



## **2022 OTHER HOUSEKEEPING AMENDMENTS (O2022-015)**

### **STAFF REPORT**

#### **GENERAL GOVERNMENT COMMITTEE BRIEFING**

##### **Issue**

During 2020 and 2021, staff gathered information on proposed minor housekeeping amendments in the Tumwater Municipal Code to be considered collectively in 2022 that are not part of the development code, which is defined as Title 16 *Environment*, Title 17 *Land Division*, and Title 18 *Zoning*. The two housekeeping amendments are separate from the development code housekeeping amendments being considered as part of Ordinance No. O2022-013 that are following the process in TMC 18.60.025(A), but will follow the same schedule.

In addition, while the Planning Commission did not recommend that specific amendments to Title 12 *Streets, Sidewalks and Public Places* move forward at this time as part of Ordinance No. O2022-015, Planning Commission recommended that the City Council consider a public engagement and a voluntary support program before proceeding with specific amendments to Title 12 *Streets, Sidewalks and Public Places*.

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**Summary**

The proposed amendments are intended make minor corrections to the City's municipal code.

**Background**

The amendments are a part of the approved 2022 Long Range Planning work program.

**Other Housekeeping Amendments (Ordinance No. O2022-015) Summary**

The following is a summary of the two proposed amendments that were included in the other housekeeping amendments in Ordinance No. O2022-015:

A. Staff Reports for Hearing Examiner - Schedule

Review when a staff report is needed for a hearing examiner hearing. The hearing examiner has asked that the date when staff reports have to be available be changed from the current five working days prior to the public hearing to seven days.

Code Section to be amended:

- TMC 2.58.110 – Distribution of information – Hearing Examiner

Proposed amendment language:

***2.58.110 Distribution of information.***

*The department of community development shall provide for the distribution of reports, comments and other appropriate information, including those of other government agencies, to the hearing examiner. This process shall comply with the provisions of TMC Title 14, Development Code Administration, and the provisions of this chapter. In addition thereto, the department shall prepare a report summarizing the factors involved and the department's findings and recommendations. At least ~~five~~seven working days prior to the scheduled hearing, the report shall be filed with the examiner and copies thereof shall be mailed to the applicant and made available for public inspection. Copies thereof shall be provided to interested parties upon payment of reproduction costs.*

B. Traffic Study Requirements

Update the criteria for when a traffic impact analysis study is required.

Code Section to be amended:

- TMC 15.48.060 – Traffic study – Transportation Concurrency Requirements

Proposed amendment language:

***15.48.060 Traffic study.***

*Nonexempt building permit applications for the following types of developments must be accompanied by a traffic impact analysis study prepared by an engineer registered in the state of Washington with special training and experience in traffic engineering and who is a member of the Institute of Transportation Engineers and submitted by the applicant:*

- A. Development that generates fifty or more vehicle trips in ~~the peak direction of the peak hour~~ on the adjacent streets and intersections; or*
- B. Development that generates twenty-five percent or more of peak-hour traffic through a signalized intersection or the critical movement at an unsignalized intersection.*

*All developments that are estimated to generate ten or more vehicle trips, five or more truck trips, or one or more trips to any Interstate 5 interchange must provide trip distribution diagrams prepared by a qualified transportation professional even if a full traffic impact analysis is not required.*

**Recommendation for City Council Further Action before Making Amendments**

The following is a summary of an amendment to Title 12 *Streets, Sidewalks and Public Places* that was originally included in the other housekeeping amendments in Ordinance No. O2022-015, but the Planning Commission decided at their July 26, 2022 worksession to pull the proposed amendment from the ordinance and recommend that the City Council undertake other actions first.

**C. Sidewalks – Obstructions, Maintenance, and Repair**

At the request of City staff, address short-term and long-term sidewalk maintenance. The intent would be to clarify which owners are responsible for maintenance of sidewalks. Currently, neither the *Tumwater Municipal Code* nor the *Tumwater Development Guide* clearly addresses this issue.

New Code Sections to be created:

- TMC 12.08.035 – Removal of sidewalk obstructions – Street and Side Obstructions
- TMC 12.12.070 – Sidewalk maintenance and repair – Construction of Curbs and Sidewalks

Proposed amendment language, new sections added:

***12.08.035 Removal of sidewalk obstructions.***

*It shall be the duty of the owner of abutting property to remove or correct any condition which renders any sidewalk, curb, or driveway unsafe or unfit for use, including snow, ice, or obstruction of any kind, natural or artificial.*

*[...]*

***12.12.070 Sidewalk maintenance and repair.***

*It shall be the duty of the owner of abutting property to keep the sidewalk, curb, and any driveway access in good repair at the owner's own expense. The owner shall maintain, or replace if necessary, the sidewalk, curb, driveway, or street tress to remove or correct any condition which renders any such sidewalk, curb, or driveway unsafe or unfit for use, including slopes (running and cross), lips or displacements, cracks, and algae and other slip hazards.*

### **Planning Commission Discussion**

At the Planning Commission briefing on July 12, 2022, the Commission raised a number of questions regarding the amendments proposed to address short- and long-term sidewalk maintenance responsibilities of the adjoining property owners.

