

ORDINANCE NO. O2023-012

AN ORDINANCE of the City Council of the City of Tumwater, Washington, amending Titles 17 and 18 of the Tumwater Municipal Code to address minor development code housekeeping amendments.

WHEREAS, during 2022 and 2023, staff gathered information on proposed minor development code housekeeping amendments to the Tumwater Municipal Code to be considered collectively in 2023; and

WHEREAS, TMC 18.60.025(A) establishes a process for such development code housekeeping amendments; and

WHEREAS, the City is required to plan under Chapter 36.70A RCW, the Growth Management Act; and

WHEREAS, this Ordinance meets the goals and requirements of the Growth Management Act; and

WHEREAS, this Ordinance is consistent with the City's Comprehensive Plan; and

WHEREAS, consistent with TMC 18.60.025, the Planning Commission had a briefing on the preliminary docket on June 27, 2023, and a work session on the preliminary docket on July 11, 2023, to send a recommendation on the items to go forward to the final docket for more review to the City Council; and

WHEREAS, consistent with TMC 18.60.025, at their August 9, 2023, meeting, the General Government Committee discussed the Planning Commission's recommendation on the items to go forward to the final docket for more review and recommended that the recommendation be placed on the City Council's consent agenda for the September 5, 2023, meeting; and

WHEREAS, the City Council approved the preliminary docket for further review by staff at their September 5, 2023 meeting; and

WHEREAS, the staff has completed review of the proposed amendments; and

WHEREAS, this Ordinance was sent to the Washington State Department of Commerce on October 27, 2023, at least sixty days before the proposed code amendments were adopted, in accordance with RCW 36.70A.106; and

WHEREAS, an Environmental Checklist for a non-project action was prepared under the State Environmental Policy Act (Chapter 43.21C RCW),

pursuant to Chapter 197-11 WAC on October 27, 2023, and a Determination of Non-Significance (DNS) was issued on November 17, 2023; and

WHEREAS, the Attorney General *Advisory Memorandum and Recommended Process for Evaluating Proposed Regulatory or Administrative Actions to Avoid Unconstitutional Takings of Private Property* (September 2018) was reviewed and utilized by the City in objectively evaluating the proposed amendments; and

WHEREAS, the Planning Commission received a briefing on the final docket of proposed code amendments on October 24, 2023, conducted a work session on the final docket November 14, 2023, and held a public hearing on the final docket on December 12, 2023; and

WHEREAS, following the public hearing and deliberations, the Planning Commission recommended approval of the final docket of proposed code amendments by the City Council; and

WHEREAS, the City Council discussed the Planning Commission's recommendation on the final docket of proposed code amendments at a work session on January 9, 2024; and

WHEREAS, the City Council considered the final docket of proposed code amendments on February 6, 2024; and

WHEREAS, the City Council finds that the provisions of this Ordinance are in the best interest of and protect the health, safety, and welfare of the citizens of the City.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF TUMWATER, STATE OF WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Section 17.12.200 of the Tumwater Municipal Code is hereby amended to read as follows:

17.12.200 Underground utilities.

A. Purpose. This section establishes the minimum requirements and procedures for the underground installation and relocation of electrical and communication facilities within the City of Tumwater. It is the policy of the City to require the underground installation of all new and relocated electrical and communication facilities, with certain minor exceptions.

B. Applicability.

- 1. All new facilities shall be installed underground.**
- 2. All existing overhead utilities shall be installed or relocated underground if:**

- a. Ten or more dwelling units are being created;
- b. Frontage improvements are required and the cumulative frontage length where existing overhead utilities exist is over two hundred linear feet for properties in the SFL single-family low density residential, SFM single-family medium density residential, and RSR residential/sensitive resource zone districts or one hundred linear feet for properties in other zone districts; or
- c. The existing overhead utility is reconstructed, relocated, replaced, upgraded, or enhanced.

C. Any deviation or exception must be determined pursuant to TMC Chapter 17.28.

~~Electrical power, telephone, cable television, fiber optics and other transmission lines shall be installed underground.~~

(Ord. 1308, Added, 10/15/1991)

Section 2. Section 18.23.050 of the Tumwater Municipal Code is hereby amended to read as follows:

18.23.050 Development and design standards – Specific to properties fronting main streets.

The following requirements apply to development proposals on land within the town center mixed use subdistrict that has frontage on rights-of-way designated as main streets in Figure 18.23.010. These requirements supplement requirements described in other sections of this chapter.

