

TUMWATER CITY COUNCIL WORKSESSION
MINUTES OF VIRTUAL MEETING
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CONVENE: 5:30 p.m.

PRESENT: Mayor Pete Kmet and Councilmembers Leatta Dahlhoff, Joan Cathey, Michael Althausen, Angela Jefferson, Eileen Swarthout, Debbie Sullivan, and Charlie Schneider.

City Administrator John Doan and City Attorney Karen Kirkpatrick Community Development Director Michael Matlock, Water Resources & Sustainability Director Dan Smith, Finance Director Troy Niemeyer, Transportation and Engineering Director Brandon Hicks, Communications Manager Ann Cook, and City Clerk Melody Valiant.

EXPERIENCE
OLYMPIA & BEYOND
UPDATE:

Annette Pitts, Chief Executive Officer, Experience Olympia & Beyond (a.k.a. Olympia-Lacey-Tumwater Visitor & Convention Bureau (VCB)), briefed the Council on the future strategic direction of the VCB and the status of the organization over the course of the pandemic. Highlights of the presentation included the following:

- The pandemic severely impacted tourism and the hospitality industry in the region.
- The region averaged over 3,200 jobs within the hospitality industry during 2020.
- The VCB continues to fulfill the objective of helping to drive the regional economy. In Thurston County, the tourism industry generated over \$345 million in revenue during the pandemic.
- One lesson learned during the pandemic was the need to embrace change and explore ways of expanding the economy through a lens of public health and safety requiring a paradigm shift.
- Six building blocks of the VCB include:
 - Recovery – Sensitivity, safety, and a balanced approach.
 - Discovery – The travel landscape has changed requiring changes in the region as well. Understanding the changes is a critical component for the VCB moving forward with driven and fact-based decision-making the rule.
 - Craft a destination – Influence destination development initiatives to enhance visitor experience while maintaining and enhancing local quality of life and honoring shared community values.
 - Deploy communications both to travelers and the community.
 - Track, measure, evaluate, adjust, and repeat – Initiatives and programs will be monitored, quantified, and adjusted with regularity based on sound, technology-based measurement tools.
 - Build the economy – Plan and execute through the lens of

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building revenue to support and drive the Thurston region. Ensure encouragement of responsible tourism, commitment to a lengthy discovery process, identify and address gaps through programmatic changes, continue traditional methods of communication to potential travelers and community stakeholders, be willing to adapt to changing conditions, and track, measure, verify, evaluate, and adjust as needed.

- The immediate path forward is through the Destination Development Plan (research-based) and the Mid-Range Strategic Plan (2023-2026) based on research and data with input from members, the Board, and from a series of surveys with community stakeholders and several stakeholder focus group meetings. Travelers were surveyed and traveler demographics were analyzed to target opportunity areas. The VCB conducted a complete market inventory (lodging occupancy rates & average revenue to gauge health of lodging partners) and tracked pre-pandemic consumer behavioral changes (short-term rentals).
- The VCB plans to revamp the website.
- The VCB discontinued membership dues.
- The VCB is expanding the branding of *Experience Olympia and Beyond* to all jurisdictions in the county to include integration into the website's new design with separate domain names for each jurisdictional partner.
- The VCB added a new director of research and administration and a new director of marketing.
- All efforts conform and comply with the mission statement to strengthen the region's economy by developing meaningful and promoting travel to vibrant Thurston County. The VCB is accredited through Destinations International.

Ms. Pitts reviewed current efforts in support of the Destination Development Plan Action Plan in the following categories:

- Research
- Contact Development
- Advertising
- Public Relations
- Community Development

Ms. Pitts shared several graphs of information on the economic impact of VCB efforts throughout the region and in Tumwater:

- ❖ Tumwater results (zip code 98501) on trackable arrivals from outside the county from January 1, 2021 through October 31, 2021:
 - Approximately \$8.8 million in revenue
 - Average room nights = 2.3 (higher than the county's

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- average of 1.8)
- Average revenue per arrival is over \$300
- Lowest revenue days are Wednesdays and Thursdays
- Top arrival market in terms of revenue is from Seattle, Tacoma, Portland, and Los Angeles

Ms. Pitts encouraged participation in the VCB by attending meetings, signing up to receive email newsletters on up-to-date information, scheduling a standing meeting time to catch up, ensuring Tumwater's tourism-related businesses are included on the VCB website, and supporting the VCB's certified tourism ambassador program (training classes are provided by the VCB).

