



## **PRESENTATIONS and HANDOUTS**

### **Regular Meeting on April 19, 2017**

- 1. 2018 Amendment to the Comprehensive Plan & Land Use Regulatory Code – Car Wash Rezone**  
(PowerPoint Slides, for Discussion Items D-1)
- 2. Brown Bear Car Wash Rezone Application**  
(PowerPoint Slides, for Discussion Item D-1)
- 3. S. 80<sup>th</sup> Street Rezone**  
(PowerPoint Slides, for Discussion Item D-2)
- 4. Correctional Facilities Interim Regulations**  
(PowerPoint Slides, for Discussion Item D-3)
- 5. E-mail from Joan Mell, April 14, 2017 concerning Essential Public Facilities**  
(Handout, for Discussion Item D-3)
- 6. Memo from City Attorney's Office, April 18, 2017, concerning Essential Public Facilities**  
(Handout, for Discussion Item D-3)
- 7. RCW and WAC on Essential Public Facilities**  
(Handout, for Discussion Item D-3)
- 8. Staff Suggested Changes – Correctional Facilities Interim Regulations**  
(Handout, for Discussion Item D-3)





# 2018 Amendment to the Comprehensive Plan & Land Use Regulatory Code

Assessment of Private Applications  
04.19.17

# Applications

- ▶ 2018-01 Car Wash Rezone
- ▶ 2018-02 Outdoor Tire Storage
- ▶ 2018-03 S 80<sup>th</sup> Street Rezone
- ▶ 2018-04 NE Tacoma Buffer Zone
- ▶ 2018-05 Design Review in MUCs
- ▶ 2018-06 VSD Height Measurement

# Amendment Process



March 31, 2017	Deadline to submit applications for 2017-2018 Amendment
April – May 2017	Planning Commission reviews applications for completeness and determines if proposed amendments meet requirements and are appropriate; the Commission may modify the scopes of the proposed amendments or suggest alternative proposals
June – December 2017	Staff and Planning Commission review each application, analyzing such factors as its consistency with existing plans and laws, its potential benefits and impacts, and whether there are feasible alternatives if appropriate and necessary.
June 2017 – May 2018	Staff conducts outreach efforts to solicit comments, feedback and suggestions from stakeholders, interested entities and the community
February 2018	Planning Commission conducts a public hearing
March 2018	Planning Commission makes recommendations to the City Council
April 2017 – May 2018	Infrastructure, Planning and Sustainability Committee and other pertinent City Council standing committees review the proposed amendments
April – May 2018	City Council conducts study sessions and a public hearing
May 2018	Infrastructure, Planning and Sustainability Committee forwards “Recommendation for Adoption” to the City Council
May 2018	City Council considers adoption of amendments
June 2018	Changes take effect

# Current Phase: Assessment

Initial assessment is based on criteria pursuant to TMC 13.02045:

1. If the amendment request is legislative and properly subject to Planning Commission review, or quasi-judicial and not properly subject to Commission review;
2. If there have been recent studies of the same area or issue, which may be cause for the Commission to decline further review, or if there are active or planned projects that the amendment request can be incorporated into; and
3. If the amount of analysis necessary is reasonably manageable given the workloads and resources of the Department and the Commission, or if a large-scale study is required, the amendment request may be scaled down studied in phases, delayed until a future amendment cycle, or declined.

# Next Phase: Analysis

Analysis criteria pursuant to TMC 13.02.045.F:

- F. Analysis of proposed amendments. Upon completing the assessment and receiving an affirmative determination from the Planning Commission to move forward, the proposed amendment will be analyzed by the Department against the following criteria:
  1. Whether the proposed amendment will benefit the City as a whole, will not adversely affect the City's public facilities and services, and bears a reasonable relationship to the public health, safety, and welfare; and
  2. Whether the proposed amendment conforms to applicable provisions of State statutes, case law, regional policies and the Comprehensive Plan.

# Application 2018-01: Car Wash Rezone



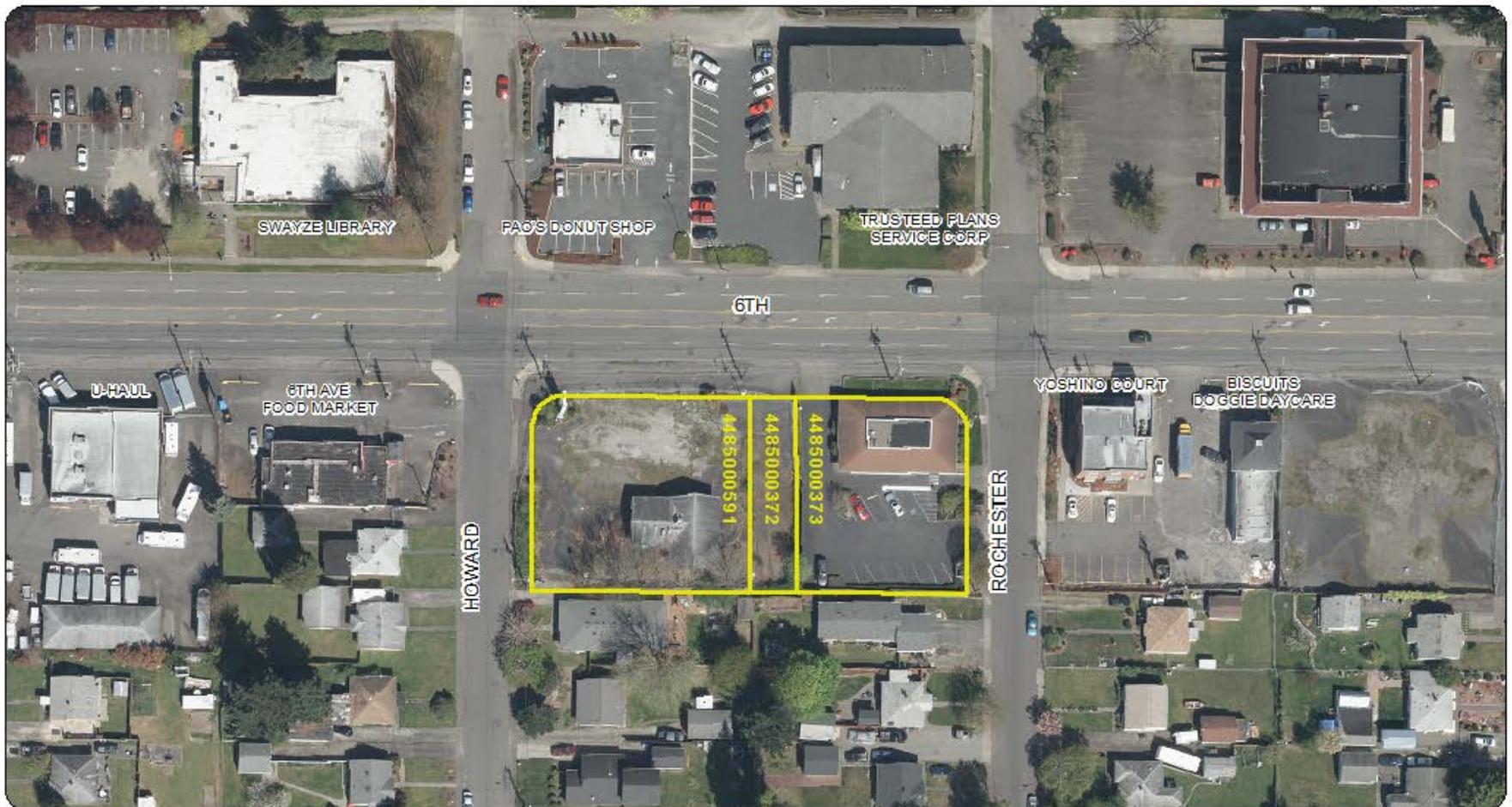
Per the TMC the City has 120 days from submittal to determine if the application is complete and will be accepted as part of the Amendment cycle.