A. Maximum Setback.

1. Intent. Enclose and define the street space. Place building walls that will:
 - a. Provide human-scaled street enclosure and building edge continuity on key town center streets.
 - b. Contribute to a continuous building edge on lots adjacent to designated main streets.
 - c. Provide a pedestrian-friendly environment by making physical and visual contact between interior building activities and the street.
2. Requirement.
 - a. The maximum setback shall be zero feet from the abutting main street right-of-way. Where a lot has frontage on more than one main street, the maximum setback shall apply only to New Market Street; provided, that first floor uses required by subsection E of this section that front any main street shall be zero feet from the abutting main street right-of-way.
 - b. Exceptions. Exceptions may be granted to allow setbacks of existing buildings to be maintained, and to integrate publicly accessible site design elements in new developments that encourage pedestrian use and activity

along the street. Such site design elements may include but not be limited to the following:

- i. Building modulation.
- ii. Pedestrian plazas or courtyards.
- iii. Covered or recessed building entryways.
- iv. Commercial uses and/or displays, such as vendors, news stands and cafes.
- v. Public art, such as water features and sculptures.
- vi. Seating and/or planting areas.
- vii. Pedestrian-oriented signs.

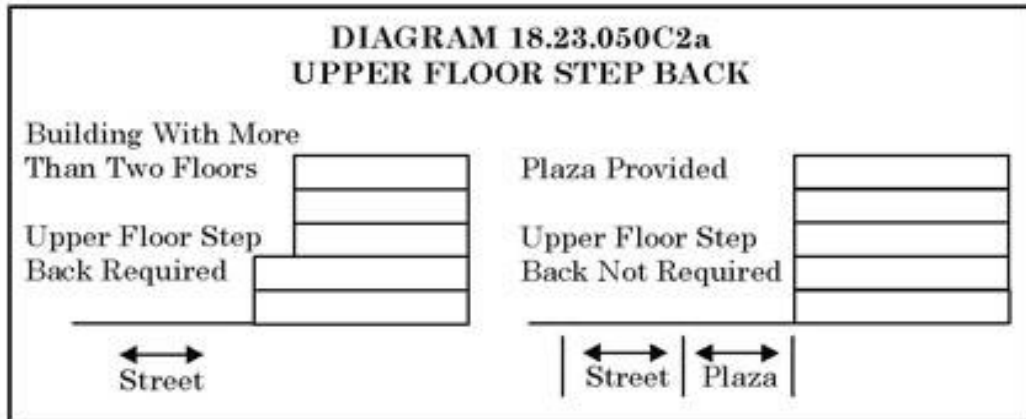
B. Primary Building Entrance.

1. Intent. Generate pedestrian and street activity. Create a prominent entry that conveys a clear sense of arrival and that uses high quality products that contribute to the richness and detail of the facade.
2. Requirements.
 - a. Primary building entrance(s) must face the main street. Where a lot is adjacent to more than one main street, primary building entrances shall face New Market Street.
 - b. Primary building entrances must be clearly visible from the sidewalk in front of the building.
 - c. Direct access shall be provided from either the sidewalk if the building facade is directly adjacent to the sidewalk, from a pedestrian plaza, or both. A pedestrian plaza must be integrated into the streetscape and be visually and physically accessible from the public rights-of-way.

C. Building Design.

1. Intent. Design buildings and parking structures to promote an architecturally appealing environment. Design emphasis should be given to the pedestrian through the provision of structural and facade elements that encourage pedestrian activity.
2. Requirements.
 - a. Upper Floor Step Back (Diagram 18.23.050C2a). Buildings and parking structures that face a main street must step back all floors above the second floor a minimum of ten feet (for example, a four-story building would have the two floors abutting the sidewalk, and all floors above the second floor would be stepped back a minimum of ten feet from the sidewalk). This requirement shall not apply to the following with the approval of the community development director:

- i. Portions of a building or parking structure that abut a publicly accessible pedestrian plaza or courtyard located between the building or parking structure and the front yard property line.
- ii. Building design features, such as pedestrian entryways; provided the feature does not cover more than fifteen percent of the total building facade facing a main street.