Transportation Manager Mary Heather Ames attended the Planning Commission worksession on July 26, 2022 to help answer questions and discuss the proposed amendments.

Some of the issues raised by the Commissioners included:

- ***How will property owners in the City know about the proposed amendments and their responsibilities for short- and long-term maintenance after the code amendments are complete?***

Currently the City has regulations in the Tumwater Municipal Code that are related to the proposed amendments:

1. ***8.04.030 Public nuisance defined.***

*A public nuisance consists of doing an act, or omitting to perform a duty, or permitting an action or condition to occur or exist which:*

- A. *Unreasonably annoys, injures or endangers the comfort, repose, health or safety of others;*
- B. *Is unreasonably offensive to the senses;*
- C. *Unlawfully interferes with, obstructs or tends to obstruct, or renders dangerous for passage, any stream, public park, square, highway, public trail, or public right-of-way in the city;*
- D. *Unlawfully interferes with, damages or pollutes habitat areas, critical areas, open spaces, restoration sites, groundwater, creeks, lakes, wetlands, wetland buffers, and similar areas;*
- E. *In any way renders other persons insecure in life or the use of property;*
- F. *Interferes with the comfortable enjoyment of life and property;*
- G. *Creates or permits the existence or continuance of any of the specific nuisances identified in this chapter.*

*(Ord. O2013-004, Amended, 10/15/2013; Ord. 616, Added, 04/18/1972. Formerly 8.04.010)*

Ordinance No. 616 (1972) explicitly addressed removing snow and ice and vegetation from public sidewalks. Ordinance No. O2013-004 (2013) replaced the code sections dealing with these specific issues.

2. **12.08.010 Obstructing streets prohibited.**

*No person shall deposit, place or put, nor suffer to be deposited, placed or put, by a person or persons in his or her employ, any goods, wares, firewood, coal, lumber, chattels or merchandise of any description whatsoever, in any of the streets, highways, alleys, or other public places of the city, except while counting or shipping the same, or actually removing the same into or out of some building or enclosure, or loading the same into or unloading the same out of some vehicle.*

*(Ord. O2011-007, Amended, 07/19/2011; Ord. 126, Added, 05/23/1922)*

Ordinance No. 126 (1922) provided the language still used in TMC 12.08.010. Ordinance No. O2011-007 (2011) removed the specific penalties that were included in the section.

3. **12.24.030 Trees and shrubs endangering usefulness of streets and sidewalks – Public nuisance.**

*Trees, plants, shrubs or vegetation, or parts thereof, which endanger the security or usefulness of any public street, sidewalk, sewer or other underground utility, are declared to be a public nuisance, except that*

*trees may extend over the sidewalk when kept trimmed to a height of eight feet above sidewalks and fourteen feet above a roadway.*

*(Ord. 909, Added, 08/15/1981)*

**12.24.040 Abatement of nuisance.**

*The public works director, or his/her designee, shall by written notice require the owner of such nuisances described in TMC 12.24.030, in addition or alternative to the penalties prescribed by TMC 12.24.090, to abate the nuisance by trimming, destroying or removal, at the owner's cost and expense within the time specified by the director; provided further, that if the destruction, trimming, or removal is not made by such owner within the time specified, the director may abate the same and render a bill covering the cost of such abatement.*

*(Ord. O2011-002, Amended, 03/01/2011; Ord. 909, Added, 08/15/1981)*

Ordinance No. 909 (1981) provided the language still used in TMC 18.24.030 and TMC 12.24.040. Ordinance No. O2011-002 updated the department names.

There are also notes in specific approved final plats that reinforce these code sections.

Staff would need to work with our Communications team on a citywide notice to all residents about the updated ordinance followed by notices that are more detailed to property owners adjacent to known defects from the transition plan. There would likely be a lengthy notice period before the City starts enforcement, perhaps two to five years.

- ***How can the City help property owners who are elderly or have other challenges keep their sidewalks clear of vegetation and snow?***

This would be subject to further discussion with the City Council, as the City cannot assist with snow removal, as staff does not remove snow on any sidewalks in the City given our limited equipment and crews. Staff is not aware of any agency that handles snow removal for sidewalks. It is typically a “help your neighbor” situation, but some residents contact the City for emergency purposes and staff helps, as they are able. It is similar for vegetation removal but staff are able to help more often given the requests do not typically occur when all our staff are on roadway snow response.

- ***How does the City explain the long-term cost implications and who will pay: property owner directly or the property owner to the City to have the City do the work instead?***

This item remains open for further discussion. The City may have had a program in the past in which the property owner paid 25% and the City paid 75%. Property owners would proactively contact the City about sidewalk defects in front of their parcels and request that they be added to a City project. Staff would be in favor of restarting a similar program.