Staff is asking the Commission to complete the initial assessment of the application at this meeting and to accept the application as part of the 2018 Amendment process, with modifications.

# Car Wash Rezone: Application Description

- Application seeks to rezone three parcels (two addresses) at 6<sup>th</sup> Ave and S. Howard in the Narrows Neighborhood Center
- Rezone request proposes to change parcels in consideration from Neighborhood Commercial Mixed-use (NCX) to Urban Center Mixed-use (UCX)
- Purpose of rezone request is to allow car washing facilities as a permitted use at this location
- Currently, car washing is defined as “vehicle service and repair,” which is prohibited in NCX district and permitted in UCX district



### Brown Bear Car Wash Proposed Location

#### Parcel # 4485000591

Site address: 6918 6th Ave  
 Current owner: Singh Ajmer & Kaur Mohinder  
 Current land use: Gas station mini mart  
 Site characteristics: Site features a vacant former gas station  
 Lot size (acres): 0.4019  
 Lot size (sf): 17,511

#### Parcel # 4485000372

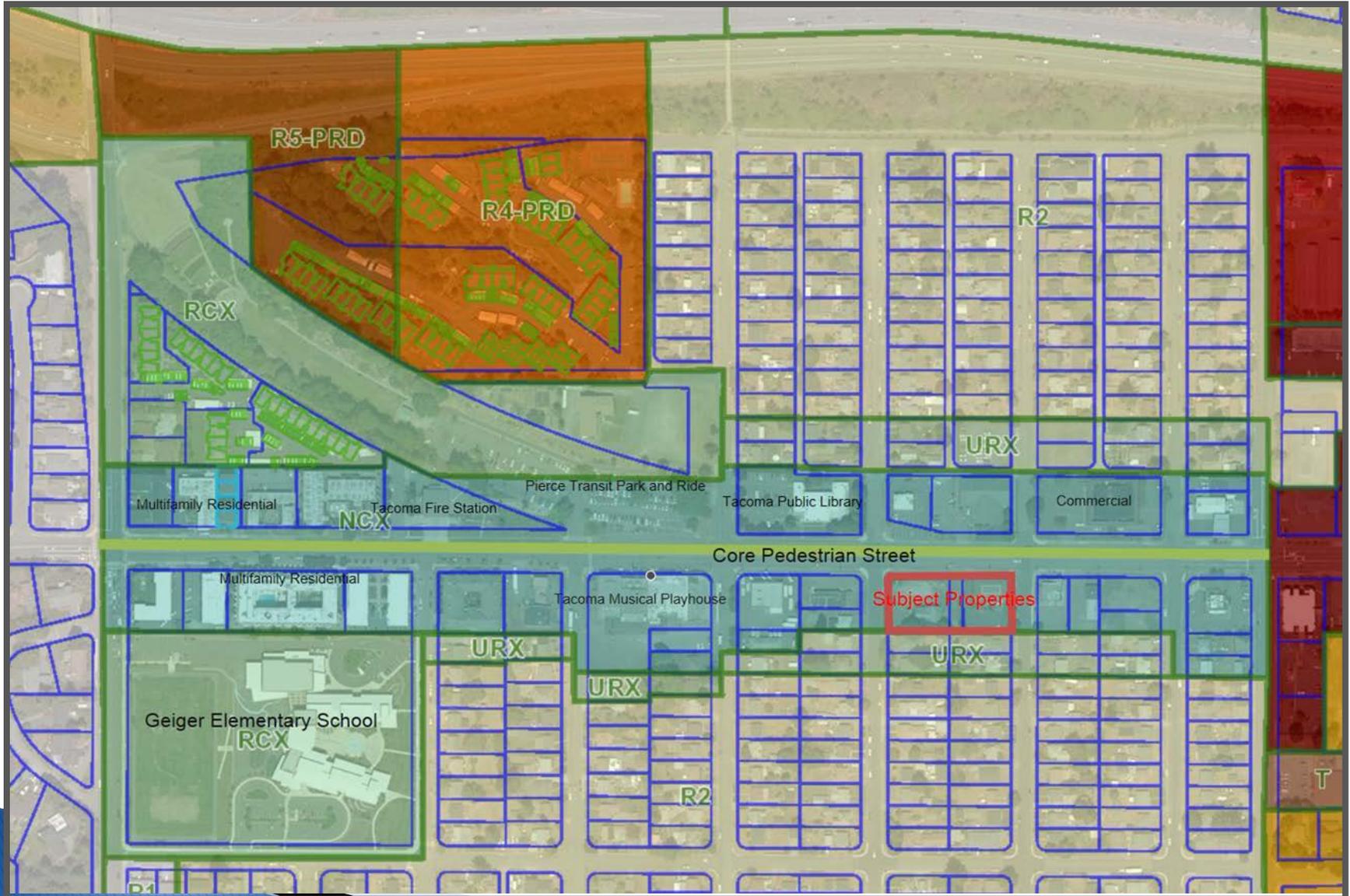
Site address: 6918 6th Ave  
 Current owner: Singh Ajmer & Kaur Mohinder  
 Current land use: Gas station mini mart  
 Site characteristics: same address as parcel #4485000591  
 Lot size (acres): 0.0882  
 Lot size (sf): 3,844

