, the Mayor (or designee) must state to those in attendance all of the following information and instructions:**
  - (i) The applicable approval criteria by Code Chapter that apply to the application;**
  - (ii) Testimony and evidence must concern the approval criteria described in the staff report, or other criteria in the comprehensive plan or land use regulations that the person testifying believes to apply to the decision;**
  - (iii) Failure to raise an issue with sufficient detail to give the City Council and the parties an opportunity to respond to the issue, may preclude appeal to the state Land Use Board of Appeals on that issue;**
  - (iv) At the conclusion of the initial evidentiary hearing, the City Council must deliberate and make a decision based on the facts and arguments in the public record; and**
  - (v) Any participant may ask the City Council for an opportunity to present additional relevant evidence or testimony that is within the scope of the hearing; if the City Council grants the request, it will schedule a date to continue the hearing as provided in TDC 32.240(5)(e), or leave the record open for additional written evidence or testimony as provided TDC 32.240(5)(f).**
- (b) The public is entitled to an impartial decision body as free from potential conflicts of interest and pre-hearing ex parte (outside the hearing) contacts as reasonably possible. Where questions related to ex parte contact are concerned, members of the City Council must follow the guidance for disclosure of ex parte contacts contained in ORS 227.180. Where a real conflict of interest arises, that member or members of the City Council must not participate in the hearing, except where state law provides otherwise. Where the appearance of a conflict of interest is likely, that member or members of the City Council must individually disclose their relationship to the applicant in the public hearing and state whether they are capable of rendering a fair and impartial decision. If they are unable to render a fair and impartial decision, they must be excused from the proceedings.**
- (c) Presenting and receiving evidence.**
  - (i) The City Council may set reasonable time limits for oral presentations and may limit or exclude cumulative, repetitious, irrelevant, or personally derogatory testimony or evidence;**
  - (ii) No oral testimony will be accepted after the close of the public hearing. Written testimony may be received after the close of the public hearing only as provided by this section; and**
  - (iii) Members of the City Council may visit the property and the surrounding area, and may use information obtained during the site visit to support their decision, if the information relied upon is disclosed at the beginning of the hearing and an opportunity is provided to dispute the evidence.**
- (d) The City Council, in making its decision, must consider only facts and arguments in the public hearing record; except that it may take notice of facts not in the hearing record (e.g., local, state, or federal regulations; previous City decisions; case law; staff reports). Upon announcing its intention to take notice of such facts in its deliberations, it must allow persons who previously participated in the hearing to request the hearing record be reopened, as necessary, to present evidence concerning the newly presented facts.**
- (e) If the City Council decides to continue the hearing, the hearing must be continued to a date that is at least seven days after the date of the first evidentiary hearing (e.g., next regularly scheduled meeting). An opportunity must be provided at the continued hearing for persons**

