

EXHIBIT B

FACTS AND FINDINGS FOR ORDINANCE BILL NO. 3-22

CODE AMENDMENT CASE NO. CA-ZC21-01 (2021 UNIFIED DEVELOPMENT CODE UPDATE – FAIRVIEW MIXED-USE ZONE AMENDMENTS)

SUBSTANTIVE FINDINGS

1. Approval Criteria for Amendments to the Unified Development Code (UDC)

Salem Revised Code (SRC) 110.085(b) sets forth the following criteria that must be met in order for an amendment to the code to be approved. The following subsections are organized with approval criteria shown in ***bold italic***, followed by findings evaluating the proposal's conformance with the criteria.

(1) ***The amendment is in the best interest of the public health, safety, and welfare of the City.***

Finding: The proposed amendments are in the best interest of the public health, safety, and welfare of the City because they update the Fairview Mixed-Use (FMU) zone to comply with recent changes in State law; establish managed temporary villages for the unsheltered and emergency centers as allowed uses within the zone, as is proposed broadly throughout the City in other zone districts, in order to help meet community need; and clarify the requirements for the approval of refinement plans and how they are reviewed in relation to the Fairview plan in order to reflect how the code has been historically applied.

Amendments to the FMU zone that are proposed as result of changes in State law include revisions implementing the requirements of House Bill HB3109 and House Bill HB2583.

House Bill HB3109 establishes requirements pertaining to how local governments may regulate family child care homes and child care centers. Under the bill local jurisdictions are required to allow family child care homes in all areas zoned for residential or commercial use and allow child care centers in areas zoned for commercial or industrial use, except areas specifically designed for heavy industrial use. The bill also establishes revised definitions for “family child care homes” and “child care centers.” In order to comply with the requirements of the bill, the permitted use table of the zone is amended to allow child day care home and child day care centers as required by the bill.

House Bill HB2583 establishes requirements prohibiting local governments from limiting maximum occupancy within a residential dwelling unit based on whether the occupants within the dwelling unit are a family. In order to align with the requirements of HB2583 and the revised definition of “family” included in SRC Chapter 111 (Definitions), the permitted use table of the FMU zone is amended to eliminate the “taking of boarders and leasing of rooms by a resident family” as a permitted use within the zone. This use is proposed to be eliminated because under the revised definition of

family under SRC Chapter 111, any number of unrelated persons may live together in a dwelling unit and therefore the allowance of this use is no longer necessary.

The proposed amendments updating the FMU zone to comply with the identified changes in State law ensure that the development code is kept up-to-date and in alignment with the most recent requirements. This in-turn eliminates any potential conflicts, confusion, or inconsistencies between State and local requirements and helps to better serve the public and ensure land use and development standards are clear as possible.

The proposed amendments to the FMU zone that establish managed temporary villages for the unsheltered and emergency shelters as allowed temporary uses within the zone are part of a broader set of amendments that have been included in the 2021 Unified Development code update. The amendments are necessary because of the need for this type of transitional shelter to help meet the needs of the unsheltered in the community, but neither shelter type is currently clearly identified as being allowed under the UDC. As a result, these uses are required to be authorized under emergency declaration rather than being allowed, as any other land use, through the UDC.

Managed temporary villages are proposed to be allowed broadly throughout the City in all zones and not just the FMU zone. This will help to ensure they can be sited throughout the City and not concentrated in particular areas. Managed temporary villages and emergency shelters are subject to siting and operational standards designed to help meet the needs of shelter residents/guests, promote security, and minimize potential impacts on adjacent properties.