#### Parcel # 4485000373

Site address: 6902 6th Ave  
 Current owner: D & L Leed Properties LLC  
 Current land use: Professional services  
 Site characteristics: Site features 2 private surfacewater inlets  
 Lot size (acres): 0.3181  
 Lot size (sf): 13,860



# Current zoning [\(Link to DART Map\)](#)



# Car Wash Rezone: Proposed Modification

- Staff recommends a modified scope of work that would address applicant's underlying concerns through an alternative approach to the area-wide rezone.
- Proposed alternative would consider:

 **Changes to definition of car wash facilities in TMC 13.06 Zoning**

 **Use allowances or conditional use criteria**

 **Potential use-specific design and development standards**

# Car Wash Rezone: Assessment Criteria

1. If the amendment is legislative and properly subject to Planning Commission review, or quasi-judicial and not properly subject to Commission review;

*Staff Assessment: The request is legislative and properly subject to Planning Commission review.*

2. If there have been recent studies of the same area or issue, which may be cause for the Commission to decline further review, or if there are active or planned projects that the amendment request can be incorporated into;

*Staff Assessment: Application should be evaluated as a stand-alone project.*

# Car Wash Rezone: Assessment Criteria

3. If the amount of analysis necessary is reasonably manageable given the workloads and resources of the Department and the Commission, or if a large-scale study is required, the amendment request may be scaled down, studies in phases, delayed until a future amendment cycle, or declined.

*Staff Assessment: The amount of work to review and evaluate application is reasonably manageable and consultant services are not expected to be required.*

*Key issues in review may include:*

- *Consistency with Comprehensive Plan policies for Neighborhood Centers*
- *Design strategies for car wash facilities*
- *Consistency with policies for a core pedestrian street*
- *Broader applicability to other mixed-use centers with NCX zoning*

# Staff Recommendation

- Staff recommends a modified scope of work that would address applicant's underlying concerns through an alternative approach to the area-wide rezone.
- Staff concludes that the application, with staff recommended modifications, is ready to proceed to the technical analysis phase of the process.
- Staff recommends that the Planning Commission accept the application, as modified, for consideration during the 2018 Amendment cycle.





***Brown Bear  
Car Wash***



**Wash Green®**

***BROWN BEAR CARWASH REZONE APPLICATION***

# Summary of Application



## ***Brown Bear Car Wash***

- Purpose: To allow for construction of a state of the art car wash facility upon the two parcels located at 6<sup>th</sup> Ave. and Howard Street (6918 and 6902 6th Ave) in the Narrows Neighborhood.
- An actual rezone would potentially *not* be necessary provided “car washing facilities” were redefined to be treated as a separate use from “vehicle service and repair” in the TMC.

# BACKGROUND

- Applicant Brown Bear Car Wash has owned and operated a car wash facility located at 5950 6<sup>th</sup> Ave since the mid-1980s. However, the site has become obsolete in terms of layout as well as building size. Condition of the building is also an issue.
- Brown Bear has spent considerable time searching for available parcels along 6<sup>th</sup> Ave that would have potential as car wash locations. However, opportunities are very limited.
- Brown Bear is considering the following options:
  - A. Maintain its presence on 6<sup>th</sup> Ave by relocating to and developing the subject parcels or;
  - B. Close the existing facility and pursue an opportunity in Gig Harbor.
- Brown Bear's strong preference is to remain on 6<sup>th</sup> Ave.

# BROWN BEAR'S DEVELOPMENT VISION

- Applicant recently completed projects in the cities of Puyallup and Poulsbo and would like to undertake a similar project at the proposed parcels

*Poulsbo-Hostmark and Hwy 305*



*Puyallup-4412 S. Meridian*



# REASONS TO SUPPORT PROJECT

- Brown Bear has been in business since 1957 and is celebrating its 60<sup>th</sup> Anniversary this year.
- This project would bring jobs to the surrounding community. Brown Bear's current starting wage is \$15/hr.
- The project would serve a "green purpose" by providing the surrounding community with an environmentally-sound way to wash their vehicles. This would directly benefit the ecosystems of the Western Slopes and Leach Creek Watersheds.
- The subjects parcels are in an area that has seen little economic growth or activity.
- Applicant is willing to invest well over \$3.0 million into the proposed facility and would make it an attractive asset to the community.

# LAKE CITY WAY/SEATTLE – OPENED 2012



# PUYALLUP – OPENED SUMMMER 2016



# POULSBO – OPENING MAY 2017



*“ I know that you have worked hard to meet our standards and your attention to detail certainly shows! We are very appreciative of how the building looks”*—Rebecca Erickson, Mayor, City of Poulsbo (excerpted from email sent April 17, 2017)