- to present and respond to new written evidence and oral testimony. If new written evidence is submitted at the continued hearing, any person may request, before the conclusion of the hearing, that the record be left open for at least seven days, so that he or she can submit additional written evidence or arguments in response to the new written evidence. In the interest of time, after the close of the hearing, the decision body may limit additional testimony to arguments and not accept additional evidence.
- (f) If the City Council leaves the record open for additional written testimony, the record must be left open for at least seven days after the hearing. Any participant may ask the decision body in writing for an opportunity to respond to new evidence (i.e., information not disclosed during the public hearing) submitted when the record was left open. If such a request is filed, the decision body must reopen the record, as follows:
- (i) When the record is reopened to admit new evidence or arguments (testimony), any person may raise new issues that relate to that new evidence or testimony;
  - (ii) An extension of the hearing or record granted pursuant to this section is subject to the limitations of TDC 32.030(1) (ORS 227.178—120-day rule), unless the applicant waives his or her right to a final decision being made within 120 days of filing a complete application; and
  - (iii) If requested by the applicant, the City Council must grant the applicant at least seven days after the record is closed to all other persons to submit final written arguments, but not evidence, provided the applicant may expressly waive this right.
- (6) **Notice of Adoption of a Type IV-A Decision.** Notice of Adoption must be provided to the property owner, applicant, and any person who provided testimony at the hearing or in writing. The Type IV-A Notice of Adoption must contain all of the following information:
- (a) A description of the applicant's proposal and the City's decision on the proposal, which may be a summary, provided it references the specifics of the proposal and conditions of approval in the public record;
  - (b) The address or other geographic description of the property proposed for development, including a map of the property in relation to the surrounding area;
  - (c) A statement a statement that a copy of the decision and complete case file, including findings, conclusions, and conditions of approval, if any, is available for review and how copies can be obtained;
  - (d) The date the decision becomes final; and
  - (e) The notice must include an explanation of rights to appeal a City Council decisions to the state Land Use Board of Appeals pursuant to ORS 197.805—197.860.
- (7) **Effective Date of a Type IV-A Decision.**
- (a) The written order is the final decision on the application.
  - (b) The date of the order is the date it is mailed by the Mayor (or designee) certifying its approval by the decision body.
  - (c) Appeal of a IV-A City Council decision is to the State Land Use Board of Appeals pursuant to ORS 197.805—197.860.

**Finding:**

*Conduct of the hearing will follow these standards. Notice of Adoption of a Type IV-A Decision any appeal will follow the requirements of this section. These standards will be met.*

### **Section 32.260 - Annexation Procedures**

**An Annexation brings property from outside the City Limits into the City Limits. At the same time, the City also removes the property from any county special districts that are no longer needed. For example, property in Washington County is withdrawn from the Washington County Enhanced Sheriff's Patrol District because police services will be provided by the Tualatin Police Department.**

**(1) *Procedure Type—Annexations.***

- (a) Quasi-Judicial Annexations will be conducted by City Council under the Type IV-A process in TDC 32.240, as modified by this Section. The 120-day rule does not apply to annexations.**
- (b) Legislative Annexations will be conducted by City Council under the Type IV-B process in TDC 32.250 as modified by this Section.**

**(2) *Submittal Information and Completeness.***

- (a) *Quasi-Judicial Annexation.* For quasi-judicial annexation applications, submittal requirements must be in accordance with TDC 32.240(1) and will be reviewed for completeness in accordance with TDC 32.240(2).**
- (b) *Legislative Annexation.* Only the City Council may initiate legislative annexations.**

**Finding:**

*The annexation application is considered quasi-judicial annexation type. The hearing will be conducted by the City Council and processed through a Type IV-A procedure as modified by this section. These standards are met.*

**(3) *Timing of the Hearing.* Within 45-days of determining an annexation application is complete, the City Manager will set the date for public hearing before the City Council.**

**(4) *Notice of Public Hearing—Annexation.* The City must give notice of its proposed deliberations by at least 20 days prior to the date of deliberations. Notice must be published as required by state law.**

- (a) For quasi-judicial annexations the City must comply with the same written notice provisions as for Type IV-A. For legislative annexations, the City must comply with the same written notice provisions as for Type IV-B proceedings. In addition, notice of public hearing must also be sent to all "Necessary Parties," as defined by Metro Code 3.09;**
- (b) The City must post the written notice of public hearing in four public places;**
- (c) The City must provide weatherproof posting of the notice in the general vicinity of the affected territory; and**
- (d) The City must post a notice of public hearing in a newspaper of general circulation within the City once each week for two successive weeks before the hearing.**

**Finding:**

*After submittal and completeness review as required by this section, notice of public hearing for the Type IV-A application for ANN 22-0003 was mailed by city staff on January 9, 2023 and published in the Tualatin Times February 16, 2023 (Exhibit G) and contained the information required by this section, as attached in Exhibit A. Written notice of public hearing has been posted and notice was published in a newspaper of general circulation within the City. These standards are met.*