The proposed amendments to the FMU zone also further clarify the relationship between the Fairview plan and refinement plans to reflect how the code has been historically applied to the approval of refinement plans within the zone. The proposed amendment:

- Adds language providing greater clarify regarding the purpose of the Fairview Plan and its regulatory authority over subsequent refinement plans.
- Revises approval criteria for refinement plans under SRC 530.030(e) to specify which specific portions of the Fairview plan that refinements plans must be found to be in conformance with.
- Clarifies that the maps and drawings in the plan are conceptual//illustrative in nature and may be further revised by refinement plans in substantial conformance with the thirteen sustainable land use principles included in the Fairview Training Center Redevelopment Master Plan document.
- Clarifies who has standing to initiate amendments to the Fairview plan and refinement plans.
- Clarifies that amendments to the Fairview plan and refinements plans are actual changes to the text and/or supporting documents of the plans, not site-specific proposals for development requesting deviation from the standards of a refinement plan (e.g. a request that would normally be addressed through a variance or adjustment to the standard rather than an amendment to the plan).

This approval criterion is met.

- (2) ***The amendment conforms with the Salem Area Comprehensive Plan, applicable Statewide Planning Goals, and applicable administrative rules adopted by the Department of Land Conservation and Development.***

Finding: The Salem Area Comprehensive Plan (SACP) is the long-range plan for guiding development in the Salem urban area. The overall goal of the plan is to accommodate development in a timely, orderly, and efficient arrangement of land uses and public facilities and services that meet the needs of present and future residents of the Salem urban area.

The proposed amendments have reviewed for conformance with the applicable goals and policies of the SACP. The following SACP goals and policies relate to the proposed amendments:

- **Mixed-Use Development Goal:** *To provide a mixture of complementary land uses that may include housing, retail, offices, services, industrial and civic uses, to create economic and social vitality.*
- **Mixed-Use Development Policy F.1 – Development:** *Encourage efficient use of land by facilitating compact, high-density development and minimizing the amount of land that is needed to accommodate automobile parking. Where appropriate, revise mixed-use design standards to make them simpler and easier to use, including making mixed-use design standards consistent across mixed-use areas.*
- **Mixed-Use Development Policy F.2 – Development:** *Encourage development that preserves private open space for residents and employees of mixed-use development.*
- **Mixed-Use Development Policy F.3 – Priorities for Mobility and Access:** *Facilitate development (land use mix, density, connectivity, design, and orientation) that reduces the need for, and frequency of, SOV trips and supports public transit, where applicable.*
- **Mixed-Use Development Policy F.4 – Priorities for Mobility and Access:** *Reinforce streets as public places that encourage pedestrian and bicycle travel.*
- **Mixed-Use Development Policy F.5 – Priorities for Mobility and Access:** *Provide roadway and pedestrian connections to residential areas.*
- **Mixed-Use Development Policy F.6 – Design:** *Develop commercial and mixed-use areas that are safe, comfortable and attractive to pedestrians.*
- **Mixed-Use Development Policy F.7 – Design:** *Provide flexibility in the siting and design of new developments, facilities, and redevelopment to respond to changes in the marketplace and infrastructure systems.*
- **Mixed-Use Development Policy F.8 – Design:** *Provide appropriate transitions between mixed-use areas and adjacent single-use neighborhoods.*
- The Fairview Mixed Use (FMU) zone applies to the former Fairview Training Center site which is designated Mixed-Use on the Salem Area Comprehensive Plan Map. The FMU zone implements the above identified mixed-use goals and policies of the Salem Area Comprehensive Plan and therefore amendments to the zone must remain consistent with these goals and policies.

The proposed amendments update the FMU zone to comply with recent changes in State law; establish managed temporary villages for the unsheltered and emergency centers as allowed uses within the zone; and clarify the requirements for the review and approval of refinement plans in order to reflect how the code has been historically applied. None of the proposed amendments change the zone in a manner to prevent mixed-use development within the zone consistent with the mixed-use goals and policies of the comprehensive plan.

Development within the FMU zone must be undertaken pursuant to the Fairview plan and subsequent requirements plans. The Fairview plan is the general overall master plan that identifies the goals and policies for development within the zone. Refinement plans are detailed regulatory plans that implement the goals and policies of the Fairview plan through more detailed and specific site planning and by establishing specific standards regulating development within the refinement plan area.