# South 80<sup>th</sup> Street Rezone (PDB)

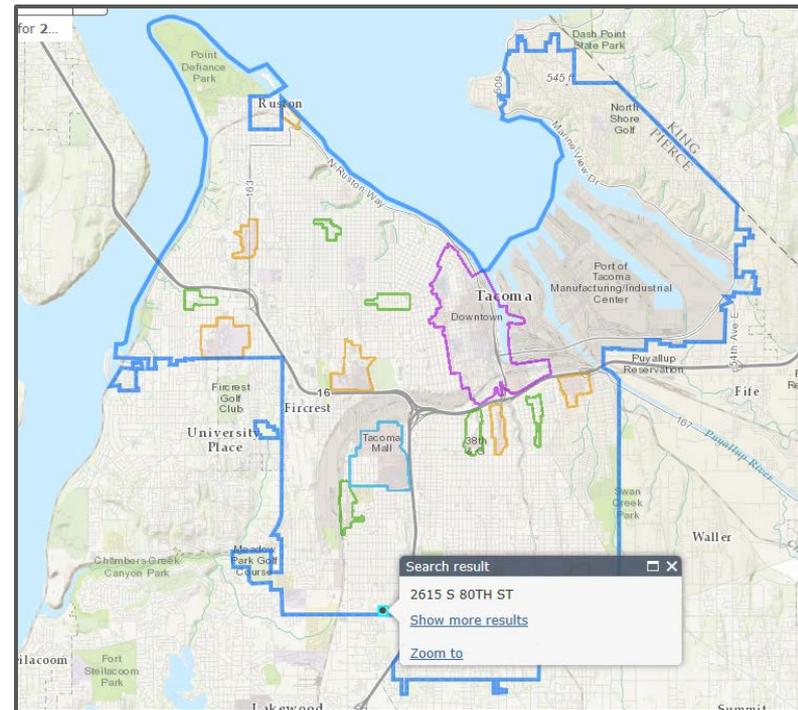


A final staff assessment and recommendation is expected on May 17, 2017 as part of the overall work program determination.

# S 80<sup>th</sup> Street Rezone (PDB): Application Description

- Application seeks to rezone property located at 2615 S 80<sup>th</sup> Street from the Planned Development Business (PDB) District to the M-1 Light Industrial District.
- Application proposes a Comprehensive Plan amendment from the General Commercial land use designation to the Light Industrial land use designation.

[\(Link to DART Map\)](#)



# S 80<sup>th</sup> Street Rezone (PDB): Assessment Criteria

1. If the amendment is legislative and properly subject to Planning Commission review, or quasi-judicial and not properly subject to Commission review;

*Staff Assessment: The amendment request is legislative and properly subject to Planning Commission review.*

# S 80<sup>th</sup> Street Rezone (PDB): Assessment Criteria

2. If there have been recent studies of the same area or issues, which may be cause for the Commission to decline further review, or if there are active or planned projects that the amendment request can be incorporated into;

## *Staff Assessment:*

*The area has not been subject to a recent study, but staff has proposed a broader commercial zoning review, which would include an assessment of the PDB district.*

*This review could result in area-wide rezones or amendments to the use and development standards associated with the PDB.*

*The City-initiated study of the PDB zone may be delayed until 2019 because it is contingent on finalization of the work program*

# South 80<sup>th</sup> Street Rezone (PDB): Assessment Criteria

3. If the amount of analysis necessary is reasonably manageable given the workloads and resources of the Department and the Commission, or if a large-scale study is required, the amendment request may be scaled down, studied in phases, delayed until a future amendment cycle, or declined.

## *Staff Assessment:*

*Staff has conducted an initial inventory of uses within the PDB zone and conformity with current zoning.*

*Proposed site is within the Accident Potential Zone (APZ).*

*Study for this site will augment the existing work program items, but is reasonable and manageable and does not require consultant services.*

*Evaluation will require close coordination with the APZ implementation and the commercial zoning review.*

# Staff Recommendation

- The application is determined to be complete.
- Staff recommends one modification: to expand the area of review to include the adjacent properties zoned PDB within the area-wide analysis.
- Based on the review of the proposal against the assessment criteria, staff concludes that it is ready for technical analysis.
- Staff recommends that the Planning Commission accept the application, as modified to include the adjacent properties, for consideration during the 2018 Annual Amendment Cycle, with a final work program determination on May 17, 2017.

# Correctional Facilities Interim Regulations

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Planning and Development Services

**Planning Commission**

April 19, 2017



# Agenda / Objectives

- **Review and Consider Approval:**
  - Draft Findings of Fact and Recommendations Report
  - Draft Letter of Recommendation



# Interim Regulations (Ord. #28417)

- **Modify definition of “correctional facility” to differentiate public and private ones**
- **Prohibit private correctional facilities**
- **Prohibit public correctional facilities in multifamily and light-industrial zones**
- **Require CUP for public correctional facilities**
- **Notes:**
  - Effective for 6 months (3/7/17 – 9/6/17)
  - Amending TMC 13.06, Sec. 100, 200, 300, 400 & 700

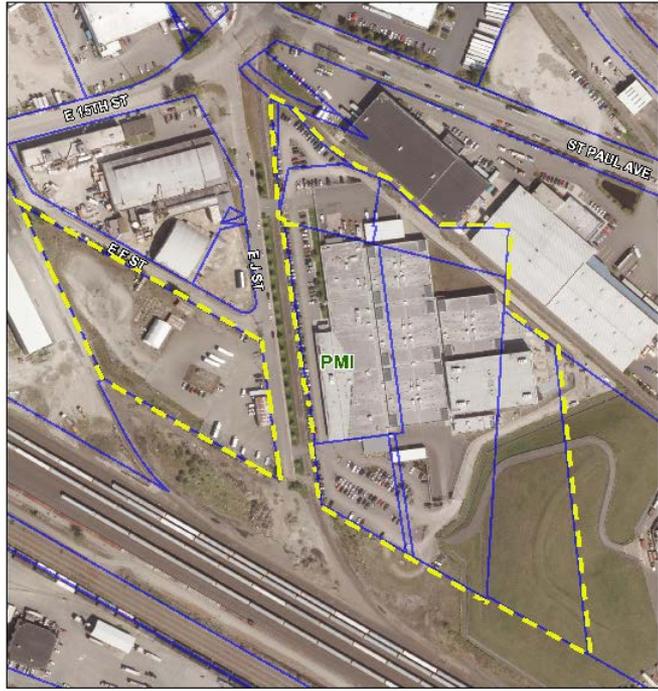
# Legislative Intent (Ord. Recitals)

- Achieve land use compatibility
- Enhance notification and outreach
- Prevent expansion of existing private facilities
- Improve regulations for correctional facilities
- Protect public health, safety, property and peace