**(5) *Final Decision.* Final decisions on quasi-judicial and legislative annexations will be made by ordinance.**

- (a) The City Council may adjourn or continue its final deliberations on a proposed boundary change to another time. For a continuance later than 28 days after the time stated in the original notice, notice must be reissued in the form required by TDC 32.260(4) of this section at least five days prior to the continued date of decision.
  - (b) For quasi-judicial annexation proceedings, the City must send notice of final decision as provided in 32.240(6) (Notice of Adoption—Type IV-A). Notice of adoption is not required for legislative annexation proceedings.
  - (c) Following a final decision approving an annexation, the City must send notice of the decision to the Metro and other applicable public bodies, in accordance with Metro Code 3.09, to effectuate the annexation decision.
  - (d) The City must file the annexation with the Secretary of State as provided in ORS 222.
- (6) **Effective Date.** The effective date of the annexation is as specified by the City Council in the annexation ordinance. If an effective date of an annexation is more than one year after the date the ordinance proclaiming annexation is adopted, the City must provide notice to the county clerk as provided in ORS 222.

**Finding:**

*Conduct of the hearing will follow these standards. Notice of Adoption of a Type IV-A Decision any appeal will follow the requirements of this section. These standards will be met.*

## **Chapter 33: Applications and Approval Criteria**

### **Section 33.010 - Annexations**

- (1) **Purpose.** The purpose of this Section is to establish the application requirements for annexing territory to the City Limits, consistent with Metro Code 3.09 and Oregon law.
- (2) **Applicability.** The requirements of this section apply to all applications for annexation to the City of Tualatin.
- (3) **Procedure Type.** Annexations are processed in accordance with the annexation procedure in TDC Chapter 32.260.
- (4) **Specific Submittal Requirements.** In addition to the general application submittal requirements in TDC 32.140 (Application Submittal), an applicant(s) for a quasi-judicial annexation must submit the following:
  - (a) The Application for Annexation form;
  - (b) The Petition to Annex to the City of Tualatin form;
  - (c) A legal description of the subject territory including any abutting public street right-of-way that is not yet in the City Limits;
  - (d) The Certification of Legal Description and Map form;
  - (e) The Certification of Property Ownership form;
  - (f) The Certification of Registered Voters form;
  - (g) The Property Owner Information Sheet form;
  - (h) The City application fee, and the Metro application fee in a separate check made payable to Metro;
  - (i) The three column by ten row matrix sheet listing the Assessors Map Number and Tax Lot Number, name and mailing address for:

- (i) **The owner (fee title) of the subject territory, and**
- (ii) **Recipients pursuant to TDC 32.240 (3) and the governing jurisdiction of any public street right-of-way to be annexed;**
- (j) **The Annexation Property Information Sheet form;**
- (k) **A copy of the County Assessors Maps showing the subject territory, any public street right-of-way to be annexed and the lots within 1,000 feet of the subject territory including any public street right-of-way. The subject territory and right-of-way to be annexed must be outlined with a wide, light colored ink marker;**
- (l) **If necessary, a letter from the County or State Road Authority stating its consent to annex the right-of-way described in the legal description; and**
- (m) **Any information required by the City Manager in addition to the above.**

**Finding:**

*The applicant submitted an application for ANN22-0003 on November 16, 2022. The application was deemed complete on December 22, 2022. The specific submittal requirements were included with this application. These standards are met.*

**(5) *Approval Criteria.* To grant an annexation application, the Council must find:**

- (a) The territory to be annexed is within the Metro Urban Growth Boundary;**

**Finding:**

*As shown in Exhibit E, the subject territory is within the Metro Urban Growth Boundary and within Tualatin's Urban Planning Area. This standard is met.*

- (b) The owners of the territory to be annexed have petitioned to be annexed;**

**Finding:**

*As shown in Exhibit A, the property owner, 9300 SW Norwood Road OR LLC, has petitioned to have the territory annexed into the City of Tualatin. A Certification of Ownership is included in Exhibit A. This standard is met.*

