

# **TUMWATER CITY COUNCIL WORKSESSION**

## **MINUTES OF VIRTUAL MEETING**

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**CONVENE:** 5:31 p.m.

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

Staff: City Administrator John Doan, Planning Manager Brad Medrud, and City Clerk Melody Valiant.

Others: Carrie Martin and Ann Larson, Department of Enterprise Services; David Merchant, Office of the Attorney General; Sarah Reich, ECONorthwest; and Tessa Gardner-Brown, Floyd|Snider.

**ORDINANCE NO.  
O2022-006,  
PLANNED UNIT  
DEVELOPMENT:**

Manager Medrud reported on proposed changes to planned unit development (PUD) regulations. The City's PUD regulations were last substantially updated in 2000. PUDs provide a benefit to developers by giving flexibility to existing regulations. However, current regulations have not afforded the City any quantifiable benefits in exchange for affording developers some flexibility. The proposed amendments would provide developers with the flexibility of existing regulations in exchange for requiring quantifiable public benefits.

Currently, the regulations do not clearly address the requirements for private streets as part of PUDs. The amendments would:

- Provide more specificity on when and how private streets are allowed.
- Amend the definition of a private street in Tumwater Municipal Code (TMC) Title 17 to be consistent with the Tumwater Development Guide and amend the sections of the Tumwater Development Guide that address private streets as needed.
- Amend the definition of Private Street in TMC 17.04.385 to read, "Private Street" means a privately owned and maintained vehicular access serving property, which is provided for by an access tract, easement, or other legal means.

Other amendments include:

- Amend permitted uses:
  - a. Add "planned unit developments" as a permitted use in the Manufactured Home Park (MHP) zone district
  - b. Add "planned unit developments not including residential uses" as a permitted use in the Airport Related Industry (ARI) zone district

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- c. Remove single-family detached dwellings as part of a planned unit development as a permitted use from the Multifamily Family Medium (MFM) zone district
- d. Remove single-family detached dwellings and duplexes as part of a planned unit development overlay as a permitted use from the Multifamily Family High (MFH) zone district
- Change the name of the chapter to remove “overlay”
- Update the intent section to establish a clear list of tangible benefits to be provided by a planned unit development to the public in exchange for flexibility in zoning regulations.
- The size of the project affects the number of tangible benefits required:
  - Projects providing 20 or more dwelling units or industrial, commercial, or institutional projects 20 acres or more in size shall provide at least 2.0 points from the list of tangible benefits
  - Projects providing less than 20 dwelling units or industrial, commercial, or institutional projects less than 20 acres in size shall provide at least 1.0 point from the list of tangible benefits

Manager Medrud reported the Planning Commission discussed quantifiable benefits and conveyed interest in ensuring smaller projects were not burdened with the same level of benefits a much larger project could provide. Staff contacted five local developers on May 16, 2022 with one developer responding. Staff incorporated some suggested changes from the developer within the ordinance.

Manager Medrud reviewed the points assigned to a series of tangible benefits provided to the public. Provisions for the point value in the ordinance require both the City and the applicant to reach an agreement on the value of a particular benefit. Tangible benefits can range from one to two points or a range of points dependent upon the amount of the benefit received:

- Provide enhanced useable parks and open space. *Based on feedback from the General Government Committee, staff updated some of the language.*
- Provide significant public facilities or other public amenities that could not be required by the City for development of the subject property without a planned unit development.
- Go significantly beyond the minimum requirements for critical area protections to preserve, enhance, or rehabilitate critical areas and buffers.
- Dedicate a site containing a building, structure, site, object, or district on a register of historic places.

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- Incorporate energy systems that produce energy from nondepletable energy sources will result in at least fifty percent of the energy needs for the development being met.
- Build passive residential dwelling units that meet the Passive Home Institute US (PHIUS) standard that will result in fifty percent or more of the total dwelling units qualifying as passive homes.
- Go significantly beyond the minimum required energy efficiency requirements for at least fifty percent or more of the energy needs of the development.
- Provide at least twenty percent of the total dwelling units as permanently affordable housing.
- Provide any other public facility, feature, item, project, or amenity proposed by the applicant that the City agrees meets the intent of this section

In addition to the quantifiable benefits as proposed, the ordinance also identifies areas of the City where PUDs would be allowed. Essentially, PUDs would be permitted in all zone districts except Greenbelt (GB), Open Space (OS), Residential/Sensitive Resource (RSR) due to the extreme sensitivity of the areas to environmental disturbance, and Historic Commercial (HC). The proposal amends current code language about the effect of PUD approval on existing zone district regulations and establishes a minimum size for a PUD of one acre.