- b. Transparency. Windows shall cover at least sixty percent of the first floor building wall area facing a main street for commercial uses. First floor windows must provide visibility into building interiors. Glass must be clear or lightly tinted. These requirements shall apply to that area of the first floor building wall fronting the street up to the finished ceiling height of the first floor building space. Windowsills shall begin twelve to thirty inches above the finished grade of the first floor building space. See Diagram 18.23.050C2b.

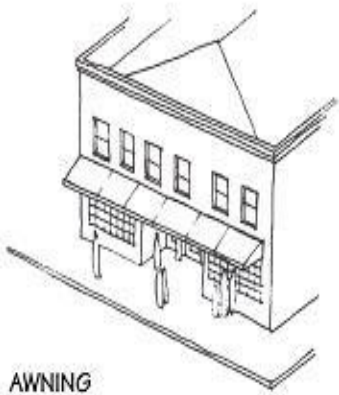
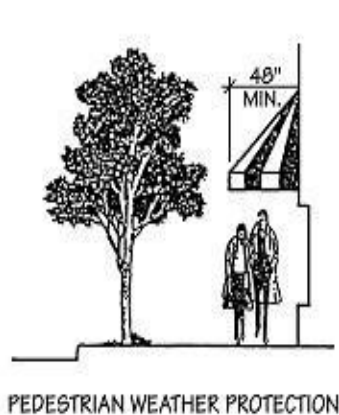
DIAGRAM 18.23.050C2b



- c. Pedestrian Weather Protection. Building facades with first floor commercial uses facing a main street shall be designed to provide for pedestrian weather protection through the use of awnings, canopies, marquees, arcades or building overhangs. Pedestrian weather protection structures shall extend along at least the length of the main street facing facade with a first floor commercial use.

- i. Pedestrian weather protection structures shall extend a minimum of four feet out from the building facade. Awnings, canopies, marquees and building overhangs may project into the public right-of-way, subject to the projection requirements of the Tumwater building code. Projections into the public right-of-way must be approved by the community development director, public works director and the building official. Arcades must be on private property. Pedestrian weather protection structures shall be architecturally integrated with the ground level design of the building to which they are attached. See Diagram 18.23.050C2c.
- ii. The minimum height of the pedestrian weather protection structures shall be ten feet above the sidewalk surface. Maintain a horizontal consistency by aligning the bottom edge of weather protection structures with those on adjacent buildings; provided, that the bottom edge of such structures shall be at least ten feet above the sidewalk surface. See TMC 18.44.150(C) for suspending signs beneath weather-protection structures.

DIAGRAM 18.23.050C2c



D. Surface Parking Lots.

1. Intent. Discourage the disruption of the continuous building edge along the street. Minimize potential interaction between pedestrians and vehicles.
2. Requirements. Surface parking lots are not allowed to abut New Market Street. Surface parking shall be located behind buildings but may be allowed to abut 73rd and 71st Avenues with landscaping buffers and/or visual screening. One curb cut for access to parking lots is allowed on each side of the portion of New Market Street designated MS4 in the Tumwater town center street design plan. Access to parking lots from other portions of New Market Street is prohibited unless no other alternative is feasible.

E. First Floor Uses in Commercial and Residential Developments.

1. Intent. Create a pedestrian environment with first floor land uses that generate pedestrian activity which complement the wide sidewalks, street trees, pedestrian-level street lights, street furniture and mid-block crossings that characterize the pedestrian-oriented streetscape.
2. Requirement. For commercial and residential developments, a minimum of twenty percent of the gross floor area on the first floor shall be dedicated to one or more of the following: retail sales, restaurants, personal services, professional services, medical clinics, child day care centers, child mini-day care centers, museums, or art galleries. These uses may be located within mixed use structures or in separate structures within the development. For example, a professional office building may incorporate a restaurant on the first floor, or a building dedicated entirely to professional offices may be constructed adjacent to a single-use restaurant building within the same development.

First floor uses required by this section must be externally oriented. "Externally oriented" for the purpose of this regulation shall mean having a public entrance opening directly to the outside and facing the main street. A minimum finished ceiling height of ten feet is required.