- (c) The application conforms to the applicable criteria in Metro Code 3.09; and**

**Finding:**

*The applicable criteria of Metro Code 3.09 have been listed below, and this standard is met.*

- (d) The application is consistent with applicable provisions of ORS Chapter 222.**

**Finding:**

*The applicable criteria of Oregon Revised Statutes (ORS) Chapter 222 have been listed below, and this standard is met.*

## **Chapter 3.09 Local Government Boundary Changes**

### **Chapter 3.09.050 Hearing and Decision Requirements for Decisions Other Than Expedited Decisions**

[...]

**B. Not later than 15 days prior to the date set for a hearing the reviewing entity shall make available to the public a report that addresses the criteria identified in subsection (D) and includes the following information:**

**1. The extent to which urban services are available to serve the affected territory, including any extra territorial extensions of service;**

**Finding:**

*The subject territory has adequate sanitary sewer, stormwater sewer, and potable water available or will be made available to serve the affected territory. The site will be accessed from an existing public street, SW Norwood Road. The provision of urban services is outlined in the applicant’s Utility Availability Report in Exhibit A. The subject territory is already within the Clean Water Services District, Tualatin Valley Fire and Rescue, TriMet, and the Sherwood School District. As a result of the proposed annexation, the property would be withdrawn from the Washington County Enhances Sheriff Patrol District and the Washington County Urban Road Maintenance District.*

**Sanitary Sewer:**

*The Utility Availability Report in Exhibit A proposes the following in response to Sanitary Sewer availability. The proposed public sanitary sewer line will connect to an existing manhole in Southwest Boones Ferry Road. The new line will run south until the intersection of Southwest Boones Ferry Road and Southwest Norwood Road, where it then will run east along Southwest Norwood Road until the subject property’s frontage. Another sanitary sewer line will be connected to the new manhole at the intersection and stubbed south for future expansion. A new private sanitary sewer service will extend into the property from the new manhole installed near the northwest corner of the property, with sufficient depth to serve all proposed structures.*

*The City of Tualatin Sewer Mater Plan Exhibit D illustrates sewer connections are available in the vicinity of the subject territory.*

**Stormwater:**

*The Utility Availability Report in Exhibit A proposes the following in response to Stormwater availability. A new private stormwater service for the subject site will connect to the existing public stormwater main in SW Boones Ferry Road via a new public storm manhole installed over the main. The service will run east from the new manhole via a new private stormwater easement to the subject site and provide points of connection.*

*There is a 15” stormwater main in SW Boones Ferry Road that will provide service to the subject territory. Tualatin and Clean Water Services additionally implement stormwater management standards as required by the National Pollution Discharge Elimination System (NPDES) and Municipal Separate Storm Sewer System (MS4) permits. Stormwater facilities, including on-site detention facilities consistent with City and Clean Water Services standards, will be required with any future development.*

*The proposed annexation is consistent with the 1972 Tualatin Drainage Plan and Tualatin Comprehensive Plan Chapter 9.*

**Potable Water:**

*The Utility Availability Report in Exhibit A proposes the following in response to water service. A new water service for the subject site will tie into the existing public water main in SW Norwood Road.*



*Domestic and fire water services will be provided from the new water service with accompanying water meter and backflow devices. Per the Water System Capacity Analysis memorandum prepared by Murraysmith Exhibit A, upon completion of planned capital improvement projects and developer-constructed improvements, adequate water service for domestic and fire suppression will be available for this project.*

*The City of Tualatin Water System Master Plan Exhibit C shows an existing distribution line in the vicinity of the subject territory. A 12” water main is located in NW Norwood Road. As a result, the property is able to connect to water service consistent with the City’s Water Master Plan.*

**Transportation and Streets:**

*The subject site is provided with public street access from SW Norwood Road, which is classified as a Major Collector and is under Washington County’s jurisdiction. Future road frontage improvements would be reviewed in conjunction with a future Architectural Review application for development on the site. This application does not approve new development or construction.*