# Findings of Fact

- **Legislative Intent**
- **Existing Facilities and the Effect** (maps on next page)
- **Nonconforming Use**
- **Expansion of Existing Private Facilities**
- **Human Rights, Social Justice and Equity**
- **Incompatible Land Uses**
- **CUP Allows Broader Notification**
- **Public vs. Private Correctional Facilities**
- **Essential Public Facilities**
- **Other High Priority Projects Affected**

Northwest Detention Center Parcels



Remann Hall



Pierce County Jail



# Essential Public Facilities

- **Additional Information:**
  - Private Correctional Facilities are considered as Essential Public Facilities
- **Suggested Revisions:**
  - Findings of Fact, #26
  - Scope of Work, #2
  - Recommendations, #1
  - Letter of Recommendation, Recommendations, #1



# Work Plan – Issues

- **Nonconforming Use**
- **Essential Public Facilities**
- **Conditional Use Permit**
- **Public vs. Private Facilities**
- **Code Clarifications**
- **Land Use on the Tidelands**



# Work Plan – Timeline

- **6-month Timeline (Potential):**

Date	Event
Mar 7	Interim regulations enacted
Apr 5 & 19	Commission findings of fact and recommendations
Apr 25	Council public hearing
May 2 & 9	Council modifies interim regulations
May 17, June 7 & 21	Commission develops draft permanent regulations
Jul 19	Commission public hearing
Aug 2	Commission recommendation
Aug 22	Council public hearing
Aug 22 & 29	Council adoption of permanent regulations
Sep 6	Interim regulations expire

# Recommendations – 3-Phased Action Strategy

- **Immediate Action:**
  - Modify the interim regulations to clarify provisions concerning siting and permitting of correctional facilities
- **Short-Term Action:**
  - Development permanent regulations by September 6, 2017
  - Address essential public facilities, public vs. private facilities, Conditional Use Permit, and clarifications
  - Address the affected facilities' need for expansion
- **Long-Term Action:**
  - Evaluate Tideflats land use through Subarea Plan

# Next Steps (potential)

- **April 19:**  
Commission approves of Findings of Fact and Recommendations Report and Letter of Recommendation
- **April 25:**  
Council conducts Public Hearing
- **May 2 & 9:**  
Council modifies Interim Regulations
- **May 17:**  
Commission begins development of permanent regulations



**From:** Joan Mell [mailto:[joan@3brancheslaw.com](mailto:joan@3brancheslaw.com)]  
**Sent:** Friday, April 14, 2017 4:07 PM  
**To:** Wung, Lihuang; Boudet, Brian  
**Cc:** Pauli, Elizabeth (Legal)  
**Subject:** Agenda April 19,2017 - Correctional Facilities Interim Regulations

Can you please make sure the Planning Commissioners receive the attached document before the hearing on the 19th. I found this record in an old PRR Response from the City. The content of significance concerns the City considering the NWDC an “essential public facility” at the time of expansion.

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City of Tacoma  
City Manager

**To:** Eric Anderson, City Manager

**From:** Matt Peelen, Management Assistant

**Subject:** PSHSED Committee's Interest in the NW Detention Center

**Date:** March 31, 2009

During their March 26<sup>th</sup> meeting, the Public Safety, Human Services and Education Committee expressed interest in additional information on the Northwest Detention Center. During this discussion the committee identified several issues that they would like to explore:

- 
- The jurisdiction of the city in regards to oversight of the Northwest Detention Center.
  - Questions related to the siting and permitting of the Detention Center
  - Any impacts on City departments and services resulting from the Detention Center
  - Questions related to demographics of the Detention Center population

Over time the City has collected various reports and e-mails on the NW Detention Center, many of which address the concerns raised by the Committee. This packet of information was provided to me by Celia Holderman and is attached to this memorandum. I have attempted to classify this information in such a way that it can quickly and efficiently answer the Committee's questions.

*What is the City's jurisdiction in oversight of the NW Detention Center?*

According to Elizabeth Pauli, this facility is considered by the state Growth Management Act to be an "essential public facility." The Act provides that no local comprehensive plan or development regulation may preclude the siting of essential public facilities. For more information please see Attachment A.

*What are the impacts on City departments and services from the NW Detention Center?*

In a May 27<sup>th</sup> memorandum (Attachment D) to Nicole Persaud with MACTEC Engineering regarding impacts on City Service due to NW Detention Center expansion, the Police Department identifies concerns with protests as their only issue with the NW Detention Center to date. The police department goes on to express concerns at the potentiality of the Washington State Department of Corrections and other parties using

space within the Detention Center, which could result in an impact to human service funding.

Sigrun Freeman of the Northwest Leadership Foundation, a group which provides social services to the detainees, identifies in Attachment E a need for service to the population granted a release from the facility as they make their way into the general population. She provides no quantitative data. No other impacts are identified.

*How was the NW Detention Center sited and what is the City's role in permitting a facility of this nature?*

The NW Detention Center opened in Tacoma in the spring of 2004. A memorandum provided by A. Neil Clark, the Field Office Director of the Seattle Detention and Removal to the Public Safety, Human Services, and Education Committee in September of 2007 is included as Attachment B. The memorandum provides an overview of both the federal program run by the Office of Detention and Removal and the GEO Group, whom own and operate the facility.

*Are there any permitting concerns?*

As described above and in Attachment A, the City can not prohibit the siting of essential public facilities such as the NW Detention Center. However, the Growth Management Act does not preclude analysis of state environmental requirements, nor the imposition of reasonable mitigation requirements.

*What consideration has the City made in regards to their recent proposal to expand the NW Detention Center?*

In Attachment C, Charlie Solverson describes the permitting process for the expansion of the NW Detention Center. The expansion project is identified as 104,800 square feet of new construction including 26,000 square feet of a general population housing unit and a 40 bed segregation unit. Permit requirements are identified as a Building Permit, a Grading Permit, and a SEPA addendum.