Ms. Pitts invited the Council to attend VCB's Annual Meeting scheduled on November 18, 2021 at the Yelm Cinemas from 8 a.m. to 10:30 a.m. Breakfast will be served. The event is free. This year's theme is "It's a Wonderful Life in Thurston County."

Mayor Kmet asked whether number portability for cell phones has any affect on the data collected by the VCB. Ms. Pitts said the data systems filter cell phone numbers regardless of where the number was assigned.

Councilmember Swarthout expressed appreciation for the opportunity to serve on the VCB Board and complimented Ms. Pitt's recent efforts to improve services and tracking data for the region.

**DEVELOPMENT
AGREEMENT WITH
PORT OF OLYMPIA
FOR NEW MARKET
INDUSTRIAL
CAMPUS (NMIC):**

In preparation for the public hearing and action on the proposed Development Agreement between the City of Tumwater and the Port of Olympia, City Administrator Doan provided background on the process to date to include a description of the subject property, issues, communication with the Port of Olympia, next steps, and the impact of the agreement on the City's budget.

The development agreement is for 200 acres of Port of Olympia land zoned Airport Related Industrial identified within the New Market Industrial Campus Master Plan Draft created by the Port of Olympia.

The City's typical development process follows the following steps:

1. City Council adopts plan, zoning, and regulations applicable to new development.
2. Property owner and/or development interest (applicant) enter into relationship to explore development of the property.
3. Applicant works with staff informally or meets with the Development Review Committee (DRC) to review requirements for zoning, SEPA, infrastructure improvements, fees, and project timelines.

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4. Ownership interest may be finalized.
5. Projects may be speculative or have a tenant specified.
6. DRC review moves from feasibility to preliminary to formal.
7. Permit application(s) are submitted.
8. Public notice and comment opportunity.
9. Review for compliance with City regulations.
10. Potential public hearing prior to decision.
11. City issues (permit(s)).
12. Appeals of permit decision.
13. Technical code review and construction design.

The process for the proposed development agreement was initiated in June 2020 with comments from Mayor Kmet submitted to Commissioner Downing on the Port's plan to enter into a lease option agreement with Panattoni Development. The Port approved the lease option agreement with Panattoni in July 2020. That agreement provides Panattoni with the sole option to lease 200 acres of Port property.

In February 2021, the Port forwarded a letter to the City followed by a memorandum from the Mayor and City Administrator to the Port on some elements of negotiation. The Council conducted a Council worksession on March 9, 2021 to discuss options. The Port sent Mayor Kmet a letter on the development agreement proposal on June 22, 2021 with the Mayor responding with comments on July 6, 2021. On July 13, 2021, Port officials presented the proposal to the City Council. On November 8, 2021, the Port Commission adopted a Term Sheet, a summarized direction to the Executive Director for a Development Agreement with the City. The Term Sheet conveys authorization to the Executive Director to sign the Development Agreement provided it is substantially similar to the Term Sheet. Other parties involved in the discussions and negotiations included Panattoni and the Federal Aviation Administration (FAA) as certain airport-related actions are required to comply with FAA rules.

Port Executive Director Sam Gibboney reported the Port Commission approved the Term Sheet as provided to the Council. The action authorizes the Executive Director to work directly with City staff to finalize the development agreement language for the Council's public hearing. General agreement has been attained on the terms with some provisions still under review by each agency's attorney. She continues to work closely with Panattoni, which is not a party to the agreement but would be implementing many elements of the agreement. A final document is anticipated to be completed in a matter of days for the Council's consideration.

Ms. Gibboney thanked Mayor Kmet and City Administrator Doan for

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their efforts during a long and detailed process.

Mayor Kmet asked about any change in the status of Panattoni's lease option and whether any leases have been completed under the framework. Ms. Gibboney replied that the Port has not exercised any leases with Panattoni other than Panattoni is moving forward with developing an application for a structure located at the southern end of Center Street.

