City of Tacoma
Planning Commission

AGENDA

MEETING: Regular Meeting

TIME: Wednesday, March 16, 2016, 4:00 p.m.

LOCATION: Room 16, Tacoma Municipal Building North
733 Market Street, Tacoma, WA 98402

A. Call to Order and Quorum Call

B. Approval of Agenda and Minutes of March 2, 2016

C. Public Comments (up to three minutes per speaker)

Comments must be pertaining to items on the agenda, except the topic of a recent public hearing, which is "Marijuana Code Amendments". A public hearing was held on March 2, 2016 and the record has been closed as of March 7, 2016. No further comments will be accepted for this item.

D. Discussion Items

1. Marijuana Code Amendments

Review public comments received at the public hearing on March 2 and through the comment period ending on March 7, and discuss potential modifications to the proposal.
(See "Agenda Item D-1"; Molly Harris, 591-5383, mharris@cityoftacoma.org)

2. Code Cleanups (an application for the 2016 Annual Amendment)

Review background information, key issues, and proposed clean-up revisions to the Land Use Regulatory Code.
(See "Agenda Item D-2"; Stephen Atkinson, 591-5531, satkinson@cityoftacoma.org)

3. Wireless Communication Facilities (an application for the 2016 Annual Amendment)

Review the proposed code amendments concerning wireless communication facilities.
(See "Agenda Item D-3"; Lihuang Wung, 591-5682, lwung@cityoftacoma.org)

4. Short-Term Rentals (an application for the 2016 Annual Amendment)

Review background information, key issues, and proposed approach and framework for code amendments concerning short-term rentals.
(See "Agenda Item D-4"; Lihuang Wung, 591-5682, lwung@cityoftacoma.org)

E. Communication Items & Other Business

(1) Enhanced Demolition Permit Review (See "Agenda Item E-1")

(2) Infrastructure, Planning and Sustainability Committee meeting, March 23, 2016, 4:30 p.m., Room 16; agenda includes: Environmental Action Plan Recommendations; Applicant Interviews for Transportation Commission; and Applicant Interviews for Board of Building Appeals.

(3) Planning Commission meeting, April 6, 2016, 4:00 p.m., Room 16; agenda includes: Marijuana Code Amendments; and 2016 Annual Amendment Package (including Multifamily Design Standards; Future Land Use Implementation; Short-Term Rentals; Wireless Communication Facilities; and Code Cleanups).

F. Adjournment

MINUTES (Draft)

TIME: Wednesday, March 2, 2016, 4:00 p.m.

PLACE: Council Chambers, Tacoma Municipal Building, 1st Floor
747 Market Street, Tacoma, WA 98402

PRESENT: Chris Beale (Chair), Stephen Wamback (Vice-Chair), Donald Erickson, Jeff McInnis, Meredith Neal, Anna Petersen, Brett Santhuff, Dorian Waller

ABSENT: Scott Winship

A. CALL TO ORDER AND QUORUM CALL

Chair Beale called the meeting to order at 4:04 p.m. A quorum was declared.

B. APPROVAL OF AGENDA AND MINUTES OF February 17, 2016

The agenda was approved.

The minutes of the regular meeting on February 17, 2016 were reviewed and approved as submitted.

C. PUBLIC COMMENTS

No members of the public came forward to provide comments.

D. DISCUSSION ITEMS

1. Multifamily District Design Standards

Stephen Atkinson, Planning Services Division, reviewed key issues and the proposed approach to code amendments concerning the design and development standards for multifamily residential zoning districts. Mr. Atkinson reviewed that the market for new development remains lower density, not supporting structured parking in most areas. He reported that they were seeking to maintain distinctions between centers and non-centers; focus standards on designated corridors that are a focal point for design and transit improvements; and balance desire for density with quality of life. He reviewed that design standards were currently bifurcated with some standards specific to a building types like townhouses and other standards specific to an area like mixed-use centers. He noted that to address the gaps between different standards they would need to consider whether it is more appropriate to create standards by zone or building type.

Designated Corridors were discussed. Mr. Atkinson reviewed that Designated Corridors were streets designated as main streets and avenues in the Comprehensive Plan with associated goals and policies. He noted that they tied together and connected the City's mixed-use centers and typically had more capacity for multifamily and commercial development. Commissioner McInnis asked if there was consideration for adding light rail to the Designated Corridors map. Mr. Atkinson responded that there were some streets planned for higher frequency transit that were not on the map, but all of the streets on the map were in the Transportation Master Plan as having higher frequency transit.

Maximum setbacks were discussed. Mr. Atkinson noted that currently the code only has minimum setbacks to provide space for yards or parking lots. He commented that maximum setbacks would create an environment that is inviting to pedestrians and creates a legible defined public realm. Mr. Atkinson recommended a balanced approach with 50% of the frontage no more than 20 feet from the street on designated corridors. Chair Beale questioned how being close to the street would affect the privacy of units that have a minimal landscape buffer and how a maximum setback would affect requirements for

landscaping. Mr. Atkinson responded that transition was an important factor and they would need to look at ensuring a transition space.

Maximum building length was discussed. Mr. Atkinson commented that it addressed an issue with larger developments where long buildings oriented away from the street can create a continuous wall. The standards would ensure that long building walls would be broken up into separate buildings, providing a feeling of transition. Vice-Chair Wamback suggested that fence and retaining wall lengths should also be considered. Commissioner Erickson commented that another tool was to break a building into different façade treatments. Chair Beale commented that he would like to consider standards on building materials and modulation rather than simply having a cutoff for the maximum length.

Parking standards were discussed. Mr. Atkinson commented that the intent was that there should be some break up of parking lots along all street frontages in order to enhance the appearance of neighborhoods and to break up monotonous street frontages. A balance would be struck by limiting street frontage parking to no more than 50% of any frontage, no more than 150 feet continuous, allowing 60 feet between structures that meet setback requirements, and requiring driveways to be separated by 150 feet. Mr. Atkinson suggested that alternatively, they could simply limit parking to 50% of any frontage and not limit the continuous length. Commissioner Erickson commented that separating driveway access by 150 feet was counterintuitive to what they were trying to do for defining the street. Commissioner Petersen expressed support for applying parking standards to all streets, as they might all become pedestrian streets in the future. Vice-Chair Wamback expressed concern that if they put a developer in a situation where they will choose not to build parking, there will be more cars parking on the street.

Pedestrian orientation standards were discussed. Roofline standards would involve changing the applicability of existing roofline standards to ensure that the roofline is addressed as an integral part of building design to avoid flat, unadorned rooflines. General pedestrian standards would include requiring main entrances from the street, standards for porch dimensions, and weather protection along the street frontage. Window and opening standards would increase public visibility for safety, provide visual interest for pedestrians, and help encourage pedestrian mobility. Fencing and utility screening standards would address specific features which detract from the appearance of residential areas. Pedestrian connectivity standards would improve the directness of routes between building entrances and nearby streets as well as between adjacent sites. Commissioner Erickson commented that it would be best to encourage people to use the public right of way for the vitality of the uses present. Mr. Atkinson responded that the size of the site and distance to the sidewalk would be considered.

Standards for natural qualities and open space were discussed. Mr. Atkinson commented that usable yard space standards would provide opportunities for outdoor relaxation and recreation. Mr. Atkinson explained that current requirements for residential districts mandate 10% of the lot size be usable open space, whereas the Commission could consider balancing general open space with private open space for residents. A tree canopy requirement would enhance the overall appearance of residential developments by providing privacy and shading and would be inclusive of tree canopy provided through other landscaping requirements. Chair Beale recommended including a standard for tree canopies shading facades that receive direct sunlight.

Chair Beale recessed the meeting at 5:00 p.m. for the public hearing concerning Marijuana Code Amendments. The discussion of Multifamily District Design Standards resumed at 5:40 p.m., after the conclusion of the public hearing.

Standards for compatibility, scale, and transition were discussed. Building coverage would limit the overall bulk of structures, ensuring that larger buildings would not have a footprint that overwhelms adjacent development. Allowed height would promote a reasonable building scale and would promote options for privacy for neighboring residences. Mr. Atkinson recommended that they could consider whether the R-5 zoning, which is currently unused, should reduce the height limit to 85 feet or whether the zoning should be eliminated. He also suggested that they could consider increasing the height limit for R-4L to 45 feet to provide a greater sense of urban scale on key corridors. Chair Beale noted that the number of feet in height doesn't directly translate to the number of stories, particularly in how mixed-use buildings are constructed. Mass reduction design choices would reduce the apparent mass of structures by providing physical breaks in building volume and reducing large flat planes on any give building elevation. Minimum

density would ensure that service capacity is used efficiently and the City's housing goals are met. Mr. Atkinson commented that it would set a threshold for minimum density that goes beyond the standard lot size so that some diverse housing lot size options would be necessary.

Vice-Chair Wamback commented that focusing on corridors leaves northeast Tacoma out of the discussion where there are multi-family pockets that flow into suburban areas. Mr. Atkinson responded that a lot of the standards like mass reduction and lot coverage would be broadly applicable and the standards for corridors would focus more on setbacks and parking. Vice-Chair Wamback suggested that it would be helpful to have some detailed maps of the corridors for future discussions. Mr. Atkinson commented that they would have a map tool available as they moved into discussion of zoning.

2. Future Land Use Implementation

Mr. Atkinson facilitated a discussion to review key issues and the proposed approach to area-wide rezones in identified study areas in order to address inconsistencies between the Comprehensive Plan and the Zoning Map. He reviewed that they had begun to look at areas that would be considered code cleanup items and that 1300 notices had been sent out to residents in the locations. Mr. Atkinson demonstrated an online map tool that would provide access to all of the Comprehensive Plan map layers.

The Knob Hill area was discussed. Mr. Atkinson reviewed that it was currently zoned R-4 and was a mix of single family, multifamily, and commercial. He noted that the area was part of the Downtown Subarea Plan, but had not been rezoned to one of the Downtown zoning districts. He commented that it would not be a large change to move from the current R-4 zoning to any of the Downtown zoning districts, which would most likely be Downtown Residential for the majority of the Knob Hill area and some potential Warehouse Residential zoning along Pacific.

The campus area around Cheney Stadium and Foss High School was discussed. Mr. Atkinson reviewed that the area was zoned R-2, even though there were no single family uses in the area. As a result of the zoning, Cheney Stadium and Foss High School were able to expand only through Conditional Use Permits. Cheney Stadium had expressed interest in adding some commercial uses to the area, but would be unable to do so under the current zoning. Mr. Atkinson explained that staff had received public comments on this area and heard concerns that a rezone would mean that large commercial uses would be constructed in the City's open space areas in this location. Chair Beale questioned whether the Institutional Campus designation would be appropriate if the parts of the area were rezoned to C-2 or if an institutional zone would be more appropriate. Vice-Chair Wamback commented that they needed to be cautious about retaining a low density residential zone in an area that could potentially become a light rail corridor.