The proposed amendments to the zone clarifying the review and approval requirements for refinement plans provide needed clarification to further prescribe the relationship between the Fairview plan and refinement plans in order to reflect the original legislative intent of the zone and how the code has historically be applied. Under the proposed amendments all of the requirements applicable to the Fairview plan and refinement plans will remain in place in place to ensure that development within the zone is consistent with the above identified applicable policies of the comprehensive plan. This approval criterion is met.

The proposed code amendment was also reviewed for conformance with the applicable Statewide Planning Goals and administrative rules adopted by the Department of Land Conservation and Development. The following goals and administrative rules are applicable to the proposed code amendment:

- **Goal 1 – Citizen Involvement:** *To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.*

The proposed amendments conform to this goal because the process to adopt the amendments requires public notice and affords the public an opportunity to review, comment, and take part in the approval process. In addition to the formal adoption process, the City held four public work sessions with the Planning Commission to provide the public an opportunity to review the code amendments prior to the official adoption process.

- **Goal 2 – Land Use Planning:** *To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.*

The City has established a land use planning process and policy framework as a basis for all decisions and actions related to the use of land and to assure an adequate factual base for such decisions and actions. The SACP has been adopted by the City and acknowledged by the Land Conservation and development Commission as being in compliance with the statewide goals, state statutes, and state administrative rules.

The proposed amendments modify the review and approval requirements for refinement plans to provide needed clarity that further prescribes the relationship between the Fairview plan and refinement plans in order to reflect the original legislative intent of the zone and how the code has historically been applied. The proposed amendments:

- ❖ Add language providing greater clarity regarding the purpose of the Fairview Plan and its regulatory authority over subsequent refinement plans.
- ❖ Revise the approval criteria for refinement plans under SRC 530.030(e) to specify which specific portions of the Fairview plan that refinements plans must be found to be in conformance with.
- ❖ Clarify that the maps and drawings in the plan are conceptual/illustrative in nature and may be further revised by refinement plans in substantial conformance with the thirteen sustainable land use principles included in the Fairview Training Center Redevelopment Master Plan document.
- ❖ Clarify who has standing to initiate amendments to the Fairview plan and refinement plans.
- ❖ Clarify that amendments to the Fairview plan and refinements plans are actual changes to the text and/or supporting documents of the plans, not site-specific proposals for development requesting deviation from the standards of a refinement plan (e.g. a request that would normally be addressed through a variance or adjustment to the standard rather than an amendment to the plan).

The proposed changes further clarify and improve the City's land use planning process. The proposed amendments therefore conform with this goal.

2. Public Testimony

Public testimony on the overall package of amendments included in the 2021 UDC update was provided during the Planning Commission and City Council public hearings on the amendments. Public testimony provided specific to the amendments to the FMU zone included two comments in favor and one comment in opposition.

One comment received in favor of the amendments indicated that it is highly recommended that the City Council approve the changes to the zoning ordinance because without the proposed changes the properties within the master planned area which are not currently approved with a refinement plan, or ones that may need amending in the future, will likely become even more uncertain as to the development potential. It is explained that in looking back at all of the refinement plans that have been approved to-date, likely none would have withstood the rigid interpretation handed down by LUBA in the *Mumper v. City of Salem* case. The comment indicates that uncertainty as to the parameters of what and how the 270 acres can be developed, both by City staff and developers, leaves the future of the Fairview property in a state of unknown, which usually means undeveloped. It is explained that one important aspect necessary for the success of this development as envisioned by the City depends on build out of the entire master development. Unfortunately, without these staff recommended changes, such connection is unlikely any time in the foreseeable future.

The other comment submitted in favor of the amendments indicated that Simpson Hills LLC is one of the largest single land owners within the Fairview FMU zone and they support the

modifications recommended by City staff because without the proposed modifications development on the Simpson Hills LLC property will be severely affected in a negative way.