The proposal updates TMC 18.36.040 for items required in an application:

- a. A description of how the PUD meets the requirements of TMC 18.36.010
- b. A description of how the PUD relates to the surrounding area
- c. If there is more than one underlying zone district then the application must include:
  - 1) A map showing the existing zone district locations, sizes, and densities within the PUD.
  - 2) A map showing the proposed locations of the zone districts within the PUD - the PUD cannot modify the sizes or densities of Comprehensive Plan land use designations or zone districts without an amendment approved through TMC 18.60 *Text Amendments and Rezones*.
- d. How the PUD is accessed and how internal circulation will be addressed
- e. The location and size of critical areas and their buffers on or within 300 feet of the project site
- f. The location and size of open space, parks, and landscaped areas and how they serve the development
- g. Identify the location of stormwater facilities

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- h. SEPA environmental review
- i. Covenants for ongoing maintenance of common areas and stormwater facilities
- j. If phased, a map of proposed phasing, a description of the proposed phasing timeline, and the general type and location of the development in each phase
- k. How the application relates to adjacent properties under similar ownership
- l. How the application allows for future development or redevelopment of neighboring properties

Other proposed code modifications would create a new section explaining how an application cannot modify requirements in TMC Title 16 *Environment* and a new section explaining that the creation of new lots shall follow the requirements in TMC Title 17 Land Division.

Manager Medrud reviewed a list of code modifications that would be allowed and not allowed for PUDs.

Manager Medrud reported public streets are required in a PUD. Exceptions include when streets serve four or fewer residential dwelling units or if the dwelling units are low income, private streets may serve up to 9 detached single-family dwellings or up to 25 attached single family or multifamily dwelling units. When serving four businesses on separate parcels or up to four businesses located on one parcel, those businesses could be served by a private street. All private streets must meet the minimum design standards and requirements for private streets in the Tumwater Development Guide.

The proposal allows for phasing development of a PUD under the following conditions:

- a. For applications with more than 100 dwelling units or commercial or industrial PUDs covering more than 20 acres
- b. Phased approval is limited to 2 but no more than 4 phases
- c. Applications shall show the number of phases, the area each phase encompasses, and the sequence for development of the various phases
- d. How transportation, access, traffic, stormwater, parks and open space, critical areas, and utilities will be addressed needs to be addressed for all phases of the development

The proposal updates the hearing examiner approval process and criteria used to approve or deny an application, updates the appeal process and bonding sections, and creates new sections for:

- a. Final planned unit development approval

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- b. Minor modifications
- c. Major modifications
- d. How applications vest
- e. How long a preliminary approval is valid

The Planning Commission recommends approval of the proposed amendments as reflected in Ordinance No. O2022-006 with modifications recommended by the General Government Committee. Staff requests the Council schedule the ordinance for consideration at its August 1, 2022 meeting.

Manager Medrud responded to questions and comments from the Council:

- As the City currently requires developers to allocate land for parks, clarification was requested for the intent of one of the tangible benefits described as providing enhanced land for parks. Manager Medrud explained that the tangible benefit specific for providing enhanced land for parks is an element that would enable flexibility between staff and the developer to agree on what could be an enhanced park or usable open space. Currently, the City's code requires 15% allocation of land for open space for some residential subdivisions. An enhanced park would exceed minimum requirements or include additional play structures, etc.
- Manager Medrud responded to questions about gated communities. The City's Comprehensive Plan does not allow for gated communities in the City. The proposal includes no modification to existing policy. The intent of the policy is to avoid creating pockets of isolated communities.
- The City's current code requires developers to provide a specific percentage of a site as passive or active open space. Recent code changes included some elements enabling developers to consider an existing park area close to the development. In those instances, the developer contributes funds for improvements to the park. The proposal is a tangible benefit proposed by the developer who would need to demonstrate what actions would be above and beyond current requirements.
- Project applications submitted and determined to be complete at this time would not be subject to the proposed ordinance.
- Manager Medrud responded to a question as to the incentive for a developer to provide benefits above and beyond current regulations. The proposal improves existing regulations as the City currently has no identified tangible benefits it would receive in lieu of enabling the developer to construct a planned unit development. The purpose of a planned unit development is a trade-off whereby the City receives

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a tangible benefit in exchange for providing flexibility to the developer

Mayor Sullivan confirmed the request to schedule the proposed ordinance for consideration during the Council's August 2, 2022 meeting.