The area around the Franke Tobey Jones retirement community was discussed. Mr. Atkinson noted that they had made a zoning change request and were interested in an R-4 PRD expansion, but the new Land Use Designations would require a Comprehensive Plan amendment to get the rezone accepted. Mr. Atkinson noted the area was a Planned Residential Development (PRD) and that the designation was low density multifamily. He commented that the expansion request would require a rezone of the R-3 PRD zoned area to an R-4 PRD. Discussion ensued. Commissioner Santhuff asked if the open space requirements had been part of the PRD. Mr. Atkinson responded that it was likely that they did. Chair Beale asked if there would be an opportunity for neighbors to comment on the proposed zoning change. Mr. Atkinson responded that there would be a public process after the zoning change request was submitted. Commissioner Erickson requested that they review the file to see what conditions had been placed on the R-4 PRD.

An area along 6th Avenue near the James and Narrows mixed-use centers was discussed. Mr. Atkinson noted that it was a site where current planning would demand site specific rezones and CUPs, suggesting that there was an issue with the zoning. He reviewed that the area was designated as high density multi-family due to the proximity to two mixed-use centers and the potential for transit access. He noted an issue with a street that did not connect all the way through. Mr. Atkinson noted opportunities for transition zoning of R-3 and R-4L and challenges associated with commercial properties did not have a consistent parcel depth. Chair Beale asked if residential and commercial split zones would allow commercial on the entire parcel. Mr. Atkinson responded that the use would be restricted. Chair Beale noted the proximity to

a transit center and two mixed-use centers and asked why they were not considering an R-5 zoning. Mr. Atkinson responded that at the current 150' height limit the R-5 did not seem appropriate. Chair Beale suggested that the R-5 zoning with an 85 foot height limit may be appropriate.

Wapato Lake Park was discussed. Mr. Atkinson noted that there had been a lot of improvements done on the access to the park including new sidewalks and improved crosswalks. He reported on a possible new access point at the midpoint of the park and commented that if they were going to make a change it could be limited to that specific area. Commissioner Erickson questioned why the homes adjacent to the park were R-2 and not R-3. Mr. Atkinson responded that it could be an interesting area for a market study. Commissioner Petersen asked how they would make sure that development is oriented towards the park and not the highway, becoming an extension of the existing shopping center. Chair Beale expressed concern that they had not spent much time on the land use designation that changed the corridor to neighborhood commercial and were now looking at bifurcating the zoning implementation. Vice-Chair Wamback commented the area around the park was too sensitive to not do right the first time. Chair Beale commented that he had concerns about the views around the park and that they should slow down and pull it from consideration for the time being. Mr. Atkinson commented that they could make a recommendation to not proceed with a zoning change until the Commission is more comfortable that the commercial zoning adequately supports the policies in the Comprehensive Plan.

3. Public Hearing – Marijuana Code Amendments

At 5:00 p.m., Chair Beale called the public hearing to order and reviewed the procedures, noting that the record would be open through March 7, 2016 to accept written comments.

Molly Harris, Planning Services Division, provided background information and reviewed the proposed amendments to the Tacoma Municipal Code concerning marijuana uses. Ms. Harris reviewed that State Law had been amended in 2015 to align the medical marijuana system with the existing recreational system and that the City Council had enacted a moratorium on January 12th to provide time for the City to update the regulations. Potential land use code amendments included maintaining existing zoning for marijuana businesses; maintaining regulations for production and processing; allowing cooperatives with buffers for sensitive uses; and no cap on the total number of marijuana businesses. Potential Land Use code amendments for retail stores included reducing buffers to 100 feet for child care centers, game arcades, libraries public parks, public transit centers, and recreation centers; reducing buffers to 300 feet for correctional facilities, court houses, drug rehabilitation centers, and detox centers; maintaining the 1000 foot buffer for elementary schools, secondary schools, and playgrounds; requiring a state medical endorsement; and a dispersion of 300 feet inside the Downtown area and 500 feet citywide. Ms. Harris noted that a preliminary Determination of Nonsignificance had been issued Feb 19, 2016.

Chair Beale called for testimony. The following citizens testified:

1) **Brian Caldwell, Triple C:**
   Mr. Caldwell commented that he operates the Triple C Collective medical store on 6th Avenue. He thanked the Commission for their progressive views and for requiring that all new retail stores be medically endorsed.

2) **Philip Dawdy, SPM:**
   Mr. Dawdy commented that he was present on behalf of SPM, a store that was on the verge of being licensed at 24th and Pacific. He commented that in the downtown zones, reducing sensitive use buffers to 100 or 300 feet made all the difference in providing locations for new stores. He requested that the Commission consider having no dispersion requirement. Mr. Dawdy commented that he appreciated requiring that all new stores have medical endorsements.

3) **Justin Ice, The 420 Club:**
   Mr. Ice commented that it was unfair that existing collective gardens hadn't been given priority consideration for the 16 available 502 stores within Tacoma. He commented that the City's remaining Collective Gardens are good individuals and that they have many established patients. He asked that they consider endorsing some of the collective gardens so they can maintain medicinal availability.

4) **Robin Austin:**
Ms. Austin requested that medical cannabis be given the respect it deserves. She commented that getting medicine at a recreational store is like going to party central. She commented that it's important that patients have dignity and respect and do not have to go to a party place to get their medicine. She recommended that medical cannabis should be allowed to have its own facility as well as being offered in recreation stores. She commented that there should not be a large sensitive use buffer between transportation centers and stores, because a transportation center should be close to a medical facility.

5) **Kristina Perez:**
Ms. Perez commented that she was a collective garden owner and that collective garden owners have jumped through hoops to be as legal as possible in hopes of becoming legal and getting their licenses. She reported that she was not one of the lucky ones to get a license because they were too close to a church. She commented that the 3,000 patients of her collective garden valued their privacy and did not want to go to a recreational store as they would not provide the advice or the medical strains that patients need. She commented that it was a shame to bend over backwards, jump through hoops, pay taxes, and end up nowhere. She reported that they had been operating by the book since 2011 with no incidents. She noted that she had sent a letter to the City of Tacoma and the Washington State Liquor and Cannabis Board regarding her collective garden's location and there had been no response to the letter.

6) **Mark Walker:**
Mr. Walker commented that he had multiple sclerosis and had been using cannabis since 2001. He commented that he had been to multiple doctors and that they did not offer anything else for his disease. He asked the Commission to make it easy for the sick and disabled as it was already hard enough.

7) **Heather Costigan:**
Ms. Costigan commented that she had been working with collectives since 2008 and that they are working to get one of their stores into the right zone as it is currently close to a park. She noted issues with buying cannabis from recreational stores including lack of information about products and inability to examine them. She reported that they would now have to partner with others to make their company move forward, which was tough after having paid taxes and the business license cost. She commented she undergone back surgery last year and had been using medical cannabis for pain relief and had not had to use any of the other pain medications. She commented that she had been a nurse for 5 years and had seen what opiates had done to people and that it was not a way to kill pain. She noted side effects from opiates that marijuana does not have. She suggested making the sensitive use buffers smaller and allowing more shops which would be helpful for the City and the people who have jobs with the dispensaries.

Seeing no one else coming forward, Chair Beale closed the public hearing at 5:31 p.m. and recessed the meeting. The meeting was resumed at 5:40 p.m., and the Commissioners continued the discussion of Multifamily District Design Standards.

E. COMMUNICATION ITEMS & OTHER BUSINESS

Vice-Chair Wamback recommended noting on the March 16th meeting agenda that comments on the Marijuana Code Amendments would not be accepted as the comment period for that item was closed.

F. ADJOURNMENT

At 6:48 p.m., the meeting of the Planning Commission was concluded.

Agenda Item D-1

City of Tacoma
Planning and Development Services

To: Planning Commission

From: Molly Harris, Planning Services Division

Subject: **Marijuana Land Use Regulations**

Date of Meeting: March 16, 2016

Date of Memo: March 10, 2016

The Planning Commission conducted a public hearing on March 2, 2016 to receive testimony on the Potential Amendments to the Land Use Regulatory Code on the production, processing, and retail uses of medical and recreational marijuana, and kept the record open through March 7, 2016 to accept written comments.

At the March 16, 2016 meeting, the Commission will review public comments received and consider potential modifications to the proposal accordingly. To facilitate the Commission's review and deliberation, attached is the Public Comments and Staff Responses Report, along with a summary of oral testimony and a compilation of written comments.

Also attached is a Staff Recommendation Report, developed based on staff' perspectives on the matter and staff's review of public comments. Hopefully this provides additional perspectives and supports the Commission's consideration and deliberation.

Based on the discussion on March 16th, staff will prepare a draft Planning Commission's Findings of Fact and Recommendation Report for the Commission's consideration at the following meeting on April 6, 2016.

If you have any questions, please contact me at 591-5383 or mharris@cityoftacoma.org.

Attachments

c: Peter Huffman, Director

Public Comments and Staff Responses Report

March 9, 2016

The Planning Commission conducted a public hearing on March 2, 2016, concerning amendments to the Marijuana Regulations in the Land Use Regulatory Code and kept the record open through March 7, 2016 to accept written comments.

A *Public Review Document* was compiled and made available for public review prior to the public hearing. The document includes the complete text of the proposed amendments, the Preliminary Determination of Environmental Nonsignificance and the environmental checklist associated with the proposal, as well as relevant background information. Public notice was provided to Planning Commission distribution lists, marijuana stakeholders, Neighborhood Councils, Neighborhood Business Districts, and to property owners in the vicinity of licensed and pending recreational marijuana retail businesses.

This report, prepared for the Planning Commission's review and discussion on March 16, 2016, summarizes public comments received during the public hearing process, identifies major issues and concerns reflected therein, provides staff responses to the issues and concerns, and suggests modifications, where appropriate, to the proposed amendments as contained in the *Public Review Document*.

Comments	Commenters	Staff Responses
1. Medical endorsement requirement for retail marijuana businesses		
• Medical endorsement requirement is good.	Dawdy; Caldwell	• Support noted.
• Long-time collective gardens should be considered for licensing.	Perez	• Comment noted. Staff notes that the City does not have control over state licensing.
• It is not fair that 502 stores have already been medically endorsed. This leaves only 7 spots for new medical stores. • The city should consider endorsing medical stores.	Ice	• Staff notes that medical endorsements and State licenses are granted by the State and the City has no control over this. The City currently has 9 retail stores and with a State cap of 16, an additional 7 stores can locate in Tacoma. Tacoma can only license stores that have a State license. • Comment noted.