(Ord. O2011-002, Amended, 03/01/2011; Ord. O2006-034, Amended, 07/17/2007; Ord. O2001-020, Added, 05/07/2002)

Section 3. Section 18.24.040 of the Tumwater Municipal Code is hereby amended to read as follows:

18.24.040 Conditional uses.

Conditional uses in the LI district are as follows:

- A. Cemeteries;
- B. The following essential public facilities:
 1. State education facilities;
 2. Large scale or regional transportation facilities;
 3. Prisons, jails or other correctional facilities;

- a. Juvenile detention facilities;
- b. Work release facilities;
- c. Prisons and prerelease facilities;
- d. Jails;
- 4. Solid waste handling facilities;
- 5. Sewage treatment facilities (not including individual or community wastewater treatment systems);
- 6. Emergency communication towers and antennas;*
- 7. Secure community transition facilities;
- C. Recycling collection centers;
- D. Marijuana processor, within a fully enclosed secure indoor structure only;
- E. Marijuana producer, within a fully enclosed secure indoor structure only;
- F. Impound yards;

G. The maximum building height may be exceeded upon approval of the hearing examiner for specific uses. Requests for such approval shall be processed in accordance with the conditional use procedure of TMC 18.56 and additional minimum conditions outlined in TMC 18.56.110(B).

*Emergency communication towers and antennas are subject to Federal Aviation Administration (FAA) standards and approval, and furthermore the use is subject to provisions for wireless communication facilities in TMC Chapter 11.20, Wireless Communication Facilities.

(Ord. O2022-013, Amended, 10/04/2022; Ord. O2018-025, Amended, 12/18/2018; Ord. O2017-023, Amended, 07/17/2018; Ord. O2017-006, Amended, 07/18/2017; Ord. O2016-037, Amended, 01/03/2017; Ord. O2006-037, Amended, 03/04/2008; Ord. O2003-001, Amended, 02/18/2003; Ord. O2002-013, Amended, 08/20/2002; Ord. O2000-004, Amended, 07/18/2000; Ord. O97-019, Amended, 06/17/1997; Ord. O95-035, Added, 12/19/1995)

Section 4. Section 18.25.040 of the Tumwater Municipal Code is hereby amended to read as follows:

18.25.040 Conditional uses.

Conditional uses in the HI district are as follows:

- A. Cemeteries;
- B. Recreational facilities;
- C. Parks and open space areas;
- D. The following essential public facilities:

1. Large scale or regional transportation facilities;
 2. Prisons, jails or other correctional facilities:
 - a. Juvenile detention facilities;
 - b. Work release facilities;
 - c. Prisons and prerelease facilities;
 - d. Jails;
 3. Solid waste handling facilities;
 4. Sewage treatment facilities (not including individual or community wastewater treatment systems);
 5. Emergency communication towers and antennas;*
- E. Child day care center; child mini-day care center;
- F. Family child care homes;
- G. Animal clinics or hospitals;
- H. Wrecking yards and junk yards;
- I. Impound yards;:-
- J. The maximum building height may be exceeded upon approval of the hearing examiner for specific uses. Requests for such approval shall be processed in accordance with the conditional use procedure of TMC 18.56 and additional minimum conditions outlined in TMC 18.56.110(B).

*Emergency communication towers and antennas are subject to Federal Aviation Administration (FAA) standards and approval, and furthermore the use is subject to provisions for wireless communication facilities in TMC Chapter 11.20, Wireless Communication Facilities.

(Ord. O2022-013, Amended, 10/04/2022; Ord. O2018-025, Amended, 12/18/2018; Ord. O2017-006, Amended, 07/18/2017; Ord. O2000-004, Amended, 07/18/2000; Ord. O97-019, Amended, 06/17/1997; Ord. O95-035, Added, 12/19/1995)

Section 5. Section 18.42.130 of the Tumwater Municipal Code is hereby amended to read as follows:

18.42.130 Park and open space area standards for development without divisions of land.

A. For new residential developments in which the majority of the dwelling units will be multifamily dwellings or roominghouses, or five or more dwelling units as rowhouses or townhomes, , or manufactured home parks with five or more dwelling units, and the land is not being divided, a minimum of fifteen percent of the gross site area shall be set aside for park and open space area.

B. For new developments that will contain mixed use development, a minimum of fifteen percent of the gross site area shall be set aside for park and open space area.