#### **CAPITOL LAKE – DESCHUTES ESTUARY LONG- TERM MANAGEMENT PROJECT UPDATE:**

City Administrator Doan introduced the topic and team members involved in identifying the long-term management option for Capitol Lake and the Deschutes Estuary.

Carrie Martin, Capitol Lake-Deschutes Estuary Project Manager, Department of Enterprise Services (DES), reported the presentation would provide information on the foundation and the status of the Capitol Lake-Deschutes Estuary Long-Term Management project to include some historical context and existing environmental conditions that prompted the project.

Tessa Gardner-Brown, Project Consultant, Floyd|Snider, reported the project boundaries extend from Tumwater Falls at the south end to the northern point of West Bay in Budd Inlet. All project actions could occur in those areas with potential impacts and benefits extending beyond the project boundaries. The project includes the 260-acre Capitol Lake. DES is leading the project as DES manages the lake under a long-term lease agreement with the Department of Natural Resources (DNR). Capitol Lake is considered part of the Washington State Capitol Campus. The Legislature directed DES to evaluate long-term management options for the water body. An Environmental Impact Statement (EIS) explored potential impacts and benefits of managing the area as either (1) a managed lake, (2) removal of 5<sup>th</sup> Avenue Dam and restoring the system to an estuary, or (3) a hybrid of both options. A no action option was also considered as required by the State Environmental Policy Act (SEPA).

As part of the project, historical photographs were reviewed to identify existing conditions of the area before installation of the 5<sup>th</sup> Avenue Dam, as well as how the long-term management option could restore conditions. The Olympia Yacht Club and the Port of Olympia existed for decades within the Deschutes Estuary environment. Dredging was a component to enable the entities to exist. Restoring the system to an estuary would not change any upland resources currently in existence. The 5<sup>th</sup> Avenue Dam was constructed in the 1950s to enhance the views from Capitol Campus. Since its construction, the dam has captured sediment moving downstream. The construction of the dam in 1951 resulted in environmental impairments to the area that have been studied and debated for decades. The Capitol Lake swimming beach was closed in the 1980s because of environmental issues.

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The key environmental impairment of the project area is the accumulation of sediment in the south basin of approximately 35,000 cubic yards of sediment moving through the system each year depositing into Capitol Lake. Of the dozen known invasive species in Capitol Lake, the New Zealand mud snail caused the state in 2009 to close the water body entirely with no active public use. The system also suffers from water quality impairments. As part of the Draft EIS, DES worked with the consultant team to evaluate how conditions would change for each of the resources under each of the management alternatives. The findings were previously presented to the Council last year. The analyses highlighted the impacts and benefits for each alternative. DES used those findings in coordination with stakeholders to identify the preferred long-term management option for the water body. After reviewing the material, input from the public, and stakeholder feedback, the estuary alternative was identified as the likely preferred alternative in March 2022. The alternative supports project goals and would result in a variety of improvements.

Sara Reich, Project Director, ECONorthwest, reviewed the work of the Funding and Governance Work Group established in 2016 to identify conceptual options and the degree of general support for shared funding and governance of the long-term management of the system by state, local, federal government, and other entities. Members of the work group include representatives from the City of Olympia, City of Tumwater, LOTT Clean Water Alliance, Port of Olympia, Squaxin Island Tribe, Thurston County, DNR, and DES. The work group established a set of guiding principles for its work and met through 2018, 2019, 2020 in conjunction with the EIS process. Lacking a decision on the preferred alternative, the work group determined funding and governance recommendations were not feasible until a preferred alternative was identified.

The Draft EIS includes recommendations from the work group for construction funding to be the responsibility of the state and funding for long-term maintenance under the estuary alternative based on shared funding and governance. Under the managed lake alternative, long-term maintenance should be state funded and under the hybrid alternative no recommendation was determined. The work group agreed to reconvene after DES identified the preferred alternative.

Following the release of the Draft and after DES identified the preferred alternative, the work group reconvened in spring 2022 with a shared goal of adopting a funding and governance model under the estuary alternative. The model considers a funding allocation to ensure the long-term management of the estuary would be accomplished. The work group agreed to identify a

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governance framework to assign roles and responsibility for long-term management, draft a legal agreement outlining commitments with pathway and timelines for legal implementation of governance and funding, and address questions on roles and responsibilities for federal, state, local, tribal, and private entities.