2. Buffered uses		
• Buffers from parks and other uses should be reduced.	Costigan; Perez	• Comments noted.
• Buffers from parks and other uses should be reduced and/or another way of measurement (not as the crow flies) should be adopted so that the buffers 'make sense' and take unique sites into consideration.	Perez	• Comments noted. The method for measuring the buffer requirements is outlined in the State rules.
3. Recreational Marijuana Retail Dispersal (proposed)		
• Requests that businesses are not required to be dispersed from each other	Dawdy; Caldwell; Rosellison; Kaminsky	• Comment noted.
• The required distance between retail locations should be greater—at 2,500'	Dunn	• Comments noted.
• Allow existing retail recreational stores currently closer than 2,500' to each other (e.g. 'grandfathered') the ability to move anywhere in the city even if its outside the retail marijuana zones but within state law of schools	Dunn	• Comments noted. This type of requirement would be a huge departure from traditional regulation of non-conforming ('grandfathered') uses and is not recommended.
• The current and proposed number of businesses clustered along 6th Avenue is too many—this is not good City policy	Dunn	• Comments noted.
4. Collective Garden/Medical Concerns		
• The quality of medical marijuana and service is not as high in retail recreational stores. • Collective garden owners have made many adjustments—paid taxes, etc. in order to become legal and it is not fair they cannot be licensed.	Perez	• Comments noted. Medical marijuana standards of care, products, etc. are regulated by the State LCB and Dept. of Health. It is not in the City's purview to regulate these areas. • Comments noted. Collective garden owners can be licensed through the State criteria for licensing.
• Collective gardens are having to partner with retail recreational stores in order to keep operating	Costigan	• Comments noted.

• Retail recreational stores are not good for selling medical marijuana	Costigan	• Staff notes that up to this point recreational marijuana stores have not been able to sell medical marijuana products. It remains to be seen how the integration of medical marijuana into formerly recreational stores will play out – whether they will do a good job or not. However, it is not uncommon for other retail stores to sell both medical and non-medical products.
5. Perspectives on marijuana		
• Medical Marijuana patients do not want to obtain medicine from recreational stores	Austin	• Comments noted.
• Medical Marijuana should be able to have own stores separate from recreational stores	Austin	• Comment noted. Staff note that retail stores can choose to only sell medical marijuana and not recreational.
• Transportation centers should be close to medical marijuana stores	Austin	• Comment noted. Initiative 502, as passed by the voters, included buffers from transit centers.
• Asks that it be made easy for sick and disabled to obtain medical marijuana	Walker	• The potential amendments require that all retail stores have a medical endorsement, which allows the sale of medical marijuana.
• Medical marijuana does not have the same side effects as opiates	Costigan	• Comments noted.
• Drug culture is expanding and is not contributing positively to our society • I see government pushing for mental health programs to counter the damage this and other drugs are doing to peoples' minds and subsequently their lives and the lives of others • Where there is violence, there is substance abuse; the rare exceptions are anomalous • Seeking a compilation of blood analysis from all perpetrators of violence upon apprehension; this would also enable to weigh cost vs revenue	Borgelt	• Comments noted.

Attachments:

1. List of Commenters
2. Summary of Oral Testimony (received at the Public Hearing, March 2, 2016)
3. Written Comments (received through March 7, 2016)

List of Commenters

Oral Testimony (March 2, 2016)

No.	Name	Affiliation	Issues
1	Caldwell, Brian	Triple C	Dispersion
2	Dawdy, Philip	SPM	Dispersion
3	Ice, Justin	The 420 Club	Collective Gardens
4	Austin, Robin		Medical Cannabis
5	Perez, Christina	Northwest Natural Medicine & Service	Buffer vs Closest Route
6	Walker, Mark		Cannabis User
7	Costigan, Heather		Sensitive Use Buffers

Written Comments (received through March 7, 2016) (listed in alphabetical order)

No.	Name	Affiliation	Issues
1	Borgelt, Brian	Freighthouse Square	Legalization of marijuana
2	Caldwell, Brian	Triple C	Dispersion
3	Dunn, Duane	Emerald Leaves	Dispersion
4	Kaminsky, Lara	The Cannabis Alliance	Dispersion
5	Perez, Christina	Northwest Natural Medicine & Service	Buffer vs Closest Route
6	Rosellison, Danielle		Dispersion

SUMMARY OF ORAL TESTIMONY

Planning Commission Public Hearing

March 2, 2016

(1) **Brian Caldwell, Triple C:**
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From: brian borgelt [mailto:bborgelt@hotmail.com]
Sent: Tuesday, March 01, 2016 4:06 PM
To: Planning
Subject: Pot

I voted for the legalization of marijuana believing it would create a revenue stream from an out-of-control illicit industry.
What I have seen unfortunately, is an expanded drug culture that is not contributing positively to our society.
I see government pushing for mental health programs to counter the damage this and other drugs are doing to peoples' minds and subsequently their lives and the lives of others.
As an industry leader in the shooting sports, I pay close attention to incidents of violence.
I have spoken to many law enforcement professionals.
Where there is violence, there is substance abuse.
The rare exceptions are anomalous.
I have friends and associates who have compromised their potential through casual drug use.
Currently, I am seeking a compilation of blood analysis from all perpetrators of violence upon apprehension.
This would also enable us to weigh cost vs revenue
If such a database exists, I believe it would cause us to look at the issue of drugs from more than a cosmetic or recreational standpoint.
Thanks for the conversation.

Brian Borgelt
Bull's Eye Indoor Range
Freighthouse Station "Square"
Dome District
National Rifle Association
National Shooting Sports Foundation
Tacoma Safe T
Disabled American Veterans
National Federation of Independent Business
and others

TRIPLE·C
The Original Cannabis Club
·Est. 2011·

March 3, 2016
City Of Tacoma
Planning and Development Services
Tacoma Municipal Building
747 Market Street, Room 345
Tacoma, WA 98402-3701

RE: Marijuana Code Amendments Section 13.06.565 Cannabis Businesses

Dear Members of the Planning Commission:

I would like to thank you for the public dialogue and transparency you are have created around the amended code revisions for marijuana within the City of Tacoma.

I have thoroughly reviewed the Planning Commissions proposed code amendments and appreciate the reflection of the comments made by both staff and the public. This proposal will create a stable framework for the future of the cannabis industry. I fully support the recommendations of the Tacoma Planning Commission with the exception of one recommendation.

I am concerned on the recommendation that would require retail cannabis stores to be located no closer than 300-feet in the downtown area and 500-feet for the rest of the City (measured by property lines) to another cannabis store.

I appreciate the effort to ensure that there is dispersion of stores across Tacoma, however there are many patient access points that have long served the medical community in well-established locations. I would like to ask that the Commission support an open, competitive marketplace. Business owners can best decide which properly zoned locations will meet their needs, investment requirements, and industry strategies.

Additionally, this will help patients maintain access to locations they are comfortable working with.

I would be happy to discuss other options if need be and greatly appreciate your consideration of this request.

Respectfully,

Brian Caldwell

2706 6th Ave
Tacoma WA 98406

cannabisclubcollective.com

Staff Note: This letter was submitted by Mr. Duane Dunn via e-mail (emeraldleavestac@gmail.com) on March 7, 2016, to the City Council and the City Manager, but was meant to be addressed to the Planning Commission as a follow-up on the oral testimony he had made at the Commission's public hearing on March 2, 2016.

City Council,

I want to first thank the council for giving me the opportunity to give my option addressing buffer zones between retail marijuana stores on 6th ave.

First I'd like to say that I am an owner of Emerald Leaves at 2702 6th ave and I share a cluster with another recreational store Mary Mart which is less than 1000ft down the street on 6th ave. Both stores share a repeat customer base to survive, 97% of our customers are repeat customers the other 3% customers come in from outside the 6th ave corridor. Currently there are 2 recreational stores on 6th ave that are less than 1000 feet from each other which I mentioned above these 2 stores are grandfather in with the possibility of the city of Tacoma adding 2-3 more rec stores on 6th ave which will bring the total to 4 Rec stores within 30ft of each other. They are Emerald Leave, Cannabis Club Collective which shares a wall with Emerald Leave another Rec store directly across the street which I will call 3rd store and a 4 store Mary Mart which is less the 500ft from the 3rd store totaling 4 stores, 2 stores which are less than 5ft from each other the 3rd store which is less than 50 ft from Emerald Leaves and Cannabis Club Collective and the 3rd store which is less than 500ft from Mary Mart and another store which I will call store 5 tried to open few months back which was 20 feet from Mary Mart that the city closed down.

I assume it is not in the interest of the city to allow a clustering of stores 3 or more recreational stores all within 50ft of each other. The 6th ave business district does not want to see 5 McDonalds store or 5 CVS pharmacy or 5 same type businesses clustered together with a 3 block radius. Spread the stores out so there will be equal access to all customers. Put a buffer zone of 2500ft between Recreational retail stores that are not grandfathered in. This would eliminate clustering of 3 stores and allow the existing grandfathered stores to grow, as I mentioned on 6th ave we have a 97% repeat customer base and a 3% outside of 6th ave customer base adding a 3rd, 4th and 5th store in a cluster will cause stores to close as there are not enough repeat customers to sustain 3rd,4^{th},5^{th} store.

Nobody can tell me that having 4-5 stores clustered together is good business, the state didn't have 5 owned liquor stores clustered together within 2500ft the 6th ave business district does not want to see 5 theaters within 1000 or 5 rite aids within 1000ft, so why would the city of Tacoma want to see 5 recreational marijuana stores clustered together within 1000 feet radius.

If the city adopts a 500ft buffer zone between recreational retail stores then allow only the grandfathered stores the ability to move

anywhere in the city even if its **outside the retail marijuana zones but within state law of schools.**

As a business owner I have played by all the rules and have invested over $200K dollars into my store hoping that the city would give me a fair chance of surviving this industry by NOT allow 3-5 stores to exist in a cluster.

Now I'm not advocating that these stores not get their city license but put a 2500ft buffer zone in place for the 3rd store where 2 recreational stores already exist in a cluster.

A 2500ft buffer between recreational retail stores is great city policy and greater city judgment.

Thank you for your time

Duane Dunn
Emerald Leaves
206 399-1361

The Cannabis ALLIANCE

City Of Tacoma
Planning and Development Services
Tacoma Municipal Building
747 Market Street, Room 345
Tacoma, WA 98402-3701

RE: Marijuana Code Amendments Section 13.06.565 Cannabis Businesses

To Whom It May Concern:

The Cannabis Alliance is a non-profit, membership-based trade association dedicated to the advancement of a sustainable, vital and ethical cannabis industry. The Alliance represents over 150 businesses from all areas of the industry across Washington, including Tacoma.

We have reviewed the Planning Commissions proposed code amendments and greatly appreciate the thorough consideration being given to the future of the cannabis industry. The Cannabis Alliance fully supports the recommendations of the Tacoma Planning Commission with the exception of one point.

We have concerns on the recommendation that would require retail cannabis stores to be located no closer than 300-feet in the downtown area and 500-feet for the rest of the City (measured by property lines) to another cannabis store.

We appreciate the effort to ensure that there is dispersion of stores across Tacoma, however there are many patient access points that have long served the medical community in well-established locations. We would recommend that the Commission support an open, competitive marketplace. Business owners can best decide which properly zoned locations will meet their needs, investment requirements, and industry strategies.