*The territory is currently within the TriMet transit district and would continue to be so upon annexation. The property is located east of the current route for TriMet bus line 96 (SW Boones Ferry Road & Norwood).*

**Additional Services:**

*As a result of the proposed annexation, the property would be withdrawn from the Washington County Enhanced Sheriff Patrol District and the Washington County Urban Road Maintenance District.*

*The territory is currently within the Tualatin Valley Fire and Rescue district, and would continue to be so upon annexation into the City.*

*The territory is currently within the Sherwood School District and would be continue to be so upon annexation.*

*The subject territory is not currently within an independent parks district, and would be served by the City of Tualatin for parks services and facilities upon annexation. This standard is met.*

**2. Whether the proposed boundary change will result in the withdrawal of the affected territory from the legal boundary of any necessary party; and**

**Finding:**

*The proposed boundary change will withdraw ±1.0 acre of land from Washington County’s jurisdiction for planning, zoning, building, and the Washington County Enhanced Sheriff’s Patrol District (ESPD). The services will transfer jurisdiction to the City of Tualatin. This standard is met.*

**3. The proposed effective date of the boundary change.**

[...]

**Finding:**

*The annexation of the subject territory will be effective on the date the annexation is filed with the Oregon Secretary of State, as provided in ORS 222.180. This standard is met.*

**D. To approve a boundary change, the reviewing entity shall apply the criteria and consider the factors set forth in subsections (D) and (E) of section 3.09.045.**

**Finding:**

*These standards are addressed below.*

**3.09.045 Expedited Decisions**

**D. To approve a boundary change through an expedited process, the city shall:**

**1. Find that the change is consistent with expressly applicable provisions in:**

**a. Any applicable urban service agreement adopted pursuant to ORS 195.065;**

**Finding:**

*ORS 195.065 considers urban services agreements pertaining to sanitary sewer, water, fire protection, parks, open space, recreation, and streets, roads, and mass transit.*

*The City of Tualatin has an established Urban Planning Area Agreement (UPAA) with Washington County, which currently has jurisdiction over the subject territory. The UPAA acknowledges that the City of Tualatin is responsible for comprehensive planning, including public facility planning, within the Urban Planning Area. It also establishes a process for determining the likely provider for urban services through concept planning; this is generally the City except where the City holds Intergovernmental Agreements (IGAs) with other service providers.*

*The subject territory is currently within, and would remain within, the Tualatin Valley Fire and Rescue district. Additionally the subject territory is currently within, and would remain within, the Sherwood School District. The territory is not within an independent parks, open space or recreation district other than Metro, of which it will remain a part.*

*The City of Tualatin has an established IGA with CWS delineating responsibilities for public sanitary sewer and stormwater management. The subject territory is already within the Clean Water Services District.*

*No additional urban services agreements apply. This standard is met.*

**b. Any applicable annexation plan adopted pursuant to ORS 195.205;**

**Finding:**

*No applicable annexation plan exists for this area. This standard is not applicable.*

**c. Any applicable cooperative planning agreement adopted pursuant to ORS 195.020(2) between the affected entity and a necessary party;**

**Finding:**

*No applicable cooperative planning agreement exists for this area. This standard is not applicable.*

**d. Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services;**

**Finding:**

*The City's Transportation System Plan, Sewer Master Plan and Water Master Plan are all contained in the Comprehensive Plan and applicable to the subject territory. These plans are discussed below in greater detail.*

***Transportation System Plan:***

*The City of Tualatin Transportation System Plan Exhibit B identifies SW Norwood Road as a Major Collector. The subject site will have public street access to SW Norwood Road. The property is able to connect to the transportation network consistent with the City's TSP.*

***Sewer Master Plan:***

*The City of Tualatin Sewer Master Plan Exhibit D illustrates sewer connection is available in the vicinity of the subject territory. The subject territory is already within the Clean Water Services district and the City's sewer district.*