*What are the demographics of the NW Detention Center?*

In Attachment B, the countries of origin are identified as being primarily from Central American and East Asian Countries. There is no information on gender or age provided. The average duration of stay for detainees at the Northwest Detention Center is identified as 27 days. In Attachment E, provided by Sigrun Freeman of the Northwest Leadership Foundation, she identifies 9,441 detainees booked into the facility, and 9,258 as booked out in 2007.

**Holderman, Celia**

Attachment A

**From:** Holderman, Celia  
**Sent:** Thursday, May 22, 2008 11:09 AM  
**To:** Anderson, Julie; Baarsma, Bill; Fey, Jake; Ladenburg, Connie; Lonergan, Mike; Manthou, Spiro; Strickland, Marilyn; Talbert, Rick; Walker, Lauren  
**Cc:** Anderson, Eric; Pauli, Elizabeth  
**Subject:** Response to CM Anderson's request regarding the Immigration Customs Enforcement Detention Center and Council's authority limitations

Council Members:

Since we don't have a Weekly Report going out today, please see the response below from City Attorney Elizabeth Pauli regarding Council Member Anderson's request for a reminder on the limitations of the Council's authority in regard to "allowing" the Immigration Customs Enforcement detention facility to operate within the City of Tacoma.

Celia

~~PS: Although we won't have Council notebooks going out today, we will still be sending your mail packets home close to 5:00 today.~~

**From:** Pauli, Elizabeth  
**Sent:** Thursday, May 22, 2008 10:32 AM  
**To:** Anderson, Eric  
**Cc:** Holderman, Celia  
**Subject:** I.C.E. Facility

At the City Council Meeting of May 6th, Councilmember Anderson asked that the Council be provided with a reminder of the limitations on the authority of the Council in regard to "allowing" the Immigration Customs Enforcement detention facility to operate within the City of Tacoma.

This facility is considered by the state Growth Management Act, to be an "essential public facility." Essential public facilities include those facilities that are typically difficult to site, such as airports, state education facilities and state or regional transportation facilities, state and local correctional facilities, solid waste handling facilities, and in-patient facilities including substance abuse facilities, mental health facilities, group homes, and secure community transition facilities. RCW 36.70A.200(1).

The Act provides that no local comprehensive plan or development regulation may preclude the siting of essential public facilities. RCW 36.70A.200(5). This prohibition also applies to the expansion or improvement of an essential public facility, but does not preclude analysis of state environmental requirements, nor the imposition of reasonable mitigation requirements. City of Des Moines v. Puget Sound Reg'l. Council, 108 Wn. App. 836 (1999).

Please feel free to contact me if there are any additional questions.

Elizabeth A. Pauli  
 City Attorney

E.

5/22/2008



**TO:** Tacoma Planning Commission

**FROM:** The Office of the City Attorney

**SUBJECT:** **Siting of Essential Public Facilities & City Ordinance 28417**

**DATE:** April 18, 2017

The Tacoma City Council recently passed emergency, interim development regulations (City Ordinance No. 28417) regarding the “siting [of] public correctional facilities.” TMC 13.02.055 requires that the Planning Commission make findings of fact and recommendations for the City Council’s consideration before any emergency, interim development regulations can be finalized. By this Memo, the City Attorney’s Office is providing the Planning Commission with the following information and guidance:

1. After additional review, the City does not see challenging any designation of the immigration detention facility in the tideflats as an “essential public facility” under RCW 36.70A.200 and WAC 365-196-550 as a viable course going forward;
2. The City understands that essential public facilities must be accounted for in the City’s Comprehensive Plan, and cannot be prohibited by the Comprehensive Plan and/or the City development regulations (WAC 365-196-550 (3) and (6));
3. The siting and permitting of essential public facilities can, however, be regulated and conditioned in order to mitigate potential impacts of the essential public facility (WAC 365-196-550 (6)); and
4. WAC 365-196-550 provides the best guidance, particularly at subsection (6), for the mitigation of potential impacts.



# Essential Public Facilities

## RCW 36.70A.200 and WAC 365-196-550

### *RCW 36.70A.200*

#### *Siting of essential public facilities—Limitation on liability.*

(1) The comprehensive plan of each county and city that is planning under RCW [36.70A.040](#) shall include a process for identifying and siting essential public facilities. Essential public facilities include those facilities that are typically difficult to site, such as airports, state education facilities and state or regional transportation facilities as defined in RCW [47.06.140](#), regional transit authority facilities as defined in RCW [81.112.020](#), state and local correctional facilities, solid waste handling facilities, and inpatient facilities including substance abuse facilities, mental health facilities, group homes, and secure community transition facilities as defined in RCW [71.09.020](#).

(2) Each county and city planning under RCW [36.70A.040](#) shall, not later than September 1, 2002, establish a process, or amend its existing process, for identifying and siting essential public facilities and adopt or amend its development regulations as necessary to provide for the siting of secure community transition facilities consistent with statutory requirements applicable to these facilities.

(3) Any city or county not planning under RCW [36.70A.040](#) shall, not later than September 1, 2002, establish a process for siting secure community transition facilities and adopt or amend its development regulations as necessary to provide for the siting of such facilities consistent with statutory requirements applicable to these facilities.

(4) The office of financial management shall maintain a list of those essential state public facilities that are required or likely to be built within the next six years. The office of financial management may at any time add facilities to the list.

(5) No local comprehensive plan or development regulation may preclude the siting of essential public facilities.

(6) No person may bring a cause of action for civil damages based on the good faith actions of any county or city to provide for the siting of secure community transition facilities in accordance with this section and with the requirements of chapter 12, Laws of 2001 2nd sp. sess. For purposes of this subsection, "person" includes, but is not limited to, any individual, agency as defined in RCW [42.17A.005](#), corporation, partnership, association, and limited liability entity.

(7) Counties or cities siting facilities pursuant to subsection (2) or (3) of this section shall comply with RCW [71.09.341](#).

(8) The failure of a county or city to act by the deadlines established in subsections (2) and (3) of this section is not:

(a) A condition that would disqualify the county or city for grants, loans, or pledges under RCW [43.155.070](#) or [70.146.070](#);

(b) A consideration for grants or loans provided under RCW [43.17.250\(3\)](#); or

(c) A basis for any petition under RCW [36.70A.280](#) or for any private cause of action.