We would be happy to discuss other options if need be and greatly appreciate your consideration of this request.

Respectfully,

Lara Kaminsky

Lara Kaminsky
Interim Executive Director

3233 S. Hanford St.
Seattle, WA 9814 **Email:** info@thecannabisalliance.us

Christina Perez owner
NorthWest Natural Medicine + Service
9027 Pacific Ave Suite I
Tacoma, WA 98444

Staff Notes:

Materials submitted by Ms. Perez on 3/2/16:

1. Email from Grant Middleton to Dustin Lawrence, 1/26/16;
2. Map ("Closest Route.pdf) attached to the above email; and
3. Letter from Christina Perez to Marcie Wilsie, 1/17/16 ("LCB MARCIE.pdf"), also attached to the above email.

Grant Middleton

From: Grant Middleton
Sent: Tuesday, January 26, 2016 8:35 PM
To: Lawrence, Dustin (dlawrence@ci.tacoma.wa.us); 'phuffman@ci.tacoma.wa.us'
Cc: Scott Clark (SClark@rrlarson.com); nwn.medicine@yahoo.com
Subject: Perez Management
Attachments: Closest Route.pdf; LCB MARCIE.pdf

Peter and Dustin,

As your aware I own the building at 9027 Pacific Avenue. When I purchased the building there was an existing lease agreement that I was required to honor with a legitimate business operated by Perez Management. Ms. Perez oversees the everyday operation of a collective garden at this location. Given the separation from my parcel line to the Immanuel Baptist Church daycare's parcel line to the SW, there is only 664 feet as the crow flies.

Because of the recent State legislation giving each jurisdiction the authority to reduce setbacks I would like to explain our position on this location for Ms. Perez's business:

Tacoma has been progressive in working with these types of businesses. As you know Seattle has recently stepped forward to reduce these overly restrictive limitations and we would like to think that Tacoma will be following suite shortly and therefore possibly open for interpretation as to why we believe that Ms. Perez's business is suitable for this location. Also given Ms. Perez's history of operating her business since 2011 it appears to be operated in a quality fashion and with care to her clients and neighbors. Additionally it should be noted that since I have been the owner of this building she continues to employ several quality long-term employees who depend on their jobs for income.

Despite the distance mentioned above there are several unique circumstances to consider given the physical environment at this location. They are as follows:

- These two business are separated by a 5 lane State highway SR-7 with a 35 MPH design. This highway is very busy and only safe and legal to cross at an approved cross-walk location.
- The closest location to cross the highway is 225 feet north of my north property line, making the total distance to Immanuel's north property line at 1,306 feet of separation. Therefore, after crossing a busy five lane highway, actually and practically meets the separation standards.
- If you measure the distances from door to door it would measure well over 1,500 feet using the methodology above. Measuring the distance this way would seem to be the most common sense and practical approach as these existing conditions are unlikely to ever change.

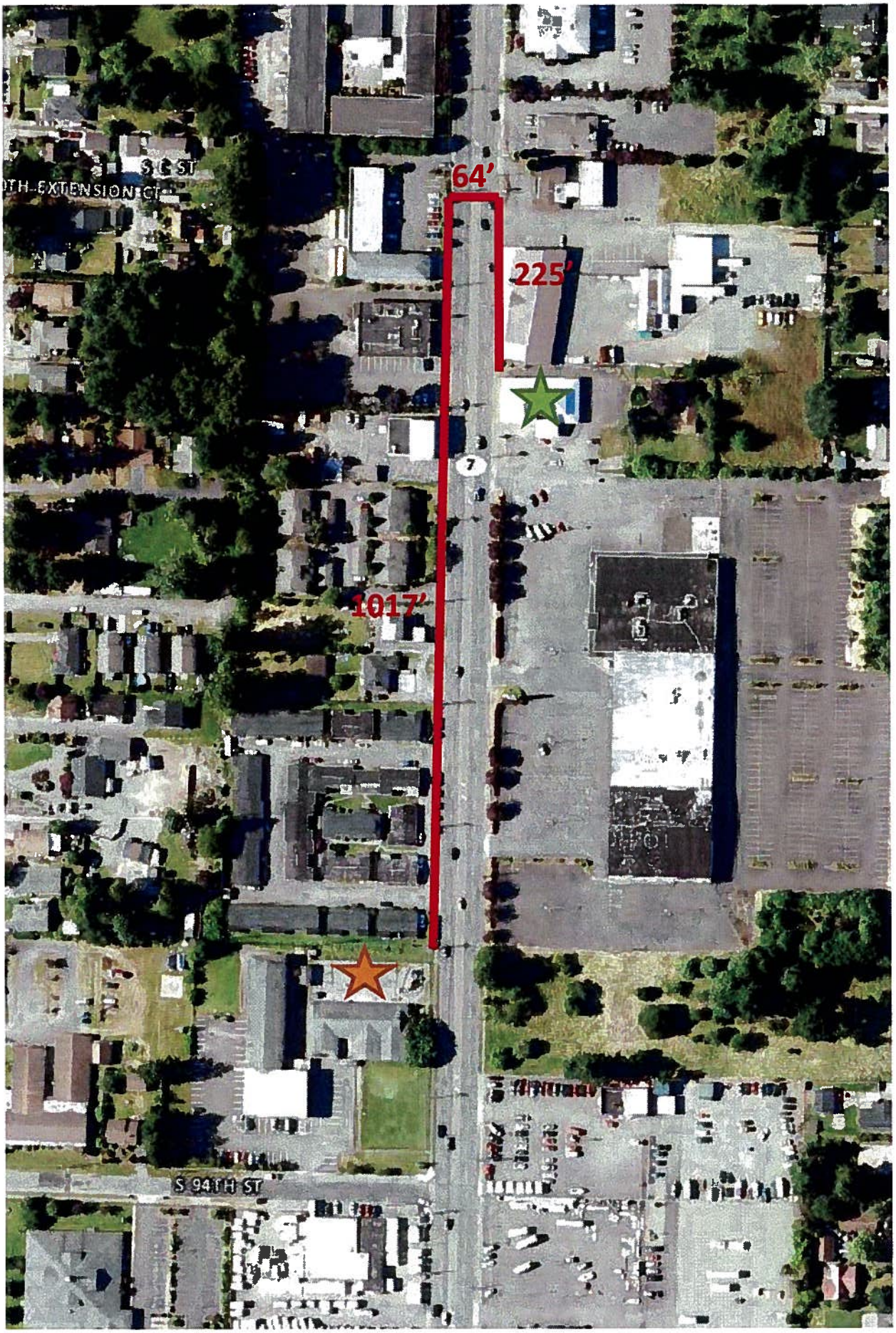
Attached you will find a diagram showing how we measured the distance, see "Closest Route.pdf" as attached. I would also like to draw your attention to a letter that Ms. Perez wrote in support of her business and also attached as "LCB MARCIE.pdf." We hope that the City is willing to consider the above as a reasonable way for Ms. Perez to continue operating her business especially given the evolving regulations that continue to change at State and local levels. Please let us know the City's decision at your earliest convenience or if another process is required in order for her to continue to operate her business.

We appreciate your attention to this matter and please feel free to contact Scott Clark or me at 253-474-3404 with questions, comments and/or suggestions.

Best Regards,

Grant J. Middleton, P.E.

Cell - (253) 377-1056
Office - (253) 474-3404 Ext. 501


S C ST
TH EXTENSION CT
64'
225'
1017'
S 94TH ST

1/17/2015

Crème of the Crop/Northwest Natural Medicine License 421041
9027 Pacific Avenue, Tacoma, WA. 98444

Marcie Wilsie - Fax
Washington State Liquor Cannabis Board

The following is with regard to our application for retail/medical marijuana license for the above mentioned.

Although, not received in writing. It is my understanding that our application has been withdrawn due to the distance of Immanuel church/daycare being less than the allowed 1,000'.

The purpose of this letter is an attempt to get some answers to some questions I have, as well as state our current position.

I understand that the City of Seattle is looking to relax the 1,000 buffer down to 500' and the city of Tacoma may follow suit. Is this true?

If we were to pay and obtain a special use permit from the city of Tacoma would this be accepted by the LCB? Essentially, a special use permit is a procedure for determining whether the contemplated land use could potentially cause damage, hazard, nuisance or detriment to persons and property in the vicinity and if so, how can these impacts be remedied through this process.

We have been in operation since 2011. We operate by the book and have done everything possible, to be as legal as possible. So much of my retirement money has been invested into our location, to the tune of over $60K. The city gladly accepted our taxes. If it were any other business I am sure we would have recourse. An awful lot of thought was put into the buildup of our location with special emphasis put on safety. Not just for our patients/members but employees as well. Our walls and windows are bullet proof and I cannot take them with me. Our establishment is considered to be one of the most professional and secure locations in Tacoma.

Our business and employees are contributing members of our community. The church/daycare is located better than 2 blocks away and on the opposite side. Our location is surrounded by other businesses with U-Haul coming to our adjoining parking lot soon. Pacific Avenue is a very busy street. One that no child should be walking down let alone across. There are no child destination spots anywhere close to our location.

I truly hope the relaxing of the buffer to be the case. If so, do we have a chance? It has nearly been impossible trying to find a new location that fits the criteria. If there isn't a daycare, there is a school; if not a school there is a park or recreational center. Locations that do fit the criteria don't want recreational marijuana. Please advise some positive news.

I look forward to hearing from you soon.

Best regards,
Christina Perez

From: Danielle Rosellison 360-319-4576 [mailto:danieller@trailblazin.net]
Sent: Friday, March 04, 2016 5:55 PM
To: Planning
Subject: Cannabis Zoning Rules

My name is Danielle Rosellison and I have reviewed the Planning Commissions proposed code amendments and I fully support the recommendations of the Tacoma Planning Commission with the exception of one point.

I have concerns on the recommendation that would require retail cannabis stores to be located no closer than 300-feet in the downtown area and 500-feet for the rest of the City (measured by property lines) to another cannabis store.

I appreciate the effort to ensure that there is dispersion of stores across Tacoma, however there are many patient access points that have long served the medical community in well-established locations. I would recommend that the Commission support an open, competitive marketplace. Business owners can best decide which properly zoned locations will meet their needs, investment requirements, and industry strategies.

Thank you for your consideration.

Warm Regards,
Danielle Rosellison

Land Use Regulatory Code Amendment
Marijuana Land Use Regulations

STAFF RECOMMENDATION
MARCH 10, 2016

Project Background:
In November 2012, Washington voters passed Initiative 502, which established precedent for the production, processing and retail sale of marijuana for recreational purposes. In April 2015, the State passed two new laws concerning marijuana uses: 2SSB 5052 and 2E2SHB 2136. These laws establish regulations for the formerly unregulated medical aspects of the marijuana system, align these with the existing recreational system, and establish a "medical marijuana endorsement" that allows licensed marijuana retailers to sell medicinal marijuana to qualifying patients and designated providers. Additionally, the statutes regarding "collective gardens" were repealed, effective July 1, 2016, and instead the new statute provides for Washington State Liquor and Cannabis Board (LCB)-certified "cooperatives" with a maximum of four patients or designated providers.