C. For new commercial or industrial development of ten acres or more where land is not being divided, a minimum of five percent of the gross site area shall be set aside for park and open space area. A commercial or industrial land development that is part of an approved master plan providing for a park or open space area meeting the intent of this provision shall be considered to have fulfilled this requirement.

D. For the purpose of calculation of the park and open space area, the park and open space area shall be separate and distinct from required yards, setbacks, and landscaped areas.

E. The community development director in consultation with the parks and recreation director may accept a fee in lieu for park and open space area subject to the following:

1. The fee in lieu for park and open space area is only allowed where the amount of land required to be set aside for park or open space area in the development is smaller than one acre in size and the development consists of:

- a. Less than or equal to any combination of sixty dwelling units in multifamily, roominghouses, rowhouses, ~~or~~ townhomes ~~dwelling~~s or manufactured home park developments;

- b. Less than or equal to sixty residential dwelling units included in a mixed use development; or

- c. Any commercial or industrial development smaller than twenty acres in size.

2. When determining whether to accept a fee in lieu for park and open space area, the community development director in consultation with the parks and recreation director shall consider the following:

- a. The availability of other existing or planned public park within one-half mile of the development;

- b. Whether the other existing or planned public park is or will be accessible from the development by sidewalk or paved pedestrian path; and

- c. The overall public benefit of accepting a fee instead of the land for park and open space area.

3. The fee shall be based on an assessed valuation of the portion of the development that would otherwise be required to be set aside.

4. The fee shall be paid prior to any building permit being issued for the development.

F. For all new residential developments in which the majority of the dwelling units will be multifamily dwellings or roominghouses, or five or more dwelling units

as rowhouses, ~~or~~ townhomes, or manufactured home parks with five or more dwelling units, and the land is not being divided, at least fifty percent of the area set aside for park and open space area must be for active recreation, with the remainder set aside for passive recreation. For all nonresidential subdivisions, all the area set aside for park and open space area must be for passive recreation.

1. The following areas may be counted towards fulfilling the active recreation requirements:
 - a. Children's play equipment, such as slides, swings, and play structures;
 - b. A paved hard court for activities such as basketball, tennis, or pickleball;
 - c. Athletic fields for activities such as soccer or baseball and similar team sports;
 - d. Multiuse trails for pedestrians and bicycles meeting WSDOT multiuse trail design standards;
 - e. A flat, open lawn area with a surface suitable for unstructured active play;
 - f. Community gardens as defined in TMC 18.04.030, C definitions; and
 - g. Other similar active recreation facilities if approved by the community development director in consultation with the parks and recreation director.
2. That portion of stormwater ponds with active recreation facilities anticipated to be useable at least six months of the year may be counted towards fulfilling the active recreation requirement, provided these facilities are consistent with the drainage design and erosion control manual for Tumwater.
3. The following areas may be counted towards fulfilling the passive recreation requirements:
 - a. Facilities for walking, such as unpaved trails;
 - b. Landscaped areas with benches and other amenities;
 - c. Picnicking facilities, such as picnic tables and shelters;
 - d. Public plazas;
 - e. Vegetated decks and rooftops, provided the deck or rooftop is accessible to all residents and employees of the development;
 - f. Stormwater ponds with perimeter trails or year-round water features consistent with the drainage design and erosion control manual for Tumwater;
 - g. Tree protection areas preserved under TMC Chapter 16.08, provided access is provided within these areas via a trail consistent with the regulatory requirements for these areas;

h. Wetland buffers under TMC Chapter 16.28, wellhead protection areas under TMC Chapter 16.26, and special flood hazard areas under TMC Chapter 18.38, provided access is provided within these areas via a trail consistent with the regulatory requirements for these areas; and

i. Other similar passive recreation facilities if approved by the community development director in consultation with the parks and recreation director.

G. The park and open space area shall have convenient access for residents or employees of the development and the park and open space area shall be consolidated to provide maximum access, visibility, usability, minimization of impacts to residential uses, and ease of maintenance. These requirements may be waived by the community development director upon a finding that the residents or employees of the development would receive a greater benefit if the required park and open space area were provided in another configuration due to the size of the development, unique topographic conditions, or other factors determined by the community development director.

H. The park and open space area shall be designed and placed in consideration of existing and potential park and open space areas on adjacent parcels to allow for consolidation or provision of future opportunities for consolidation of park and open space areas.