- ***Liability issue: if the City's code explicitly states that it is the adjoining property owner's responsibility to maintain sidewalks (snow, ice, vegetation, etc.), will it encourage lawsuits?***

The City can shift maintenance responsibility to abutting properties, but it is our understanding is the City cannot shift liability absent the property owner being the cause of the defect (See *MRSC - Sidewalk Construction, Maintenance, and Repair* and *MRSC - Sidewalk Trip and Fall . . . Who is at Fault? Who Pays? (2013)* at <https://mrsc.org/Home/Stay-Informed/MRSC-Insight/May-2013/Sidewalk-Trip-and-Fall-Who-is-at-Fault-Who-Pays.aspx>).

The City will generally always be liable, but staff would need to confirm this with our City Attorney.

According to Sophie Stimson, who is the Transportation Planning and Engineering Supervisor in the City of Olympia Public Works Department, Olympia requires adjacent property owners to maintain and repair sidewalks, but does not enforce those provisions outside of a soft encouragement. Some streets they take on the work themselves. However, they have a huge backlog of both types repairs (those they should do and those property owners should do). Olympia will examine their policy around sidewalk repair more thoroughly next year. The sidewalk repair presentation that Olympia staff gave their Land Use and Environment Committee in February 2022 is included in the packet as Attachment D.

The City of Lacey does not have any requirements.

After discussion at their worksession on July 26, 2022, the Planning Commissioners recommended that the proposed amendments be taken out of the ordinance. The Planning Commission asked that staff discuss the public engagement process that would be required to implement the amendments, as well as working to establish a volunteer support program for property owners unable to maintain their sidewalks with City Council first and then address amendments later.

### **Public Approval Process**

An Environmental Checklist for a non-project action was prepared on June 10, 2022 under the State Environmental Policy Act (Chapter 43.21C RCW), pursuant to Chapter 197-11 WAC, and a Determination of Non-Significance was issued on July 7, 2022.

The ordinance was sent to the Washington State Department of Commerce on June 10, 2022 for the required 60-day review before the proposed text amendments were adopted, in accordance with RCW 36.70A.106.

The Planning Commission received a briefing on the proposed other housekeeping amendments on July 12, 2022 and held a worksession on the ordinance on July 26, 2022.

A Notice of Public Hearing for the Planning Commission was issued on July 29, 2022 prior to a public hearing. The notice was posted, published as a press release, distributed to interested individuals and entities that have requested such notices, and published in *The Olympian*.

The Planning Commission held a public hearing for the amendments on August 9, 2022. Following the public hearing and deliberations, the Planning Commission made a recommendation that Council on the amendments and the next steps for sidewalk maintenance and repair.

The General Government Committee is scheduled to review the amendments in a briefing on September 14, 2022 and recommend that the ordinance be discussed at a City Council worksession. The City Council is scheduled to review the amendments at a worksession on September 27, 2022 and consider the amendments on October 4, 2022.

### **Public Notification**

A Notice of Public Hearing was issued, posted, mailed to interested parties, and published in *The Olympian* on July 29, 2022, after the Planning Commission set the public hearing date.

### **Staff Conclusions**

1. The proposed text amendments are consistent with the goals of the Washington State Growth Management Act.
  - a. This ordinance are consistent with Goal 7 of the Growth Management Act which states:

*“Permits. Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability.”*

The Ordinance establishes concise requirements for the application, review process, and approval of planned unit developments.

2. The proposed amendments are consistent with the Economic Development Plan because the proposed amendments improve the clarity and specificity of the regulations for submittal, review, and approval of planned unit developments.



- a. Goal #1 of the Economic Development Plan states:

*“Establish a development climate that stimulates economic activity and desirable investment.”*

- b. The text of the Economic Development Plan states that one of the ways to support Goal #1 is:

*“...by making ongoing improvements to existing development regulations, systems, and processes.”*

- c. Action item 1.D. of the Economic Development Plan states:

*“Ensure a predictable and efficient experience for business owners and developers seeking to invest in Tumwater.”*

This Ordinance will need to be improve the existing regulations for the application, review process, and approval of planned unit developments.

3. Based on the above review and analysis, staff concluded that the proposed text amendments are consistent with the requirements of the Washington State Growth Management Act and the Tumwater Comprehensive Plan.

### **Planning Commission Recommendation**

The Planning Commission recommends approval of Ordinance No. O2022-013.

In addition, while the Planning Commission did not recommend that specific amendments to Title 12 *Streets, Sidewalks and Public Places* move forward at this time as part of Ordinance No. O2022-015, Planning Commission recommended that the City Council consider a public engagement and a voluntary support program before proceeding with specific amendments to Title 12 *Streets, Sidewalks and Public Places*.

### **Effects of the Proposed Amendments**

The proposed text amendments would necessitate changes to the Tumwater Municipal Code.

### **Staff Contact**

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