The State cap on licensed marijuana retailers for Tacoma was eight; however, in January 2016, the State raised Tacoma's cap to sixteen. Tacoma currently has nine licensed marijuana retailers and anticipates that seven more will open after completing the state and local licensing process.

The City Council enacted a moratorium on new licensed marijuana retailers in January 2016 after the State issued a license to a ninth retail store in Tacoma, before the Council had the opportunity to establish new regulations in concert with the community's desires. The intent of the moratorium, and this code amendment process, is to provide regulatory guidance to facilitate the City's review of marijuana license applications from the Washington State Liquor Control Board (WSLCB), including those additional licenses coming forth as a result of the new State laws and the incorporation of medical marijuana into the recreational marijuana marketplace.

Since November 2015, the Planning Commission has been presented with background information, comparable approaches of other jurisdictions in Washington State, various draft regulatory options for discussion and the Commission has also heard from various state and local-level staff representatives, medical patients and providers, business and property owners and both recreational and medical marijuana advocates. On March 2, 2016, the Planning Commission held a public hearing on this matter.

To facilitate public comment and input at the public hearing, the Commission outlined potential regulatory alternatives to the Tacoma Municipal Code, Chapters 13.06 – Zoning and 13.06A – Downtown Tacoma, with the following provisions:

- Reduce the minimum buffer between retail marijuana stores and child care centers, game arcades, libraries, public parks, public transit centers, or recreation centers or facilities from 1,000 feet to 100 feet
- Reduce the minimum buffer between retail marijuana stores and correctional facilities, court houses, drug rehabilitation centers, or detoxification centers from 1,000 feet to 300 feet

- Maintain the 1,000-foot minimum buffer between retail marijuana stores and properties containing elementary schools, secondary schools, or playgrounds
- Requires all retail stores to have a State medical endorsement
- Institute a new dispersion standard that would require retail marijuana stores to be located no closer than 300 feet to each other in the downtown area and no closer than 500 feet to each other in the rest of the City (measured from property lines)
- Allow cooperatives as per State law, including the 1,000-foot buffers from elementary schools, secondary schools, or playgrounds, but with sensitive buffers reduced from 1,000 feet to 100 feet from child care centers, game arcades, libraries, public parks, public transit centers, and recreation centers or facilities
- No changes to standards associated with marijuana production and processing facilities

There was limited testimony received at the public hearing and during the comment period, but it was mostly supportive of the Commission's potential alternatives, though with some differing opinions on retail store dispersion requirements. Aside from the public hearing, there have been a number of concerns that have come from the community at large, through the City Council and their constituents, and the Neighborhood Councils. These concerns include clustering and overconcentration of retail stores, fire safety issues, enforcement difficulties, noise and odor, and issues with the existing medical collective storefronts.

Intent of the Recommendation:

The proposed recommendations are intended to ensure the regulations are consistent with State law and address issues raised through community discussions, public comments and the recent Planning Commission public hearing. These recommendations consider how to regulate the impacts of marijuana land uses and to protect the public health, safety and general welfare while providing safe, secure and reasonable access for recreational marijuana consumers and qualified medical marijuana patients. The buffer, dispersion, medical endorsement, cap and other requirements and recommendations are intended to balance interests by having sufficient areas within which marijuana land use activities may locate while limiting potential impacts and preventing overconcentration in any one neighborhood or district. It is with these views in mind, and keeping the intent behind voter-approved Initiative 502, the recent State law changes, and the City Council's existing ordinances in the forefront, that these recommendations were developed.

Staff also recognizes that there is not widespread community agreement on all of these issues – that was certainly clear based on the positive but relatively split vote for I-502 and that continues to be the case both here and around the state. Additionally, although marijuana is now recognized as being legal in Washington State, federal law still designates cannabis as a Schedule I controlled substance. Suffice to say, we are in the midst of a cultural shift relative to marijuana, what it is, how good or bad it is, how it can and should be used, and how it should be integrated into our communities. Not only are we breaking new ground, but much of this transition has not yet occurred, making it difficult to fully understand and manage with great certainty. It is likely that the market will continue to evolve dramatically over the next decade or

more, community opinions may continue to shift, state and national laws may change, and it is likely that the City's standards will also change in the future in response to these forces.

There has also been much discussion about the concept of "normalization" and treating this use like any other use. It is staff's sense that the majority of citizens recognize that this is not just any other use, and they desire a specific, intentional, measured approach to integrating this new, unique use into our community. Other previously illegal uses, such as alcohol, took decades to "normalize" (and in the case of alcohol it would be easy to say that it is still not fully normalized). Recognizing all of this, the staff recommendation is designed to reflect a thoughtful, progressive, reasoned approach that is provided for the Commission's consideration.

Tacoma is and should continue to be a leader in providing both medical and recreational access to its citizens, while also protecting the citizenry, and especially young children, from adverse impacts and unintended consequences of efforts to standardize the legal use of marijuana. It is important to note that while the majority of the jurisdictions surrounding Tacoma, including Federal Way, Lakewood, Gig Harbor, University Place, Fircrest, Pierce County and others, have directly or indirectly banned marijuana land uses from their communities, Tacoma has provided a flexible market in which to operate. With this recommendation, Tacoma will continue to provide ample and adequate commercial and industrial land for these uses, while also providing reasonable controls for its citizenry.

Staff Recommendations on Key Issues:

Retail Buffers:

1. Maintain a 1,000-foot (approx. 3-blocks) minimum buffer between licensed marijuana retailers and properties containing elementary schools, secondary schools, or playgrounds
2. Within the Downtown Regional Growth Center, reduce the minimum buffer between licensed marijuana retailers and child care centers, game arcades, libraries, public parks, public transit centers, recreation centers or facilities, correctional facilities, court houses, drug rehabilitation centers, or detoxification centers from 1,000 feet to 500 feet (approx. 1½-blocks)
3. Outside of the Downtown Regional Growth Center, maintain the 1,000-foot (approx. 3-blocks) minimum buffer between licensed marijuana retailers and properties containing elementary schools, secondary schools, playgrounds, child care centers, game arcades, libraries, public parks, public transit centers, recreation centers or facilities, correctional facilities, court houses, drug rehabilitation centers, or detoxification centers

Discussion:

- State law sets a minimum 1000-foot buffer distance requirement for separation of certain uses (elementary schools, secondary schools, playgrounds, recreation centers or facilities, child care centers, public parks, public transit centers, or game arcades admitting minors) from licensed marijuana producers, processors or retailers

- The City's current, Council-adopted regulations further require a 1000-foot buffer from correctional facilities, court houses, drug rehabilitation centers and detoxification centers from licensed marijuana retailers
- The recent State law changes allow local jurisdictions to reduce the 1000-foot buffer zones to not less than 100 feet from recreation centers or facilities, child care centers, public parks, public transit centers, or game arcades admitting minors (but not around elementary and secondary schools or playgrounds)
- Initiative 502 voters asked for buffers between certain sensitive uses and marijuana uses
- Buffering certain uses from "sensitive" uses is a common zoning tool to help limit impacts (both perceived and real) and help ensure reasonable compatibility; the City has numerous uses for which there are required buffers and, even to this day, there are State-mandated buffers for establishments that serve or sell alcohol
- The existing buffers provide more than adequate space for additional retail stores to be located throughout the City, except in the downtown
- Having limited available areas in downtown Tacoma for retail operations seems to promote inequitable distribution of potential store locations, especially for Tacoma's largest Mixed-Use Center and the area where the highest concentration of retail use is generally allowed and expected
- The recommended buffer reductions in the Downtown Mixed-Use Center are a reasonable and prudent way to provide equitable retail space while still maintaining the buffers called for by voters, the State legislature, and the Council at a level that has some effect

Dispersion:

1. Require licensed marijuana retailers to be located no closer than 500 feet (approx. 1½-blocks) in the Downtown Mixed-Use Center and 1,000 feet (approx. 3-blocks) for the rest of the City

Discussion:

- Neither State nor Tacoma laws currently regulate how close licensed marijuana retailers can be to each other
- Over-concentration and inequity (of both access and potential impact) have been a concern continuously expressed by some community members and City Council members
- Dispersion is a common zoning tool used to separate uses for which the community has concerns about the impacts of an over-concentration; the City has numerous uses for which dispersion is required
- At the same time, excessive dispersion could result in a significant reduction in the allowable areas for retail stores
- The level of dispersion requirements recommended would help to prevent clustering and over-concentration of licensed marijuana retailers in one part of town and help to ensure more equitable access throughout the community, while not significantly impacting the ability to site the additional stores to be licensed

Medical Endorsement:

1. Require at least 50% of all licensed marijuana retailers within the City to have a State medical endorsement

Discussion:

- Reasonable patient access is critical
- It is not currenty required that licensed retail stores carry medical marijuana; the State system is set up to allow stores to sell only recreational marijuana, only medical marijuana, or to sell both, and applicants can request whichever type of license they choose
- Requiring medical endorsements can help to ensure that qualifying patients have reasonable access to medical marijuana, which sometimes involves different products than recreational marijuana
- The State Department of Health is still in the process of creating the rules associated with medical marijuana endorsements and the production, processing and provision of those products; while having a medical endorsement today is not onerous, that may change in the future
- Requiring certain businesses to sell a particular type of product is a very unusual zoning approach, and not one that staff is aware the City utilizes for any other type of commercial enterprise
- Requiring at least 50% of all licensed marijuana retailers to have a State medical endorsement may be a reasonable and prudent way to assist in ensuring access to retail medical marijuana, while not being too onerous on all retailers
- The 50% level also recognizes the reality that the City's 8-store cap was put in place to implement I-502 regarding recreational marijuana, and the additional 8 stores now being considered were added in response to the state legislation designed to expand the marijuana marketplace to include medical marijuana

Cooperatives:

1. Allow cooperatives as per State law, without any modifications to the standard 1,000-foot approx. 3-blocks) buffer requirements from sensitive uses

Discussion:

- Reasonable patient access is critical
- While requiring medical endorsements can help to ensure medical access, it cannot guarantee that the stores carry all of the different varieties of medical products and/or provide them at reasonable cost, particularly considering that medical marijuana is not generally covered by medical insurance
- Since there is no licensed medical production and sales yet, the cost of retail medical marijuana is highly uncertain and is likely that it will take some time to stabilize