[ [2013 c 275 § 5](#); [2011 c 60 § 17](#); [2010 c 62 § 1](#); [2002 c 68 § 2](#); [2001 2nd sp.s. c 12 § 205](#); [1998 c 171 § 3](#); [1991 sp.s. c 32 § 1](#).]

**NOTES:**

**Effective date—2011 c 60:** See RCW [42.17A.919](#).

**Purpose—2002 c 68:** "The purpose of this act is to:

(1) Enable the legislature to act upon the recommendations of the joint select committee on the equitable distribution of secure community transition facilities established in section 225, chapter 12, Laws of 2001 2nd sp. sess.; and

(2) Harmonize the preemption provisions in RCW [71.09.250](#) with the preemption provisions applying to future secure community transition facilities to reflect the joint select committee's recommendation that the preemption granted for future secure community transition facilities be the same throughout the state." [ [2002 c 68 § 1](#).]

**Severability—2002 c 68:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [ [2002 c 68 § 19](#).]

**Effective date—2002 c 68:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 21, 2002]." [ [2002 c 68 § 20](#).]

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW [71.09.250](#).

## WAC 365-196-550

### Essential public facilities.

(1) Determining what facilities are essential public facilities.

(a) The term "essential public facilities" refers to public facilities that are typically difficult to site. Consistent with county-wide planning policies, counties and cities should create their own lists of "essential public facilities," to include at a minimum those set forth in RCW [36.70A.200](#).

(b) For the purposes of identifying facilities subject to the "essential public facilities" siting process, it is not necessary that the facilities be publicly owned.

(c) Essential public facilities include both new and existing facilities. It may include the expansion of existing essential public facilities or support activities and facilities necessary for an essential public facility.

(d) The following facilities and types of facilities are identified in RCW [36.70A.200](#) as essential public facilities:

(i) Airports;

(ii) State education facilities;

(iii) State or regional transportation facilities;

(iv) Transportation facilities of statewide significance as defined in RCW [47.06.140](#). These include:

(A) The interstate highway system;

(B) Interregional state principal arterials including ferry connections that serve statewide travel;

(C) Intercity passenger rail services;

(D) Intercity high-speed ground transportation;

(E) Major passenger intermodal terminals excluding all airport facilities and services;

(F) The freight railroad system;

(G) The Columbia/Snake navigable river system;

(H) Marine port facilities and services that are related solely to marine activities affecting international and interstate trade;

(I) High capacity transportation systems.

(v) Regional transit authority facilities as defined under RCW [81.112.020](#);

(vi) State and local correctional facilities;

(vii) Solid waste handling facilities;

(viii) In-patient facilities, including substance abuse facilities;

(ix) Mental health facilities;

(x) Group homes;

(xi) Secure community transition facilities;

(xii) Any facility on the state ten-year capital plan maintained by the office of financial management.

(e) Essential public facility criteria apply to the facilities and not the operator. Cities and counties may not require applicants who operate essential public facilities to use an essential public facility siting process for projects that would otherwise be allowed by the development regulations. Applicants who operate essential public facilities may not use an essential public facility siting process to obtain approval for projects that are not essential public facilities.

(f) Regardless of whether it is a new, existing or an expansion or modification of an existing public facility, the major component in the identification of an essential public facility is whether it provides or is necessary to provide a public service and whether it is difficult to site.

(2) Criteria to determine if the facility is difficult to site. Any one or more of the following conditions is sufficient to make a facility difficult to site.

(a) The public facility needs a specific type of site of such as size, location, available public services, which there are few choices.

(b) The public facility needs to be located near another public facility or is an expansion of an essential public facility at an existing location.

(c) The public facility has, or is generally perceived by the public to have, significant adverse impacts that make it difficult to site.

(d) Use of the normal development review process would effectively preclude the siting of an essential public facility.

(e) Development regulations require the proposed facility to use an essential public facility siting process.

(3) Preclusion of essential public facilities.

(a) Cities and counties may not use their comprehensive plan or development regulations to preclude the siting of essential public facilities. Comprehensive plan provisions or development regulations preclude the siting of an essential public facility if their combined effects would make the siting of an essential public facility impossible or impracticable.

(i) Siting of an essential public facility is "impracticable" if it is incapable of being performed or accomplished by the means employed or at command.

(ii) Impracticability may also include restrictive zoning; comprehensive plan policies directing opposition to a regional decision; or the imposition of unreasonable conditions or requirements.

(iii) Limitations on essential public facilities such as capacity limits; internal staffing requirements; resident eligibility restrictions; internal security plan requirements; and provisions to demonstrate need may be considered preclusive in some circumstances.

(b) A local jurisdiction may not include criteria in its land use approval process which would allow the essential public facility to be denied, but may impose reasonable permitting requirements and require mitigation of the essential public facility's adverse effects.

(c) An essential public facility is not precluded simply because the comprehensive plan provisions would be too costly or time consuming to comply with.

(d) If the essential public facility and its location have been evaluated through a state or regional siting process, the county or city may not require the facility to go through the local siting process.

(e) Essential public facilities that are sited through a regional or state agency are distinct from those that are "sited by" a city or county or a private organization or individual. When a city or county is siting its own essential public facility, public or private, it is free to establish a nonpreclusive siting process with reasonable criteria.

(4) Comprehensive plan.

(a) Requirements:

(i) Each comprehensive plan shall include a process for identifying and siting essential public facilities. This process must be consistent with and implement applicable county-wide planning policies.

(ii) No local comprehensive plan may preclude the siting of essential public facilities.

(b) Recommendations for meeting requirements:

(i) Identification of essential public facilities. When identifying essential public facilities, counties and cities should take a broad view of what constitutes a public facility, involving the full range of services to the public provided by the government, substantially funded by the government, contracted for by the government, or provided by private entities subject to public service obligations.

(ii) Agreements among jurisdictions should be sought to mitigate any disproportionate financial burden which may fall on the county or city which becomes the site of a facility of a statewide, regional, or county-wide nature.

(iii) Where essential public facilities may be provided by special districts, the plans under which those districts operate must be consistent with the comprehensive plan of the city or county. Counties and cities should adopt provisions for consultation to ensure that such districts exercise their powers in a way that does not conflict with the relevant comprehensive plan.

