

MEMORANDUM

CONFIDENTIAL CORRESPONDENCE ATTORNEY-CLIENT PRIVILEGE

TO: Mayor Robert Gatt
City Council Members

FROM: Thomas R. Schultz, Esq.

RE: Draft City West Ordinance—Wetlands/Woodlands Issues

DATE: August 17, 2023

Included in this week's off-week packet is a revised version of the proposed City West text amendment. One thing that City Council will note when reviewing it is that there is no new or specific set of regulations included for woodlands and wetlands within the City West area. We did hear during the last City Council meeting some discussion about potentially including more rigorous environmental standards specific to the properties contemplated for rezoning to this district. The reason we have not included any additional regulations relating just to the affected properties is because we do not believe that the City has the ability to single out the environmental features of this particular area for special or additional regulation, as compared to other properties within the City. A set of extra, more rigorous regulations just for this area and these properties, in our view, would raise not only Equal Protection issues, but a general question of what legitimate governmental interest there is in treating these particular wetlands and/or woodlands differently from others throughout the City.

The City does of course retain all usual discretionary authority that it has with regard to the regulation of woodlands and wetlands under those separate ordinances, without adding any regulations in this new ordinance. What staff is proposing is to make it even more clear that, in order to get access to the discretionary mixed-use option, a property owner will need to address the effect of the development on woodlands and wetlands. In other words, the woodlands and wetlands on any given piece of property may be taken into consideration by the City Council in determining whether to grant (or not) a specific development proposal. From our perspective, then, the proposed revisions to the ordinance represent an appropriate set of regulations relating to environmental features, consistent with the way the City regulates other properties.