- Cooperatives are regulated and controlled by the State; per the State's draft rules, cooperatives will be required to register with the State and there is no clear involvement or notice of local jurisdictions or the community
- The cooperative concept was designed to help ensure access where there is likely to be limited access to licensed stores
- Per State law, cooperatives are not allowed within 1-mile of a licensed store (this buffer cannot be modified) and not within 1,000 feet of sensitive uses (these buffers can be modified by local jurisdictions, with limitations, similar to the retail stores)
- While it is unclear whether all stores will provide all products there is already fairly good distribution of stores in Tacoma and that will be improved as the additional stores come on-line
- The existing distribution of stores already significantly limits the areas that would be available for cooperatives based on the State's required 1-mile separation from retail stores, and this available area will be further limited as the additional stores are licensed
- The fact that stores are fairly well distributed throughout the City means that it will be difficult for residents and City staff to have a clear understanding of where cooperatives are allowed and where they aren't, and this allowed area will shift as the store locations shift (including when stores are opened or closed in neighboring jurisdictions)
- Cooperatives are clearly a new attempt by the State to create a small-scale medical option, which was the intent behind the previous "collectives" concept that was completely abused, facilitated creation/expansion of the "grey" market, and created significant impacts on this and other communities
- The State took little to no role in addressing the issues associated with the "collectives" and the City, like many jurisdictions, found itself in the untenable position of being held accountable for enforcing a problem it did not create and for which enforcement was virtually impossible
- Staff recognizes that the limitations associated with cooperatives will likely be almost impossible to enforce, particularly at the local level, and has little confidence that the State will take an active role in enforcement
- Given those concerns, along with the uncertainty of medical marijuana access once collective gardens are no longer allowed, and recognizing that medical marijuana access is important to Tacoma's citizenry, preserving the option for cooperatives is reasonable, but only with a careful and measured approach

Cap on Number of Stores:

1. Set a cap of sixteen (16) licensed marijuana retailers

Discussion:

- The State's original cap for stores in Tacoma was eight (to accommodate the recreational marketplace); the State's new cap on retail stores for Tacoma is sixteen (to accommodate both the recreational and medical marketplaces)
- This cap is determined by the WSLCB and the board can change this cap, or eliminate it, at any time by adopting new rules; in fact, the WSLCB originally proposed eliminating

the caps statewide but then decided instead to increase them after getting significant pushback from stakeholders, including Tacoma

- The State's cap was based on a December 2015 study that evaluated market demand and revenue (prepared by BOTEC Analysis Corp.)
- Based on the State's analysis, sixteen stores appears to be an appropriate number to provide reasonable medical and recreational marijuana access for Tacoma at this time
- The community has expressed concern about the number, location and clustering of licensed marijuana retailers
- If the City had previously put a cap in place, it is likely that the recent Council-adopted emergency moratorium would not have been necessary
- While we make no assumption that sixteen is, or forever will be, the "right" number of stores in Tacoma, staff has serious concerns about having no locally-adopted cap as that would mean that there is no local control over this issue, and instead, the State would have total control over how many stores are appropriate in Tacoma
- With a City cap, we can be assured that the City will always have the ability to decide the appropriate number and locations for this community (recognizing that the cap may need to change in the future based on changes in market demand or other factors)

Standards for Marijuana Producers and Processors:

1. No changes to the existing producer and processor standards are proposed

Discussion:

- The existing standards for producers and processors appear to be functioning appropriately, providing sufficient areas for these types of facilities while limiting potential impacts
- There has not been any significant concern expressed by the community, the Council, or the Commission about those standards or those uses

Agenda Item D-2

City of Tacoma
Planning and Development Services

To: Planning Commission

From: Stephen Atkinson, Planning Services Division

Subject: **Code Cleanups**

Date of Meeting: March 16, 2016

Date of Memo: March 11, 2016

At the meeting on March 16, 2016, the Planning Commission will review proposed amendments to the Tacoma Municipal Code in support of the 2016 Annual Amendment. Upon completing the review, the Commission will be requested to consider releasing the proposal, as may be modified, for public review, in preparation for the public hearing on the 2016 Annual Amendment package tentatively scheduled for May 4, 2016. The scope of work and assessment report for the code cleanup was discussed previously with the Commission at the January 6, 2016 meeting.

Attached, to facilitate the Commission's review and discussion, is a staff analysis report, prepared pursuant to TMC 13.02.045.F, that summarizes the proposal as well as the rationale and the potential effects of the proposal. Attached to the staff report is the text of the proposed code amendments and a memorandum pertaining to the best available science review conducted as part of the 2015 Comprehensive Plan update.

If you have any questions, please contact me at 591-5531or satkinson@cityoftacoma.org.

Attachment

c: Peter Huffman, Director

2016 Annual Amendment
Staff Analysis Report

Proposed Amendment:	Code Cleanups
Applicant:	Planning and Development Services Department
Location & Size of Area:	Citywide
Current Land Use & Zoning:	Various
Neighborhood Council Area:	Citywide
Staff Contact:	Stephen Atkinson, Planning Services Division (253) 591-5531, satkinson@cityoftacoma.org
Date of Report: **(Planning Commission review date; draft or final)**	March 16, 2016

I. Description of the Proposed Amendment:

Proposal

The proposed amendments involve general text corrections to various sections of the Tacoma Municipal Code. These minor amendments are intended to address inconsistencies, correct minor errors, and improve provisions that, through administration and application of the Land Use Regulatory Code, are found to be unclear or not fully meeting their intent. (Exhibit A)

Intent

The intent of the proposed amendment is to improve consistency between the Tacoma Municipal Code and the Comprehensive Plan, fully implement the recommendations of the 2015 Best Available Science review in Tacoma Municipal Code 13.10 Shoreline Master Program, to correct errors in the code, and to implement changes to the nonconforming use standards to better implement policies in the Comprehensive Plan.

Background

The code cleanup is an annual process used by staff to improve the clarity and effectiveness of the Land Use Regulatory Code by addressing inconsistencies, incorporating legislative revisions, correcting minor errors, and improving confusing or ineffective standards. The proposed amendments include issues that have been identified by staff as well as issues identified by the public and Planning and Development Services Department's customers. The code cleanup is typically used for amendments that are not substantive enough to rise to the level of a stand-alone code amendment application. Most of the proposed amendments have been included as a high priority for ensuring consistency between the One Tacoma Comprehensive Plan adopted on December 1, 2015 and the implementing Municipal Code.

Key Revisions

Comprehensive Plan Consistency: During the Comprehensive Plan update, there were terminology changes made that are not currently reflected in the Municipal Code. This cleanup action would bring the Municipal Code into consistency with the changes made to the following terms.

- Mixed-use Centers: The names of the center "types" as well as of the specific mixed-use centers were changed during the update. In addition, Stadium and Hilltop Neighborhood Centers were recognized more fully as integrated subareas within the Downtown Regional Growth Center.
- Open Space Corridors: These areas were previously identified as Habitat Corridors. The change was made to reflect the broad and multiple benefits associated with these areas, as identified in the Environment and Watershed Health Element, including habitat functions, stormwater, urban heat island mitigation, aesthetic qualities, and passive recreation.
- Land Use Designations: The Land Use Designations described in the Urban Form Element and associated with the Future Land Use Map have replaced the "Land Use Intensities." The code changes specifically replace the term "intensities" with "designations."
- Public Facilities and Services Element: Previously, the Comprehensive Plan included a utilities and capital facilities element, in addition to the Capital Facilities Program. This amendment reflects that these two elements have been combined into a new Public Facilities and Services Element.

Definitions and References:

- Mobile Home/Trailer Court: Mobile Home/Trailer Courts are identified as uses in the use tables of TMC 13.06 Zoning. However, the definition was for a single mobile home. The amendment replaces this definition of a single unit with a definition of the "court".
- Several references in the Conditional Use Criteria are outdated. The amendment will update these references.

Nonconforming Uses: As part of the Comprehensive Plan update staff and the Planning Commission had discussions around appropriate zoning and land use designations for small commercial and residential uses currently nonconforming to the current zoning. Since not all of these particular uses are inventoried at this time, staff has proposed to address the question of how to accommodate these uses by amending the nonconforming use section of the Municipal Code. The amendment would allow expansion or change of use that exceed current limitations in the nonconforming use code through a conditional use permit and meeting additional conditional use criteria.

Shoreline Critical Areas: In 2015, as part of the Comprehensive Plan update, the City of Tacoma updated TMC 13.11 Critical Areas Preservation in accordance with the requirements of the Growth Management Act (GMA) (RCW 36.70A). The GMA requires jurisdictions to consider best available science in the development of critical areas policies and regulations. ESA reviewed the best available science literature and prepared a memo for City of Tacoma staff summarizing the compilation of information and recommendations for policy and code updates. The City's critical areas within shoreline jurisdiction are regulated solely under TMC 13.10 and the Shoreline Master Program. These amendments would implement the recommendations from the 2015 Best Available Science Review for areas within shoreline jurisdiction.

II. Analysis of the Proposed Amendment:

1. How does the proposed amendment conform to applicable provisions of State statutes, case law, regional policies, the Comprehensive Plan, and development regulations?

The proposed amendment would improve consistency between the Comprehensive Plan and the Tacoma Municipal Code as well as ensure a consistent application of the best available science in critical areas review and preservation.

2. **Would the proposed amendment achieve any of the following objectives?**
   - **Address inconsistencies or errors in the Comprehensive Plan or development regulations;**
   - **Respond to changing circumstances, such as growth and development patterns, needs and desires of the community, and the City's capacity to provide adequate services;**
   - **Maintain or enhance compatibility with existing or planned land uses and the surrounding development pattern; and/or**
   - **Enhance the quality of the neighborhood.**

   The proposal would fix several errors within the Land Use Regulatory Code, including outdated references and definitions. Changes to the nonconforming use code may result in new development activity that demonstrates a positive contribution to the surrounding neighborhoods.

3. **Assess the proposed amendment with the following measures: economic impact assessment, sustainability impact assessment, health impact assessment, environmental determination, wetland delineation study, traffic study, visual analysis, and other applicable analytical data, research and studies.**

   Exhibit B is a Memorandum dated June 29, 2015 from Environmental Science Associates (ESA) pertaining to the City of Tacoma Comprehensive Plan Update: Best Available Science Review. The amendments to TMC 13.10 in association with these recommendations will ensure the application of the best available science in the review and application of critical areas standards in shoreline permits. Other amendments will ensure that the code is effectively implementing the policies of the Comprehensive Plan, in support of the broad goals of that plan to improve overall public and environmental health and economic opportunity.

4. **Describe the community outreach efforts conducted for the proposed amendment, and the public comments, concerns and suggestions received.**

   Staff provided an initial round of public notification vis-a-vis pamphlets mailed to approximately 1300 residents within or in close proximity to areas proposed for potential rezone. The pamphlets provided information on all of the annual amendments. Additional outreach will be conducted and public comments will be solicited during the public review process through the Planning Commission's public hearing in May 2016.

5. **Will the proposed amendment benefit the City as a whole? Will it adversely affect the City's public facilities and services? Does it bear a reasonable relationship to the public health, safety, and welfare?**

   While the code cleanups are minor in nature, they will ensure the proper application of the City's Comprehensive Plan policies and development regulations, consistent with the general welfare of the City as a whole.