***Water Master Plan:***

*The City of Tualatin Water System Master Plan Exhibit C shows an existing transmission line in the vicinity of the subject territory. A 12" water main is located in NW Norwood Road. As a result, the property is able to connect to water service consistent with the City's Water Master Plan. This standard is met.*

**e. Any applicable comprehensive plan;**

**Finding:**

*The City of Tualatin's Comprehensive Plan contains the Comprehensive Plan Map 10-1, Exhibit E showing this territory as part of the Urban Planning Area and indicating that the property is zoned Medium Low Density Residential (RML).*

*Comprehensive Plan Chapters 8 Transportation, and 9 Public Facilities Services provide details about service provision in this vicinity. Map 9-1 Exhibit C outlines the future provision of water service over the subject territory. Map 9-2 Exhibit D shows connections and future provision for sewer service to the subject territory. Chapter 9 establishes a method for cooperation with DEQ and Clean Water Services with the Storm Water Management Ordinance applied at the time of future development.*

*This standard is met.*

**f. Any applicable concept plan; and**

**Finding:**

*The area was included within the City's adopted Basalt Creek Concept Plan and related documents. The property is subject to a land use designation of Medium Low Density Residential (RML) illustrated on Comprehensive Plan Map 10-1 Exhibit E. This standard is met.*

**2. Consider whether the boundary change would:**

**a. Promote the timely, orderly and economic provision of public facilities and services;**

- b. Affect the quality and quantity of urban services; and**
- c. Eliminate or avoid unnecessary duplication of facilities or services.**

**Finding:**

*Given the property is adjacent to existing urban services, including utilities and transportation access on SW Norwood Road, this annexation would not interfere with the timely, orderly, and economic provision of public facilities and services, nor would it necessitate the duplication of services. The property is contiguous to the City Limits, and annexation of the property is integral to providing urban services to the area. The progression toward additional transportation and utility improvements associated with any future development would be timely. Annexation is a necessary first step to future development and related public improvements. Standards A through C are met.*

- e. A city may not annex territory that lies outside the UGB, except it may annex a lot or parcel that lies partially within and partially outside the UGB.**

**Finding:**

*The subject territory is wholly within the Urban Growth Boundary (UGB). This standard is met.*

- d. The application is consistent with applicable provisions of ORS Chapter 222.**

**ORS 222.111(1)** When a proposal containing the terms of annexation is approved in the manner provided by the charter of the annexing city or by ORS 222.111 to 222.180 or 222.840 to 222.915, the boundaries of any city may be extended by the annexation of territory that is not within a city and that is contiguous to the city or separated from it only by a public right of way or a stream, bay, lake or other body of water. Such territory may lie either wholly or partially within or without the same county in which the city lies.”

**Finding:**

*As shown on the Comprehensive Plan Map 10-1 Exhibit E, the subject territory is not within a city and is contiguous to the City of Tualatin. This standard is met.*

**ORS 222.520(1)** Whenever a part less than the entire area of a district named in ORS 222.510 becomes incorporated as or annexed to a city in accordance with law, the city may cause that part to be withdrawn from the district in the manner set forth in ORS 222.120 or at any time after such incorporation or annexation in the manner set forth in ORS 222.524. Until so withdrawn, the part of such a district incorporated or annexed into a city shall continue to be a part of the district.

**Finding:**

*The subject territory is within the Sherwood School District, Tualatin Valley Fire & Rescue, and TriMet districts and will remain so. Police services will be provided by the City of Tualatin. Because the proposed boundary change is consistent with state and local law, this standard is met.*

**Conclusion and Recommendation:**

*Based on the application and the above analysis and findings, the proposed annexation complies with applicable Oregon Revised Statutes, Metro Code, and TDC. Accordingly, staff recommends City Council approval of File No. ANN 22-0003 and adoption of Ordinance No. 1472-23.*