Mayor Kmet said the boundary in the development agreement is different than the lease area with Panattoni. He asked whether the Port anticipates any adjustment to the lease option with Panattoni to cover the entire boundary. Ms. Gibboney said some amenities are proposed outside of the current lease option, such as the multipurpose trail. Panattoni has indicated an interest in the increased area including some of the DePaul log yard; however, no agreement has been reached with the Port to exercise those options.

Councilmember Schneider referred to the conceptual development design and questioned how Panattoni would manage stormwater on the property. According to City staff, no injection wells would be allowed on the property. He asked for confirmation of that position at this time. City Administrator Doan recommended deferring the question to Director Smith when he reviews stormwater regulations.

Councilmember Althausen questioned whether the earlier review of the development review process is applied to each parcel as each development project is unique and has different impacts. City Administrator Doan affirmed that each parcel and every project are unique. Individual projects located within the lease option area will undergo a separate and independent City development review process.

City Administrator Doan reminded the Council that throughout the process of finalizing and approving the development agreement, no project has been proposed as the agreement serves as the framework for future development.

Councilmember Jefferson questioned the impacts to the Tumwater School District as the lease option area surrounds the bus depot and is immediately adjacent to a middle school. City Administrator Doan said the Port has engaged with the Tumwater School District.

City Administrator Doan summarized City regulations applicable to all development occurring within the City. Zoning regulates the uses on property, bulk standards of the development, and parking requirements. Design guidelines address the design features of buildings and the site,

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building modulation, setbacks, and pedestrian access. Other City codes are the Building Code, Fire Code, Energy Code, Plumbing, Wellhead Protection, stormwater management regulations, SEPA, tree protection regulations, critical areas, land division or platting regulations, design standards for streets, grading, access, utilities, requirements for concurrency, and a series of state and federal regulations.

City Administrator Doan reviewed the evolution of City issues, the Port's response, and how the issues evolved and were incorporated within the Term Sheet adopted by the Port Commission. The term of the proposal is 10 years from the final adoption of the Habitat Conservation Plan (HCP). The earlier draft of the agreement included a 20-year term. The Port committed to not allowing buildings over 200,000 square feet east of Center Street for the term of the agreement. The agreement acknowledges Kimmie Street and any City utilities would be relocated at the cost of the developer. The agreement includes a commitment of a 10-foot wide paved shared use path along the western edge of the property with two-feet of gravel shoulder on each side of the paved trail. Other provisions include 9.7 acres for a community center or other civic use. Each organization's legal department continues to work on language surrounding the dedication of 9.7 acres. The Port will comply with the Model Toxics Control Act to address any existing contamination, which could include the bark waste existing on some of the properties. The agreement includes a framework for tree protection focusing on the area around the middle school, City wells, areas along Center Street, and along the north property line. Those provisions may be insufficient to meet the City's tree protection standards; however, the provisions are recognized as the first priorities to meet the City's tree protection standards.

City Administrator Doan reviewed the agreement's financial impact to the City. The assumptions for the estimate are based on development of 2.7 million square-feet of industrial warehouse or light industrial space at a Thurston County lease rate of \$.48 per square-foot, private internal street systems, and buildout over 10 years. Revenue includes one-time revenue and ongoing revenue. One-time revenue typically is sales tax generated from the cost of construction. The City estimated less than the Port's estimate of \$2.5 million to the general fund and \$500,000 to the Transportation Benefit District. Factoring a higher inflation rate in the cost of construction would align the estimates more closely. The Port estimated ongoing revenue of \$762,000 to the general fund each year and \$135,000 to the Transportation Benefit District each year. Because the properties are leased, Panattoni does not pay property tax on the value of the land, but pays property tax on the building value and a leasehold excise tax (a function of the amount of the lease). The City's estimated range is \$459,000 to \$536,000 based on valuation of similar buildings

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from other communities. The Port's estimate is higher than the City's estimate. Revenue to the Metropolitan Park District (MPD) is less than the Port's estimate partly because the estimate by the Port included land value in addition to building value. The Port's estimate did not include utility revenue or utility tax revenue for water and sewer. The stormwater utility generates revenue from impervious surface created by the development. Using the buildout estimates, the City forecasts approximately \$190,000 of utility revenue to the Stormwater Utility and approximately \$11,000 in stormwater utility tax. Business and occupation and sales tax could be included dependent upon the uses in the buildings.