The comment received in opposition objects to the proposed amendments based on the following issues:

- The amendments are internally inconsistent and inconsistent with the Fairview Master Plan.
- The amendments are intended to weaken the standards and criteria.
- The amendments limit criteria for refinement plan amendments. Instead of consistency, substantial conformance is required.
- Weakening of the criteria does a disservice to original Fairview Master Plan and Council's constituency.
- The amendments relegate the master plan vision to mere superfluity.
- Amendments deem plans and drawings for streets, utilities, paths/trails, etc. as conceptual in nature and may be revised by refinement plan.
- Amendments are inconsistent with the requirements in SRC 530.030 that refinement plans further refine and implement the Fairview Plan. If what is contained in the Fairview Plan is simply conceptual, then amendments to refinement plans would not actually be implementing or refining the Fairview master plan.
- The Fairview Master Plan contains numerous diagrams that cannot be simply conceptual because the text of the plan specifically implements those diagrams. The City cannot say that the diagrams are conceptual without also affecting the text of the Fairview Master Plan.

Staff Response: The proposed amendments to the FMU zone include revisions required to bring the zone into compliance with recent changes in State law (*including HB3109 concerning child day care homes and centers*); revisions to allow managed temporary villages for the unsheltered and emergency shelters; and revisions to address issues raised in LUBA's decision in the *Mumper v. City of Salem* case which reversed the City's approval of a refinement plan and subdivision for approximately 14.07 acres of the former Fairview Training Center site located in an area known as "The Woods."

In *Mumper v. City of Salem*, a refinement plan and corresponding subdivision was approved by the Planning Commission for residential development of approximately 14.07 acres of the former Fairview Training Center site. The Planning Commission's decision was appealed and subsequently affirmed by the City Council. The City Council's decision was appealed and later reversed by LUBA because the proposed development was found to be inconsistent with the Fairview Master Plan.

In order to address the issues raised in the LUBA decision and amend the FMU zone in a manner that reflects past interpretation and application of the zone in the approval refinement plans, a series of amendments are proposed to:

- Provide greater clarity regarding the purpose of the Fairview Plan and its regulatory authority over subsequent refinement plans.
- Revise the approval criteria for refinement plans under SRC 530.030(e) to specify which specific portions of the Fairview plan that refinements plans must be found to be in conformance with.
- Clarify that the maps and drawings in the plan are conceptual/illustrative in nature and may

be further revised by refinement plans in substantial conformance with the thirteen sustainable land use principles included in the Fairview Training Center Redevelopment Master Plan document.

- Clarify who has standing to initiate amendments to the Fairview plan and refinement plans.
- Clarify that amendments to the Fairview plan and refinements plans are actual changes to the text and/or supporting documents of the plans, not site-specific proposals for development requesting deviation from the standards of a refinement plan (e.g. a request that would normally be addressed through a variance or adjustment to the standard rather than an amendment to the plan).

Testimony in opposition to the amendments indicates they are internally inconsistent, inconsistent with the Fairview Master Plan, weaken the standards and criteria, and relegate the master plan vision to mere superfluity.

It is not the intent of the proposed amendments to weaken the standards and criteria of the FMU zone or to diminish the vision originally established by the Fairview Plan. The amendments are instead intended to address the recent issues that have arisen in the application of the zone and to provide for needed additional clarity to ensure that interpretation and application of the zone aligns with its original intent and purpose and how the zone has been historically applied to past approvals.

The stated purpose of the FMU zone, as provided under SRC 530.001, is to implement the mixed-use designation of the Salem Area Comprehensive Plan by establishing a master planning process through which allowed uses are identified and development standards are established which fulfill a series of identified goals calling for the innovative sustainable mixed-use development of the former Fairview Training Center site.