The work group is currently negotiating a memorandum of understanding (MOU) serving as a bridge document to a binding interlocal agreement (ILA). The MOU includes a table outlining all project assets and the responsible entity. The work group continues work on the funding allocation. The MOU addresses points of agreement the work group has solidified and includes language that defines the points of agreement, as well as background on the work group's charge by the Legislature, as well as the purpose and objectives of the recommendations. The MOU identifies pre-project conditions and the different components of required actions prior to implementation of the preferred alternative. The transfer of assets and contract responsibilities are documented in the MOU, as well as terms of agreement and triggers for renegotiation. The MOU term is through 2050. The MOU will also address the funding allocations for sediment management costs with the work group agreeing to share costs among all members with the exception of the tribe which has not been assigned an allocation based on principles of equity. Pending issues also remain under discussion.

The work group's goal is to execute the MOU this fall and include it within the Final EIS. The MOU is a non-binding agreement designed to signal support and areas of agreement to the Legislature, assist in moving forward the restoration of the estuary, and to serve as a bridging document to a future ILA. Key assumptions included in the MOU designate that the construction would be funded by the state and sediment management would be funded by those entities that benefit.

Ms. Reich described how the work group, working under a set of goals and principles, identified benefits from project implementation of the sediment dredging program and entities affected that would receive benefits and increased economic activity from project improvements and benefits and increased economic activity from sustained activities.

Councilmember Schneider asked whether the Olympia Yacht Club would be included as a beneficiary of the dredging program. Ms. Reich said initial conversations have been completed with the marinas and the Olympia Yacht Club to provide an update on the project. Another meeting is scheduled to discuss long-term sediment management under the no-action alternative and under the implementation of the estuary alternative.



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Ms. Gardner-Brown added that the marinas will contribute toward dredging but it would be consistent with what would occur under existing conditions managed at a consistent level.

Ms. Gardner-Brown reviewed the timeline of actions required before long-term dredging can begin. In October, DES will issue the Final EIS and submit a capital budget request. Should the Legislature appropriate the funds in response to the request, a three to five year design and permitting effort would be initiated for estuary restoration. Estuary construction could begin by the late 2020s requiring six to eight years to complete. The earliest date for removal of the dam would be in 2033. The modeling reflects that dredging would require a six-year frequency to avoid significant impacts to the Port of Olympia and marinas. The first expenditure of significant funds from identified entities would likely not occur until 2040.

Prior to any construction activity, the Port of Olympia is leading efforts to remediate contaminated sediment in Budd Inlet. The Port of Olympia is currently working on remedial design with the goal to complete the design by mid-2025. It would take approximately three years to complete the project before additional sediment is deposited in Budd Inlet.

Councilmember Swarthout commented on the thoroughness of the process. The issue of long-term management of the lake has been a contentious issue within the communities with some opposing the estuary alternative and others supporting the lake alternative. She conveyed appreciation of the process as it entailed much work and involved everyone.

City Administrator Doan reported the briefing would likely require a conversation during a worksession in September in terms of the funding component and an early deadline in October for the Council to approve the MOU. Approval of the MOU will lead to the development of a detailed interlocal agreement in early 2023. An adopted MOU is important to demonstrate to the Legislature the shared commitment to the project, as well as a commitment to shared funding. Staff will draft a funding strategy for Tumwater's share. The first payment is projected to occur in 2040 affording time to establish a revenue source.

Mayor Sullivan thanked the team for providing the update.

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

City Administrator Doan reported on a request for Councilmember Swarthout to attend Association of Washington Cities (AWC) Budget Workshop in Leavenworth. Councilmember Swarthout has expended most of her travel and training budget; however, an option is available to utilize

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existing funds allocated for attendance to a national conference. The Council supported the recommendation.

City Administrator Doan encouraged the Council to read the City's internal newsletter, which features new employees to the City, employee retirements, scheduled City events, stories on great customer service by employees, development review of future projects, public works projects, and reports from the Tumwater Police Department, Transportation and Engineering, Water Resources and Sustainability, Tumwater Fire Department, and Parks and Recreation specific to the Metropolitan Park District.

Mayor Sullivan reported the next Council meeting is on Monday, August 1, 2022 because of the election. Tuesday, August 2, 2022, the City will be celebrating *National Night Out*.

Councilmember Jefferson inquired as to any cooling centers located in the City because of the intense hot weather. City Administrator Doan advised that the Tumwater Library serves as the City's cooling center. Additionally, Old Town Center is open during regular hours.

**ADJOURNMENT:**      **With there being no further business, Mayor Sullivan adjourned the meeting at 7:03 p.m.**

Prepared by Valerie L. Gow, Recording Secretary/President  
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