City Administrator Doan reviewed the overall financial impact to the City in terms of revenue (both one-time and ongoing) and the value of the \$6 million for land for the City's community center based on the Port's lease rate over a 30-year period. The agreement also expands the City's tax and utility base by providing funding capacity, debt issuance, and completing infrastructure projects. Ongoing revenue would assist the City in stabilizing the ongoing structural deficit facing the City since property tax increases each year capped at 1% is not sufficient to cover the cost of operating the City. Information submitted by the Port outline the creation of 1,700 to 2,600 new jobs. The numbers are based on figures from buildable lands studies and information provided from the City of Lacey's recent development. A single Amazon job fair in the City of Lacey was held to fill 1,000 positions for one warehouse project. The actual number of new jobs is dependent on the function of the actual types of uses.

By November 18, 2021, the Port is submitting a final development agreement for review by the City. Staff is seeking the Council's approval to schedule a special meeting on November 30, 2021 to conduct a public hearing on the proposed development agreement followed by the Council's action.

Councilmember Schneider noted that the proposed agreement speaks to "Kimmie Street could be relocated," which is in conflict with the review by City Administrator Doan. City Administrator Doan said he believes the agreement states that Kimmie Street could be relocated and the conceptual plan reflects the relocation of the Kimmie Street. Councilmember Schneider mentioned that previous comments surrounding the conceptual plan speak to the potential of changes to the design, which could entail Kimmie Street remaining creating truck traffic in front of the school. During the course of many presentations, information was mentioned that as few as 900 jobs would be generated, which has increased to 2,600 jobs. Because the agreement is based on a conceptual design, it is unknown as to the number of new jobs created.

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He questioned the accuracy of the projection without the benefit of knowing the type of development occurring on the property. City Administrator Doan agreed that the projection of jobs is based on assumptions. The Port study examined other areas of industrial-zoned land and a forecasted amount of employment, which is the basis for the Port's employment range. The projected range is across the entire area recognizing a range of different types of businesses.

Ms. Gibboney added that beyond the conceptual layout figures, language and provisions are included in the draft agreement for the termination of Kimmie Street to through traffic to the south. During conversations with the developer, information was shared about internal circulation within the development with driveways exiting to Center Road. The Port is willing to work with the City of Tumwater on traffic regulations for Center Street to direct truck traffic to the north to Tumwater Boulevard. Kimmie Street would no longer be a through street. The language stipulating to the closure is included in the draft agreement.

Councilmember Schneider referred to numerous articles that speak to complete automation of warehouses within the next 15 years. He questioned whether warehouse is the best use of the properties. Ms. Gibboney said the conversations with the developer have encouraged the developer to seek a variety of uses and building sizes. The first building under consideration is for a manufacturing facility.

Director Smith addressed prior questions surrounding requirements for stormwater management. He qualified the review by emphasizing that the City has not received a project proposal that would enable a thorough evaluation. The City has an adopted Comprehensive Stormwater Design Manual that each development project either residential, commercial, or industrial must undergo a process with the City that begins with the project proposal affording an opportunity to evaluate the pathway to stormwater management, conditions, size of the facility, and treatment requirements. The City rarely allows off-site discharges of stormwater. It is only allowed in areas, such as Tumwater Hill where much of hill is comprised of underlying bedrock where water cannot be infiltrated. Underground injection control well is a tool the City allows for the management of stormwater in the City. An underground injection control well is a structure that is built to allow fluid to drain by gravity into the ground in a subgrade capacity. A number of existing projects throughout the City are built underground due to site constraints on smaller lots. A drain field is considered a UIC, as well as a dry well, which is commonly connected to roof downspouts to infiltrate stormwater run-off from the roof to a dry well. When a developer proposes a UIC for a project, staff employs a process to evaluate whether the UIC would be the appropriate tool. Staff reviews criteria for site