I. Except where removal is required to meet active recreation requirements in this chapter, existing trees and significant native vegetation shall be retained in park and open space areas unless an alternate landscaping plan for such areas is required or approved by the community development director.

J. Park and open space areas shall be held in single ownership where such ownership assumes full responsibility for maintenance and operation, or held in common ownership by all of the owners in the development through a property owners' association or similar organization. As a condition of approval, the city may require or choose to accept dedication, when the park and open space area set aside is one or more of the following.

1. Greater than two acres.
2. Adjacent to an established or future city park or school grounds.
3. Includes public access to a body of water, wetland, important fish/wildlife habitat, or other environmentally sensitive area.
4. If the city determines it is in the public interest to accept land for park and open space area.

K. The owner of the park and open space area shall maintain it in a manner consistent with its purpose. Amenities such as those listed in subsections (F)(1) and (F)(3) of this section shall be maintained and kept in a clean, safe, and usable condition.

(Ord. O2020-015, Added, 02/16/2021)

Section 6. Section 18.56.110 of the Tumwater Municipal Code is hereby amended to read as follows:

18.56.110 “B” uses.

“Bed and breakfasts”

A. Minimum Conditions.

1. The bed and breakfast shall have no more than four guest rooms;
2. No cooking facilities shall be provided in the guest rooms;
3. Guest rooms shall not be rented for stays of more than fourteen days at a time;
4. A minimum of one off-street parking space shall be provided per guest room;
5. The scale, bulk, and architectural style of the structure in which the bed and breakfast is located shall not be altered to be incompatible with the surrounding residential neighborhood;
6. Large banquets, weddings, conferences, and similar group gatherings shall not be permitted at bed and breakfasts.

“Building Height Increases in the LI and HI zone districts.”

A. Minimum Conditions.

1. The height increase shall only be to accommodate equipment, structures or buildings that contain special equipment primarily related to manufacture, assembly, processing of goods or products;
2. The functional need for a height increase shall be demonstrated by the applicant;
3. The proposed height increase shall be compatible with the general purpose, goals, objectives and standards of the Comprehensive Plan, the zoning regulations and any other plan, program, map, or regulation of the City;
4. Building heights shall not result in substantial or undue adverse effects on adjacent and abutting property. When a building in excess of the maximum height is proposed adjacent to or abutting a lot with a maximum height less than the subject property, increased setbacks and/or step-backs may be appropriate to reduce adverse effects on adjacent or abutting property;
5. Upper floor step-backs, varied tower heights with separation, and/or other architectural methods shall be integrated into the design to provide a human-scaled building edge along the street with access to sky views. Bulk reduction methods such as varied building geometry, variety in materials, texture, pattern or color, architectural rooftop elements, and/or other techniques shall be provided;

6. Building(s) shall be designed so that light and glare impacts upon streets, public facilities, and public open spaces are minimized;

7. Building(s) shall be designed so that shade and shadow impacts on adjacent shadow-sensitive uses (e.g., residential, outdoor restaurants, open spaces, and pedestrian areas) are minimized;

8. The maximum building height allowed under this process shall be no more than ninety feet; and

9. No structure shall penetrate imaginary airspace surfaces as defined by 14 C.F.R. Part 77. A map that provides detailed information on ground and imaginary airspace surface elevations is available for inspection in the community development department.

(Ord. O2017-006, Amended, 07/18/2017; Ord. O2013-025, Amended, 01/07/2014; Ord. O2008-009, Amended, 02/17/2009; Ord. O2001-012, Amended, 03/19/2002; Ord. O97-025, Amended, 12/02/1997; Ord. O96-022, Added, 12/17/1996)

Section 7. Corrections. The City Clerk and codifiers of this ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener/clerical errors, references, ordinance numbering, section/subsection numbers, and any references thereto.

Section 8. Ratification. Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

Section 9. Severability. The provisions of this ordinance are declared separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this ordinance or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of the ordinance, or the validity of its application to other persons or circumstances.

Section 10. Effective Date. This ordinance shall become effective thirty (30) days after passage, approval, and publication as provided by law.

ADOPTED this _____ day of _____, 2023.

CITY OF TUMWATER

Debbie Sullivan, Mayor

ATTEST:

Melody Valiant, City Clerk

APPROVED AS TO FORM:

Karen Kirkpatrick, City Attorney

Published:_____

Effective Date:_____