



City of Tualatin

CITY OF TUALATIN Staff Report

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos, City Manager

FROM: Cody Field, Management Analyst II

DATE: September 12, 2022

SUBJECT:

Consideration of Resolution 5644-22 Authorizing the City of Tualatin to Join a Coalition of Cities Challenging the State's Climate Friendly and Equitable Communities Rules.

EXECUTIVE SUMMARY:

On July 21st, 2022, the Land Conservation and Development Commission (LCDC) permanently adopted the Climate Friendly and Equitable Communities (CFEC) Rules. The rulemaking effort was first initiated by the LCDC in September of 2020, in response to Governor Kate Brown's Executive Order 20-04, directing state agencies to take action to reduce and regulate greenhouse gas emissions. The Department of Land Conservation and Development (DLCD) was responsible for development of the rules.

The City of Springfield, and at least seven other Oregon cities, plan to file a legal challenge to the rules within 60 days of the August 17th, 2022 effective date. The rules can be challenged under ORS 183.400 under the following three circumstances:

- The rule violates constitutional provisions;
- The rule exceeds the statutory authority of the agency; and
- The rule was adopted without compliance with applicable rulemaking procedures.

Legal Council has advised Council Members that the CFEC rules likely exceed the statutory authority of the Department of Land Conservation and Development (DLCD). Additionally, DLCD did not follow correct procedures in enacting the rules. Specially, the fiscal impact statement provides no reference to actual financial numbers, despite acknowledging that the rules will have a fiscal impact on local governments

On August 11, 2022, City Council convened an executive session to consult with legal counsel and address the question of whether the City of Tualatin should formally join legal action seeking to delay implementation of the CFEC rules. This discussion was continued at the August 22nd Council meeting. At this meeting, Council approved a motion requesting staff to return to Council with a resolution authorizing them to take the steps necessary to participate in the litigation.

RECOMMENDATION:

A majority of the Tualatin City Council voted at its August 22, 2022 meeting in favor of directing staff to return with a resolution in support of joining the legal challenge to the CFEC rules.

OUTCOMES OF RECOMMENDATION:

Council approval of Resolution 5644-22 would direct the City Manager to pursue actions to join the legal challenge to the CFEC rules.

ALTERNATIVES TO RECOMMENDATION:

Council may alternatively continue the discussion to a later date or, alternatively, decline to approve Resolution 5644-22.

FINANCIAL IMPLICATIONS:

The cost of litigation will be divided between the cities participating in the legal challenge. The cost for each city will be based on the size of a city's budget less American Rescue Plan Act (ARPA) funds and any pass-through funding. Tualatin's proportional share will depend on the number of cities that participate in litigation.

ATTACHMENTS:

- Resolution 5644-22