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suitability, setbacks from other buildings, depth to groundwater, and water quality dependent upon the proposed land use requiring treatment requirements for stormwater. With respect to the Port properties, one challenge for groundwater management is the depth to groundwater criteria. The City's protection of groundwater includes examining depth to groundwater to ensure sufficient soil coverage from the top of the groundwater level to the bottom of the stormwater facility for sufficient space for the soil to provide additional treatment of stormwater. Other measures for protecting groundwater in addition to depth to groundwater criteria are land use water quality treatment provisions, the City's Wellfield Protection Program limiting certain types of facilities from locating near wells, inspection of businesses located within the City's wellhead protection areas, and monitoring of water quality throughout the City through an extensive network of groundwater monitoring wells. As new development occurs, staff evaluates whether new monitoring wells should be added. During the City's development review process, staff evaluates a project's potential pathways to possible contamination. The City has teams trained in spill response. In the recent past, a large diesel spill occurred off Kimmie Street where both the Port and City staff responded immediately to address the spill and clean up the soil to eliminate any impacts to groundwater. As part of that process, the City is building additional capacity in the City teams to address spills.

With respect to the Port's development proposal, one of the largest challenges for the use of UIC wells is high groundwater. Historic high groundwater flooding in the area of the proposed properties documents the existence of high groundwater. Stormwater requirements include additional monitoring, hydrological studies, and other reports and reviews when a development is not able to maintain five feet of separation from the bottom of the stormwater facility to the top of the groundwater. When those conditions exist, the project must complete another series of analyses to document no impact to groundwater. Should the evaluation reflect impacts to groundwater, City staff works with the developer to mitigate impacts. If impacts cannot be mitigated, a different alternative is necessary to manage stormwater. The level of treatment is based on the type of land use. The protection of groundwater is one of the highest concerns of the City as the City's drinking water is from groundwater.

City Administrator Doan added that over the last 20 years, emphasis on stormwater has increased steadily to address stormwater quantity and quality. Requirements and processes have evolved where each site has a different and unique solution with the engineering and design necessary to determine a solution.

Councilmember Althausen requested clarification on the log yard as it is

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excluded from the proposal at this time. At some point during the discussions, the Port indicated that the log yard would be included into the agreement through an amendment. The presence of waste on the site would likely impact groundwater. He asked why the addition of the log yard would not be included in the initial agreement as opposed to a future amendment to ensure log yard contamination is mitigated. Additionally, the future trail is dependent upon the log yard and if redevelopment of the property does not occur as envisioned in the agreement, it could have implications for mitigating the impacts to groundwater and the trail. Ms. Gibboney affirmed that a trail is planned along the western boundary of the existing log yard. The Port has advised the tenant that it intends not to renew the lease. The Port anticipates leasing the property to the developer. Under the agreement, the Port is obligated to manage its relationships with tenants to provide for the building of the trail. Port leases include provisions for site clean up including the log yard. The current tenant is responsible to restore the property to an acceptable condition. She offered to share the documentation with the Council.

Councilmember Althausen said it appears that the new tenant would incur an obligation to complete the trail segment. He asked whether construction of the trail segment would be delayed if the property remains vacant. Ms. Gibboney advised that the construction of the trail coincide with the development of each adjacent parcel. The trail agreement is between the Port and the City, not the tenants. The Port is responsible for fulfilling the obligations of the agreement. The Port works with each tenant to ensure no gifting of public funds and that the tenant provides the trail.

Mayor Kmet commented that the development of the trail should be completed as one project rather than by each tenant completing a segment. Panattoni is saving millions of dollars by constructing private roads throughout the development rather than public streets. It appears that Panattoni could at least construct the trail once the land becomes available. It also appears the Term Sheet includes some different language and he would prefer the Port include language that speaks to a firmer commitment for completion of the trail by a specific date. Ms. Gibboney advised that conversations are occurring internally about the cost efficiencies and expenditure of resources to complete individual trail segments. The Port is working on a scenario for completing the trail and future maintenance of the trail. The agreement includes specific terms with the City. However, because of uncertainties in terms of future development, once some development thresholds have been achieved and the Port benefits from those developments, the Port is obligated to fulfill certain requirements within the agreement.