III. Staff Recommendation:

Staff recommends that the proposed amendments to the Tacoma Municipal Code, as depicted in Exhibit A, be distributed for public review prior to the Planning Commission's public hearing tentatively scheduled for May 4, 2016.

IV. Exhibits:

A. Proposed Amendments to Tacoma Municipal Code

B. Memorandum from Environmental Science Associates (ESA) dated June 29, 2015

Exhibit A: Mixed-use Centers
From TMC 13.17 Mixed-use Center Development, pertaining to residential target areas for the multi-family tax exemption.

2. Building requirements that may include elements addressing parking, height, density, environmental impact, public benefit features, compatibility with the surrounding property, and such other amenities as will attract and keep permanent residents and will properly enhance the livability of the residential target area.

The required amenities shall be relative to the size of the proposed project and the tax benefit to be obtained.

C. Designated Target Areas. The proposed boundaries of the "residential target areas" are the boundaries of the ~~18~~ mixed-use centers listed below and as indicated ~~on the Generalized Land Use Plan~~ in the Comprehensive Plan and in the Comprehensive Plan legal descriptions which are incorporated herein by reference and on file in the City Clerk's Office.

The designated target areas do not include those areas within the boundary of the University of Washington Tacoma campus facilities master plan (per RCW 84.14.060).

MIXED-USE CENTER	CENTER TYPE	ORIGINALLY ADOPTED
~~South 56th and~~ South Tacoma Way	Neighborhood	November 21, 1995
Downtown ~~Tacoma~~	Downtown Regional Growth Center	November 21, 1995
Proctor ~~(North 26th and Proctor)~~	Neighborhood	November 21, 1995
Tacoma Mall ~~Area~~	~~Urban~~Regional Growth Center	November 21, 1995
Hilltop	~~Neighborhood~~ Downtown Regional Growth Center	November 21, 1995
Westgate	~~Community~~Crossroads	November 21, 1995
Lincoln ~~(South 38th and "G" Street)~~	Neighborhood	November 21, 1995
6th Avenue ~~and Pine Street~~	Neighborhood	November 21, 1995
Tacoma Central ~~Plaza/Allenmore~~	~~Community~~Crossroads	November 21, 1995
~~South 72nd and Pacific Avenue~~Upper Pacific	~~Community~~Crossroads	November 21, 1995
~~East 72nd and~~ Upper Portland Avenue	~~Community~~Crossroads	November 21, 1995
Stadium ~~(North 1st and Tacoma)~~	~~Neighborhood~~ Downtown Regional Growth Center	November 21, 1995
James Center~~/TCC~~	~~Community~~Crossroads	November 21, 1995
Lower Portland Avenue	~~Community~~Crossroads	January 16, 1996
~~South 34th and Pacific Avenue~~Lower Pacific	~~Community~~Crossroads	December 11, 2007
McKinley ~~(E. 34th and McKinley)~~	Neighborhood	December 11, 2007
Narrows ~~(6th Avenue and Jackson)~~	Neighborhood	December 11, 2007
Point Ruston	~~Community~~Crossroads	July 1, 2014

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(Ord. 28230 Ex. H; passed Jul. 22, 2014: Ord. 28222 Ex. D; passed May 13, 2014: Ord. 27818 Ex. B; passed Jul. 28, 2009: Ord. 27813 Ex. J; passed Jun. 30, 2009 (South Tacoma Mixed Use Center amended, Ex. J is for illustrative purposes): Ord. 27710 Ex. A; passed Apr. 29, 2008: Ord. 27663 Ex. A; passed Dec. 11, 2007: Ord. 25823 § 1; passed Jan 16, 1996: Ord. 25789 § 3; passed Nov. 21, 1995)

13.17.030 Tax exemptions for multi-family housing in residential target areas.

A. The application, review, and decision guidelines and procedures for multi-family housing property tax exemptions are contained in TMC Title 6, Tax and License Code, Section 6A.110.

(Reenacted by Ord. 27818 Ex. B; passed Jul. 28, 2009: Ord. 27710 Ex. A; passed Apr. 29, 2008; Ord. 27466 § 44; passed Jan. 17, 2006; Ord. 27321 § 1; passed Mar. 1, 2005; Ord. 26492 § 1; passed Aug. 10, 1999; Ord. 26386 § 40; passed Mar. 23, 1999; Ord. 25789 § 3; passed Nov. 21, 1995)

which decrease walking distances and increase pedestrian safety. This classification is not appropriate inside Comprehensive Plan designated low-intensity areas.

C. Applicability and pedestrian streets designated.

Applicability. The following tables compose the land use regulations for all Mixed-Use Center Districts. All portions of Section 13.06.300 and applicable portions of Section 13.06.500, apply to all new development of any land use variety, including additions and remodels, in all Mixed-Use Center Districts, unless explicit exceptions or modifications are noted. The requirements of Sections 13.06.300.A through 13.06.300.D are not eligible for variance. When portions of this section are in conflict with other portions of Chapter 13.06, the more restrictive shall apply. Refer to 13.06A.052 for Pedestrian Streets within Downtown Tacoma.

TABLE C.1: MIXED-USE CENTER PEDESTRIAN STREETS ESTABLISHED

The following pedestrian streets are considered key streets in the development and utilization of Tacoma's mixed-use centers, due to pedestrian use, traffic volumes, transit connections, and/or visibility. They are designated for use with certain provisions in the mixed-use zoning regulations, including use restrictions and design requirements, such as increased transparency, weather protection and street furniture standards. In some centers, these "pedestrian streets" and/or portions thereof are further designated as "core pedestrian streets" for use with certain additional provisions. The "core pedestrian streets" are a subset of the "pedestrian streets," and thus, those provisions that apply to designated "pedestrian streets" also apply to designated "core pedestrian streets."

In centers where multiple streets are designated, one street is designated the Primary Pedestrian Street. This is used when applying certain provisions, such as the maximum setback requirements for projects that abut more than one pedestrian street. Primary Pedestrian Streets are denoted with an asterisk*.

Mixed-Use Center	**Designated Pedestrian Streets** (All portions of the streets within Mixed-Use Centers, unless otherwise noted.)	**Designated Core Pedestrian Streets** (All portions of the streets within Mixed-Use Centers, unless otherwise noted)
6th Avenue ~~and Pine Street~~Neighborhood Center	6th Avenue	6th Avenue
Narrows ~~(6th Avenue and Jackson)~~Neighborhood Center	6th Avenue	6th Avenue
McKinley Neighborhood Center~~(East 34th and McKinley)~~	McKinley Avenue from Wright Avenue to East 39th Street*	McKinley Avenue from Wright Avenue to East 36th Street
Lower Portland ~~Avenue~~ Crossroads Center	Portland Avenue*, East 32nd Street, East 29th Street	Portland Avenue
Proctor Neighborhood Center~~(North 26th Street and Proctor Street)~~	North 26th Street; North Proctor Street*	North 26th Street; North Proctor Street
Stadium ~~(North 1st Street and Tacoma Avenue)~~ District – Downtown Regional Growth Center (DRGC)	Division Avenue from North 2nd Street to Tacoma Avenue; Tacoma Avenue*; North 1st Street; North I Street	Division Avenue from North 2nd Street to Tacoma Avenue; Tacoma Avenue; North 1st Street
Hilltop Neighborhood – Downtown Regional Growth Center (DRGC)	Martin Luther King Jr. Way*; South 11th Street; Earnest S. Brazill Street; 6th Avenue, South 19th Street	Martin Luther King Jr. Way from S. 9th to S. 15th, South 11th Street; Earnest S. Brazill Street
Lincoln Neighborhood Center~~(South 38th Street and G Street)~~	South 38th Street*; Yakima Avenue from South 37th Street to South 39th Street; and South G Street south of 36th Street	South 38th Street
~~South 34th and Pacific~~ Lower Pacific Crossroads Center	Pacific Avenue	Pacific Avenue
~~South 56th Street and~~ South Tacoma Way Neighborhood Center	South Tacoma Way*; South 56th Street	South Tacoma Way
~~East 72nd Street and Portland Avenue~~Upper Portland Crossroads Center	East 72nd Street*; Portland Avenue	East 72nd Street, Portland Avenue
~~South 72nd Street and Pacific Avenue~~ Upper Pacific Crossroads Center	South 72nd Street; Pacific Avenue*	Pacific Avenue

Tacoma Central Crossroads Center ~~/Allenmore~~	Union Avenue*; South 19th Street between South Lawrence Street and South Union Avenue	Union Avenue south of South 18th Street; South 19th Street between South Lawrence Street and South Union Avenue
Tacoma Mall Regional Growth Center ~~Area~~	South 47th/48th Transition Street; Steele Street*	N/A
~~TCC/~~James Center Crossroads Center	Mildred Street*; South 19th Street	Mildred Street south of South 12th Street; South 19th Street
Westgate Crossroads Center	Pearl Street*; North 26th Street	Pearl Street
~~* Indicates primary designated pedestrian streets. In centers where multiple streets are designated, one street is designated the Primary Pedestrian Street. This is used when applying certain provisions, such as the maximum setback requirements for projects that abut more than one pedestrian street.~~		

D. Land use requirements.

1. Use requirements. The following use table designates all permitted, limited, and prohibited uses in the districts listed. Use classifications not listed in this section or provided for in Section 13.06.500 are prohibited, unless permitted via Section 13.05.030.E.

2. Use table abbreviations.

P	=	Permitted use in this district.
CU	=	Conditional use in this district. Requires conditional use permit, consistent with the criteria and procedures of Section 13.06.640.
TU	=	Temporary use consistent with Section 13.06.635.
N	=	Prohibited use in this district.