(c) The siting process should take into consideration the need for county-wide, regional, or statewide uniformity in connection with the kind of facility under review.

(5) Development regulations governing essential public facilities.

(a) Development regulations governing the siting of essential public facilities must be consistent with and implement the process set forth in the comprehensive plan.

(b) Except where county-wide planning policies have otherwise dictated siting choices, provision should be made for the possibility of siting each of the listed essential public facilities somewhere within each county's or city's planning area.

(c) Counties and cities should consider the criteria established in their comprehensive plan, in consultation with this section to determine if a project is an essential public facility. Counties and cities may also adopt criteria for identifying an essential public facility.

(d) If an essential public facility does not present siting difficulties and can be permitted through the normal development review process, project review should be through the normal development review process otherwise applicable to facilities of its type.

(e) If an essential public facility presents siting difficulties, the application should be reviewed using the essential public facility siting process.

(6) The essential public facility siting process.

(a) The siting process may not be used to deny the approval of the essential public facility. The purpose of the essential public facility siting process is to allow a county or city to impose reasonable conditions on an essential public facility necessary to mitigate the impacts of the project while ensuring that its development regulations do not preclude the siting of an essential public facility.

(b) The review process for siting essential public facilities should include a requirement for notice and an opportunity to comment to other interested counties and cities and the public.

(c) The permit process may include reasonable requirements such as a conditional use permit, but the process used must ensure a decision on the essential public facility is completed without unreasonable delay.

(d) The essential public facility siting process should identify what conditions are necessary to mitigate the impacts associated with the essential public facility. The combination of any existing development regulations and any new conditions may not render impossible or impracticable, the siting, development or operation of the essential public facility.

(e) Counties and cities should consider the extent to which design conditions can be used to make a facility compatible with its surroundings. Counties and cities may also consider provisions for amenities or incentives for neighborhoods in which facilities are sited. Any conditions imposed must be necessary to mitigate an identified impact of the essential public facility.

[Statutory Authority: RCW [36.70A.050](#), [36.70A.190](#). WSR 10-22-103, § 365-196-550, filed 11/2/10, effective 12/3/10; WSR 10-03-085, § 365-196-550, filed 1/19/10, effective 2/19/10.]

**Meeting:** Planning Commission Meeting, April 19, 2017

**Agenda Item:** D3 – Correctional Facilities Interim Regulations

**Staff Suggestion:** Revisions to the Draft Findings of Fact and Recommendations Report

Staff has received, and forwarded to the Planning Commission, the following information regarding Essential Public Facilities:

- (a) An e-mail from Ms. Joan Mell, dated April 14, 2017, providing documents in 2008-2009 that indicated the City considered the NWDC an “essential public facility” at the time of expansion
- (b) A memo from the City Attorney’s Office, dated April 18, 2017, concerning “Siting of Essential Public Facilities & City Ordinance 28417”

Upon reviewing the additional information received, staff suggests that the Commission consider the following revisions to the Draft Findings of Fact and Recommendations Report:

**(1) Findings of Fact, #26:**

Current Language:

26. Not allowing private correctional facilities may be subject to challenge, since the Washington Administrative Code, WAC 365-196-550(1)(b), states that for the purposes of identifying facilities subject to the "essential public facilities" siting process, it is not necessary that the facilities be publicly owned.

Proposed Language:

26. The interim regulations prohibit the siting of private correctional facilities in all zoning districts. This restriction, even as an interim measure, may be subject to challenge based on potential inconsistency with state provisions concerning “essential public facilities,” which are addressed in the state Growth Management Act (see Revised Code of Washington, RCW 36.70A.200). The Commission refers to the following relevant provisions as set forth in the Washington Administrative Code:

- For the purposes of identifying facilities subject to the "essential public facilities" siting process, it is not necessary that the facilities be publicly owned (WAC 365-196-550(1)(b)).
- The key considerations for identifying an essential public facility is whether it provides or is necessary to provide a public service and whether it is difficult to site (WAC 365-196-550(1)(f)).
- Per WAC 365-196-550(3)(a), cities and counties may not use their comprehensive plan or development regulations to preclude the siting of essential public facilities.
- The permitting process for Essential Public Facilities may include reasonable requirements such as a conditional use permit (WAC 365-196-550(6)(c)).

Based on the above information, the Commission believes that private correctional facilities should be considered essential public facilities, and as such, cannot be prohibited by the Comprehensive Plan and/or development regulations, but can be regulated and conditioned in order to mitigate their potential impacts.

**(2) Work Plan, Scope of Work, #2:**

Current Language:

2. Essential Public Facilities – Are the newly defined “private correctional facilities” considered essential public facilities as defined in and regulated by the Growth Management Act (RCW 36.70A)?

Proposed Language:

2. Essential Public Facilities – The issue concerning whether the newly defined “private correctional facilities” are considered essential public facilities as defined in and regulated by the Growth Management Act (RCW 36.70A) may need to be further examined, and the code revised accordingly.

**(3) Recommendations, #1:**

Current Language:

1. Immediate Action – Modify the interim regulations to better align the code language with the City Council's intent to prohibit new private correctional facilities and the expansion of existing facilities. This work can be done immediately upon the completion of the City Council public hearing on April 25, 2017 as scheduled per Ordinance No. 28417.

Proposed Language:

1. Immediate Action – Modify the interim regulations to allow private correctional facilities in the same zoning districts as public correctional facilities and subject to conditional use permits. This work can be done immediately upon the completion of the City Council public hearing on April 25, 2017 as scheduled per Ordinance No. 28417.

**(4) Letter of Recommendation, Recommendations, #1:**

Current Language:

1. Immediate Action – Modify the interim regulations, upon the completion of the Council's public hearing on this matter on April 25, 2017, to better align the code language with the Council's intent to prohibit new private correctional facilities and the expansion of existing facilities.

Proposed Language:

1. Immediate Action – Modify the interim regulations, upon the completion of the Council's public hearing on this matter on April 25, 2017, to allow private correctional facilities in the same zoning districts as public correctional facilities and subject to conditional use permits.