Councilmember Schneider acknowledged information provided by staff

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as to the requirements for stormwater management. The proposal pertains to the development of buildings, roads, and parking lots and he is still uncertain as to how the Port plans to alleviate the possibility of more flooding to nearby properties. Director Smith replied that the City's stormwater ordinance requires no net rise of flooding conditions at the property boundary by six inches. Any development proposal must complete modeling analysis to determine the groundwater level under the worst-case scenario. Any new development must monitor groundwater levels for a year through the wet season and then statistically correlate the levels to 1999 levels. If there is more than a six-inch rise at the property boundary, the developer must reconfigure the solution to arrive at a level of six inches or less to protect neighboring properties. If the developer is unable to achieve the standard, the developer must redesign the stormwater system to meet the standard. If the developer is unable to meet the standard with a new redesigned stormwater system, the developer must reconsider the use of the site.

Mayor Kmet added that he served as the City's representative on the committee studying the 1999 flooding of the Salmon Creek Basin. Most of the Port's properties were not impacted by the flooding, as the drainage break for the Salmon Creek Basin is located on the southern edge of the Port property near the City's wellfield. Most of the Port's property is located north of the drainage break with the properties draining to the north rather than to the south where groundwater flooding occurred in the 90s.

Mayor Kmet inquired about the Port's contact with the Tumwater School District. Ms. Gibboney advised that the Port has communicated with the school district on several occasions. She attended a school board meeting during the summer and provided the board with the presentation similar to the Council's presentation. Staff from both the school district and the Port and Panattoni have met to discuss traffic flow near the bus barn.

Councilmember Cathey commented about the confusion as to the parties to the agreement as the Port has lost control of the properties included in the lease agreement with Panattoni. Panattoni has not completed a development plan. The process is too uncertain as Panattoni's presentation to the Development Review Committee was for development of 30 acres for a 450,000 square-foot warehouse. Panattoni has no other source of land for many of the uses desired by the City. She does not understand how the Port can offer promises while the developer lacks a development plan.

Mayor Kmet explained that based on the City's perspective during the review of the Port's agreement with Panattoni, the City was uncertain as

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to whether Panattoni would develop one or more of properties. Subsequently, the City requested development of a conceptual agreement between the Port and the City outlining how the area would develop in the future. The City selected that path with the Port to negotiate an agreement.

Ms. Gibboney added that the Port employs several mechanisms to ensure performance and compliance. The first is participation by Panattoni to review the development agreement in conjunction with the Port. Panattoni will sign a concurrence agreement with the Port affirming to adherence of the requirements within the development agreement. The agreement with Panattoni includes termination clauses as one of its options and it is possible the company could withdraw from further development. The Port would have the option of marketing the property to another entity. The Port remains as the property owner of the properties. Once specific thresholds are attained, the Port is obligated to meet conditions within the development agreement. The Port retains control of its properties. A tenant has the ability to design properties, undergo development review, and develop the property based on requirements within lease agreements and compliance with land use ordinances, environmental ordinances, and state and federal laws.

Councilmember Cathey conveyed concerns that the plan is entirely speculative with no guarantees as to future development that would devastate a large swath of land in the City.

Ms. Gibboney advised that the Port's agreement with Panattoni include performance standards requiring Panattoni to exercise its lease options within a specific timeframe. If unable to exercise lease options, the lease option expires and the Port can negotiate with another developer.

Councilmember Swarthout expressed appreciation for the information shared by staff on stormwater management. Much of the same information has been shared with the Public Works Committee. She asked whether the City is monitoring impacts from the log yard on the City's existing wells. Director Smith explained that the City has monitoring wells near the log yard. There has been no indications that the log yard is causing any contamination to groundwater at this time. The City will continue to evaluate the situation. City staff has inspected the site several times and coordinated those inspections with Port staff.

Councilmember Althaus reviewed his understanding of vesting provisions within the development agreement. Standards in place for design guidelines, stormwater, tree protection, zoning, and development regulations, etc. would be effective the date of the adoption of the HCP and would be the standards applied to all development during the 10

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years of the agreement. His concern is that any future development within the 10 years would not be subject to any changes in environmental regulations that might have changed over time. He would prefer revising the language in the agreement to speak to that issue.