An important aspect of the stated intent and purpose of the zone is to establish a master planning process that identifies **allowed uses** and **development standards**. This differs from a typical master planning process where specific uses are identified and a specific site development pattern/layout is established. In the case of the FMU zone, master planning instead involves a two-step approval process which first requires the approval of a Fairview Plan for the entire FMU zoned area and then the approval of subsequent refinement plans that generally, but are not required to, apply to smaller areas of the site.

As provided under SRC 530.020, the Fairview Plan is a master plan that identifies the goals and policies, and serves as the guiding document, for development within the FMU zone; SRC 530.030 provides that refinement plans are detailed regulatory plans that implement the Fairview Plan. Based on the identified purpose of the Fairview Plan and refinement plans, and the intent and purpose of the FMU zone to establish a master planning process through which allowed uses and development standards are identified, the submittal requirements and approval criteria for the Fairview Plan and refinement plans achieve the overall purpose of the FMU zone. The proposed amendments do nothing to diminish this purpose and instead provide additional needed clarity to better prescribe the requirements for, and relationship between, the Fairview Plan and refinement plans.

Testimony in opposition to the amendments indicates that they inappropriately limit the approval criteria for refinement plan amendments to require only substantial conformance, rather than consistency, with the Fairview Plan and incorrectly deem plans and drawings for

streets, utilities, paths/trails, etc. as conceptual in nature and subject to revision by refinement plans.

The testimony provided in opposition is correct that the proposed amendments change the approval criteria for refinement plans and identify the drawings included within the Fairview Plan as conceptual. These proposed changes, however, are necessary to provide needed additional clarity and more clearly prescribe the relationship between the Fairview Plan and refinement plans in furtherance of the intent and purpose of the FMU zone.

The purpose of the Fairview Plan is not to establish a detailed prescribed master plan laying out the development for the entire Fairview site. Instead, the purpose is to identify the overall goals and policies for development within the FMU zone. In furtherance of this purpose the submittal requirements for the Fairview Plan included under SRC 530.020(c) require submittal of a description of the purpose, main concepts, goals, policies, and general development guidelines for development within the zone, an overall open space plan and transportation and mobility plan, and a series of additional items for the purpose of analyzing and inventorying the site. A detailed site plan identifying the specific development of the site and proposed mix of uses is not, however, required to be submitted with the Fairview Plan. That greater level of detailed master plan site planning is instead reserved for the approval of subsequent refinements plans which is illustrated by the submittal requirements for refinement plans included under SRC 530.030(d) which require, among other things, an illustrative site plan, identification of the land uses to be allowed within the refinement plan area, a general allocation and identification of major proposed land uses, typical street cross sections, detailed standards governing development within the refinement plan area (*such as development densities, setbacks, lot coverage, parking requirements, etc.*), and the location of proposed utilities.

The proposed amendments add necessary clarifying language to the requirements of the zone in order to reflect that it is at the refinement plan level, and not the Fairview Plan, where more specific and detailed master planning and site development layout is intended to occur. The plans and drawings included in the Fairview Plan are therefore correspondingly intended to be conceptual and illustrative in nature and further refined by the more detailed site planning efforts conducted with refinement plans. The proposed modified approval criteria for refinement plans ensure conformance with the Mixed-Use policies of the Salem Area Comprehensive Plan and the intent and purpose of the FMU zone by requiring all refinement plans to be in substantial conformance with the Fairview Training Center Redevelopment Master Plan, the applicable sustainable land use principles of the plan, the applicable goals and policies of the Salem Area Comprehensive Plan, and the sustainable mixed-use goals included within the zone which the Fairview Plan must also be in compliance with.

The authority for the master planning process for development of the former Fairview Training Center site rests in the FMU zone. The proposed amendments revise the requirements of the FMU zone to provide additional needed clarity to more clearly prescribe the relationship between the Fairview Plan and subsequent requirements plans and reflect the original intent of the zone and how it has been historically applied to the approval of past refinement plans.