City Administrator Doan explained how the vesting issue was framed within the agreement. One of the challenges is the environmental section of the code as it includes stormwater and SEPA, which cannot be vested. When the Port first considered the lease option with Panattoni, conversations were ongoing about the proposal and that the development would be large warehouse distribution facilities. There were concerns the City might rezone the property to reduce the size of those types of uses to no more than 250,000 square feet. Those conversations resulted in the Port and the City discussing the Port's lease option with Panattoni. The Port of Olympia is an entity similar to the City other than the Port is an economic development agency. For the subject properties, the Port is accountable to the taxpayers, state auditor, and the FAA, and that the use of Port resources is consistent with those limitations. The Port sought an exchange for certainty of zoning for some period of time to enable development of uses consistent with the City's land use regulations. However, the City has yet to define what land use regulations will apply within the development agreement. The Port is seeking certainty of the land use regulations in exchange for 10 acres of land for a community center along with other conditions that could also be considered through permit review. The challenge by legal counsel from the City and the Port is defining what "land use regulations" would be applied.

Ms. Gibboney agreed that there have been discussions pertaining to an exchange of considerations. In many development agreements, the developer requests additional considerations, such as higher density or other changes to existing regulations. In consideration of those provisions, the agreement often includes provisions of other public amenities, etc. In this case, the Port of Olympia is not seeking a change in development regulations, but that existing regulations currently codified would be effective for the duration of the vesting period. Some regulations do not vest based on state law, such as stormwater. Port and City attorneys are working to enumerate the provisions for vesting and specifically exclude the procedural provisions of the code, such as SEPA and other type of procedures that are not allowed to vest under state law.

Councilmember Althaus said his interest is ensuring language is included that speaks to how some regulations are not applicable to vesting.

Councilmember Cathey questioned the intent of section 8 that speaks to approval of specific tree tracts without other mitigation requirements that

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could be required by the City's tree protection ordinance. City Administrator Doan explained that the intent was focusing on the best areas to protect trees to achieve compliance with the City's tree protection ordinance. Protecting the areas with the largest trees and the highest value was deemed to be important. The City has identified many of those areas. Preserving those areas could enable the City rendering a 200-acre protection decision rather than a one-lot decision. Director Matlock agreed that the development agreement does not exempt development from the City's tree protection standards. The agreement directs tree protection efforts to areas that should be preserved. All standards in Title 16 Tree Protection are applicable to any development proposal under the agreement.

Councilmember Cathey requested an inclusion in the agreement that speaks to conflict of interest by public employees or elected officials that no personal benefit would be gained either directly or indirectly from the activities outlined in the agreement. City Administrator Doan pointed out that the City is subject to state law as well as the City's ethics provisions that prohibit any elected official or employee from benefitting from actions they might take as a Councilmember or as a City official. Ms. Gibboney advised of the Port's similar adopted provisions. Councilmember Cathey reiterated her request to include language within the agreement.

Discussion followed on ensuring adherence with the City's tree protection ordinance. City Administrator Doan reported the first priorities for retention of trees is the designation of a large tract of trees around the wells, around the middle school, along Center Street, and the north property line. Other provisions in the tree protection ordinance also apply.

Councilmember Dahlhoff asked about the possibility of developing a flow chart/decision tree linking the City's checks and balances (regulations) as there appears to be disconnect between the City's regulations and the development agreement. City Administrator Doan acknowledged the possibility of expanding information to provide a visual connection to assist the Council in answering community questions.

Councilmember Cathey asked whether the expectation is for the Council to act on the proposed development agreement following the public hearing on November 30, 2021. City Administrator Doan reported the proposal is conducting a public hearing on November 30, 2021 with staff presenting the proposal for consideration by the Council. The decision to reject or adopt is at the discretion of the Council. The document presented during the public hearing would be an actionable document.

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Councilmember Cathey expressed opposition of conducting a public hearing with action to follow because it conveys the wrong message to the public.

Ms. Gibboney added that the Port is working in concert with City Attorney Kirkpatrick to review the draft document for finalization of the draft document to be presented during the public hearing. The Port Commission authorized her to work with City staff and the City Attorney to draft and finalize the language, as well as sign the development agreement as long as there are no material changes to the terms. Any major changes will need to be presented to the Port Commission for approval.

Commissioner Jefferson said she believes the proposal for the Council to render a decision on November 30, 2021 is too rushed, as the process is moving too quickly and deserves more time to ensure the right decision is rendered. Mayor Kmet agreed the Council has options should the Council not accept the agreement following the public hearing on November 30, 2021.

City Administrator Doan pointed out that the process has been ongoing for the last several years and during that time, no public comment opportunity has been afforded. Although the process has generated many public comments, no public hearing has been afforded to receive testimony from the public. The public hearing is an opportunity for the public to comment on the proposal. Any action following the public hearing is at the discretion of the Council.

Mayor Kmet thanked Ms. Gibboney for attending the meeting. He acknowledged the level of effort by City and Port staff.

RECESS:

Mayor Kmet recessed the meeting at 8:30 p.m. for a break.

RECONVENE:

Mayor Kmet reconvened the meeting at 8:35 p.m.

ORDINANCE NO.
O2021-022 - 2021-2022
BUDGET 2ND
AMENDMENT:

City Administrator Doan explained that a budget amendment is routine for a biennial budget at the end of the first year to adjust some forecasts. This amendment is different because of American Rescue Plan Act (ARP) funds received from the federal government and changes to the City's revenue projection in response to the how the economy has been affected by the pandemic.

Director Niemeyer reported the Council is scheduled to conduct a public hearing on the proposed amendment on November 16, 2021 with action proposed at the December 7, 2021 Council meeting.

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The first amendment to the biennial budget was adopted in May restoring most of the 2020 cuts. Since then, the City has experienced strong retail sales and new commercial and residential construction, which has increased revenue to the City. The forecast for the remaining biennium continues to remain strong. The proposed adjustment focuses mostly on expenditures with some revenues from the ARP Act of \$2.5 million over a two-year period. The proposed increase of revenue of \$4.4 million is a forecast with most of it from one-time sources and from the increase in retail sales. However, the forecast is subject to change dependent upon the status of the economy or should inflation increase. Additional general fund expenditures are approximately \$3.5 million for both ongoing and one-time expenses.

Additional general fund expenditures are attributed to police reform training in response to new police reform laws, extra pavement maintenance to take advantage of the extended summer weather, septic replacement at the golf course, and the addition of several positions and promotions to include the addition of sixth Police Sergeant for supervision (police reform), Engineer II and Engineer III positions, Art Specialist, Economic Development Director, and a Department Assistant in the Community Development Department. Ongoing expenses include continued overtime for police, fire, and Community Development, and a 3% cost of living adjustment for non-represented staff. Construction activities include a 1.1 million square-foot Costco distribution center, new apartment complexes, and residential and commercial construction.

Director Hicks responded to questions on whether the pavement maintenance included sidewalks in neighborhoods. A portion of the pavement maintenance project totaling \$630,000 was completed in summer 2021. Because of low bid prices, the project was expanded. It is uncertain if a pavement maintenance project is possible next year; however, it is important to be prepared to take advantage of low pricing in 2022 by increasing the budgeted pavement maintenance project from \$1.85 million to \$2.5 million next year. Uncertainty exists as to whether a pavement maintenance project would be completed in 2022. If no project occurs in 2022, the funds would be used for future projects.

Councilmember Dahlhoff asked whether each City department is allocated personal protection equipment (PPE) and COVID testing for employee safety and testing. City Administrator Doan reported that during the early stages of the pandemic, the City purchased masks and personal protection equipment. The City received reimbursement from the federal government during the first allocation of CARES funding. If the City continues to encumber PPE expenses, ARP funds could be utilized. If the City develops a testing scenario for employees, the City

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could fund the program with ARP funds.

Director Niemeyer advised that the Council is scheduled to conduct a public hearing on the proposed amendment on November 16, 2021 followed by approval at the December 7, 2021 Council meeting.

**MAYOR/CITY
ADMINISTRATOR'S
REPORT:**

Mayor Kmet reported on the submittal of a comment to Thurston County on the county's HCP requesting the county allocate some funds from county conservation fees to assist the City in funding the City's HCP.

The Transportation Coalition forwarded a request to the City to sign onto a letter on behalf of the City to state representatives requesting the inclusion of transit, pedestrian, and bicycle improvement funds in any transportation request.

The Council supported scheduling a special meeting on November 30, 2021 to receive public testimony on the proposed development agreement with the Port of Olympia.

ADJOURNMENT:

With there being no further business, Mayor Kmet adjourned the meeting at 8:52 p.m.

Prepared by Puget Sound Meeting Services, psmsoly@earthlink.net