3. District use table.

Uses	NCX	CCX	UCX	RCX[1]	CIX	HMX	URX	NRX	Additional Regulations[3, 4, 5] (also see footnotes at bottom of table)
Adult family home	P	P	P	P	P	P	P	P	Subject to additional requirements contained in Section 13.06.535. See definition for bed limit. Prohibited at street level along designated pedestrian streets in NCX.[2] Not subject to minimum densities found in Section 13.06.300.E.
Adult retail and entertainment	N	N	N	N	N	N	N	N	Prohibited, except as provided for in Section 13.06.525.
Agricultural uses	N	N	N	N	N	N	N	N	
Airport	CU	CU	CU	CU	CU	CU	CU	CU	
Ambulance services	N	CU	CU	N	P	P	N	N	
Animal sales and service	P	P	P	N	P	N	N	N	Except in the CIX District, must be conducted entirely within an enclosed structure. Must be set back 20 feet from any adjacent residential district or use.
Assembly facility	P	P	P	CU	P	N	N	N	Prohibited at street level along designated pedestrian streets in NCX.[2]
Brewpub	P	P	P	P	P	N	N	N	Brewpubs located in NCX, CCX, UCX, and RCX shall be limited to producing, on-premises, a maximum of 2,400 barrels per year of beer, ale, or other malt beverages, as determined by the annual filings of barrelage tax reports to the Washington State Liquor Control Board. Equivalent volume winery limits apply.
Building materials and services	N	P	P	N	P	N	N	N	Prohibited at street level along frontage of designated core pedestrian streets.[2]
Business support services	P	P	P	N	P	N	N	N	In NCX, all activities must occur within buildings; outdoor storage/repair is prohibited. Customer service offices must be located at building fronts on designated pedestrian streets in NCX.
Carnival	TU	TU	P	N	TU	TU	TU	N	Subject to Section 13.06.635.
Cemetery/internment services	N	N	N	N	N	N	N	N	New facilities are not permitted. Enlargement of facilities in existence prior to the effective date of this provision (May 27, 1975) may be approved in any zoning district subject to a conditional use permit. See Section 13.06.640.
Commercial parking facility	P	P	P	N	P	P	N	N	Prohibited at street level along frontage of designated pedestrian streets in NCX and CCX Districts.[2]
Commercial recreation and entertainment	P	P	P	N	P	N	N	N	
Communication facility	CU	CU	P	N	P	N	N	N	Prohibited at street level along frontage of designated pedestrian streets in NCX and CCX Districts.[2]

Uses	NCX	CCX	UCX	RCX[1]	CIX	HMX	URX	NRX	Additional Regulations[3, 4, 5] (also see footnotes at bottom of table)
Confidential shelter	P	P	P	P	P	P	P	P	See Section 13.06.535. Prohibited at street level along frontage of designated core pedestrian streets in NCX.[2] Not subject to minimum densities founding Section 13.06.300.E.
Continuing care retirement community	P	P	P	P	P	P	P	P	See Section 13.06.535. Prohibited at street level along frontage of designated core pedestrian streets in NCX.[2]
Correctional facility	N	N	N	N	N	N	N	N	
Craft Production	P	P	P	P	P	N	N	N	Must include a retail/eating/drinking/tasting component that occupies a minimum of 10 percent of usable space, fronts the street at sidewalk level or has a well-marked and visible entrance at sidewalk level, and is open to the public. Outside storage is allowed provided screening and/or buffer planting areas are provided in accordance with Section 13.06.502.D. All production, processing and distribution activities are to be conducted within an enclosed building.
Cultural institution	P	P	P	N	P	N	N	N	
Day care, family	P	P	P	P	N	P	P	P	
Day care center	P	P	P	P	P	P	P	CU	Not subject to RCX residential requirement.[1]
Detoxification center	N	N	N	N	CU	CU	N	N	
Drive-through with any use	P	P	P	N	P	P*	N	N	* In the HMX District, drive-throughs are only allowed for hospitals and associated medical uses. All drive-throughs are subject to the requirements of TMC 13.06.513.
Dwelling, single-family detached	P	P	P	P	P	P	P	P	In NCX and CCX Districts, prohibited at street level along frontage of designated core pedestrian streets.[2] See Section 13.06.300.E for minimum densities.
Dwelling, two-family	P	P	P	P	P	P	P	CU	In NCX and CCX Districts, prohibited at street level along frontage of designated core pedestrian streets.[2] See Section 13.06.300.E for minimum densities.
Dwelling, three-family	P	P	P	P	P	P	P	CU	In NCX and CCX Districts, prohibited at street level along frontage of designated core pedestrian streets.[2] See Section 13.06.300.E for minimum densities.

Uses	NCX	CCX	UCX	RCX[1]	CIX	HMX	URX	NRX	Additional Regulations[3, 4, 5] (also see footnotes at bottom of table)
Dwelling, multiple-family	P	P	P	P	P	P	P	N	In NCX and CCX Districts, prohibited at street level along frontage of designated core pedestrian streets.[2] See Section 13.06.300.E for minimum densities. In the NRX District, multiple-family dwellings lawfully in existence on August 31, 2009, the time of reclassification to this district, shall be considered permitted uses; said multiple-family dwellings may continue and may be changed, repaired, replaced or otherwise modified, provided, however that the use may not be expanded beyond property boundaries owned, leased, or operated as a multiple-family dwelling at the time of reclassification to this district.
Dwelling, townhouse	P	P	P	P	P	P	P	CU	In NCX and CCX Districts, prohibited at street level along frontage of designated core pedestrian streets.[2] See Section 13.06.300.E for minimum densities.
Dwelling, accessory (ADU)	P	P	P	P	P	P	P	P	In NCX and CCX Districts, prohibited at street level along frontage of designated core pedestrian streets.[2] See Section 13.06.150 for specific Accessory Dwelling Unit (ADU) Standards.
Eating and drinking	P	P	P	P	P	P*	N	N	Outdoor seating is permitted with a 12-seat maximum in RCX. In RCX live entertainment is limited to that consistent with a Class "C" Cabaret license, as designated in Chapter 6B.70. In all other districts, live entertainment is limited to that consistent with a either a Class "B" or Class "C" Cabaret license, as designated in Chapter 6B.70. *Limited to 7,000 square feet of floor area, per business, in the HMX District.
Emergency and transitional housing	CU	P	P	CU	N	CU	CU	CU	See Section 13.06.535. In NCX and CCX Districts, prohibited at street level along frontage of designated core pedestrian streets.[2]
Extended care facility	P	P	P	P	P	P	P	P	See Section 13.06.535. In NCX and CCX Districts, prohibited at street level along frontage of designated core pedestrian streets.[2]
Foster home	P	P	P	P	P	P	P	P	In NCX and CCX Districts, prohibited at street level along frontage of designated core pedestrian streets.[2]
Fueling station	N	P	P	N	P	N	N	N	Prohibited along frontage of designated pedestrian streets within the UCX and CCX Districts.[2] Fueling station pump islands, stacking lanes and parking areas shall be located at the side or rear of the building.
Funeral home	P	P	P	N	P	P	N	N	
Golf course	N	N	N	N	N	N	N	N	
Group housing	P	P	P	P	P	P	P	P	In NCX and CCX Districts, prohibited at street level along frontage of designated core pedestrian streets.[2]
Heliport	N	N	N	N	CU	CU	N	N	

Uses	NCX	CCX	UCX	RCX[1]	CIX	HMX	URX	NRX	Additional Regulations[3, 4, 5] (also see footnotes at bottom of table)
Home occupation	P	P	P	P	P	P	P	P	Home occupations shall be allowed in all X-Districts pursuant to the standards found in Section 13.06.100.E.
Hospital	N	CU	CU	N	P	P	N	N	
Hotel/motel	P	P	P	N	P	P	N	N	
Industry, heavy	N	N	N	N	N	N	N	N	
Industry, light	N	N	N	N	P	N	N	N	
Intermediate care facility	P	P	P	P	P	P	P	P	See Section 13.06.535. In NCX and CCX Districts, prohibited at street level along frontage of designated core pedestrian streets.[2]
Juvenile community facility	P	P	P	P/CU	P	N	P/CU	CU	In NCX and CCX Districts, prohibited at street level along frontage of designated core pedestrian streets.[2] See Section 13.06.530 for additional information about size limitations and permitting requirements.
Live/Work	P	P	P	P	P	P	P	P	Projects incorporating live/work in new construction shall contain no more than 20 live/work units. Subject to additional requirements contained in Section 13.06.570.
Lodging house	P	P	P	P	P	P	P	CU	Prohibited at street level along frontage of designated core pedestrian streets in NCX and CCX Districts.[2]
Marijuana processor	N	N	N	N	P	N	N	N	See additional requirements contained in Section 13.06.565
Marijuana producer	N	N	N	N	P	N	N	N	See additional requirements contained in Section 13.06.565
Marijuana retailer	P	P	P	N	P	P*	N	N	*Limited to 7,000 square feet of floor area, per business, in the HMX District. See additional requirements contained in Section 13.06.565
Microbrewery/ winery	N	N	N	N	P	N	N	N	Microbreweries shall be limited to 15,000 barrels per year of beer, ale, or other malt beverages, as determined by the filings of barrelage tax reports to the Washington State Liquor Control Board. Equivalent volume winery limits apply.
Mobile home/trailer court	N	N	N	N	N	N	N	N	
Nursery	P	P	P	N	P	N	N	N	
Office	P	P	P	P	P	P	N	N	Not subject to RCX residential requirement for properties fronting the west side of South Pine Street between South 40th Street and South 47th Street.[1]
Parks, recreation and open space	P	P	P	P	P	P	P	P	Not subject to RCX residential requirement.[1] Subject to the requirements of Section 13.06.560.D.
Passenger terminal	P	P	P	N	P	N	N	N	
Personal services	P	P	P	P	P	P*	N	N	*Limited to 7,000 square feet of floor area, per business, in the HMX District.

Uses	NCX	CCX	UCX	RCX[1]	CIX	HMX	URX	NRX	Additional Regulations[3, 4, 5] (also see footnotes at bottom of table)
Port, terminal, and industrial; water-dependent or water-related (as defined in Chapter 13.10)	N	N	N	N	N	N	N	N	
Public safety and public service facilities	P	P	P	P	P	P	P	CU	In the NRX District, unless the specific use is otherwise allowed outright, public service facilities are permitted only upon issuance of a conditional use permit. See Section 13.06.640. Not subject to RCX residential requirement.[1]
Religious assembly	P	P	P	P	P	P	P	CU	Not subject to RCX residential requirement.[1]
Repair services	P	P	P	N	P	N	N	N	In NCX, all activities must occur within buildings; outdoor storage/repair is prohibited.
Research and development industry	N	N	N	N	P	N	N	N	
Residential care facility for youth	P	P	P	P	P	P	P	P	See Section 13.06.535. See definition for bed limit. In NCX and CCX Districts, prohibited at street level along frontage of designated core pedestrian streets.[2] Not subject to minimum densities found in Section 13.06.300.E.
Residential chemical dependency treatment facility	P	P	P	P	P	P	P	P	See Section 13.06.535. In CCX and NCX Districts, prohibited at street level along frontage of designated core pedestrian streets.[2]
Retail	P	P/CU~	P/CU~	P	P/CU~	P*	N	N	~ A conditional use permit is required for retail uses exceeding 45,000 square feet. See Section 13.06.640.J. *Limited to 7,000 square feet of floor area, per business, in the HMX District.
Retirement home	P	P	P	P	P	P	P	P	See Section 13.06.535. In NCX and CCX Districts, prohibited at street level along frontage of designated core pedestrian streets.[2]
School, public or private	P	P	P	P	P	P	P	CU	Not subject to RCX residential requirement.[1]
Seasonal sales	TU	TU	TU	TU	TU	TU	TU	TU	Subject to Section 13.06.635.
Self-storage	N	P	P	N	P	N	N	N	See specific requirements in Section 13.06.503.B. In NCX and CCX Districts, prohibited at street level along frontage of designated core pedestrian streets.[2]
Staffed residential home	P	P	P	P	P	P	P	P	See Section 13.06.535. See definition for bed limit. Prohibited at street level along designated core pedestrian streets in NCX and CCX Districts.[2] Not subject to minimum densities found in Section 13.06.300.E.

Uses	NCX	CCX	UCX	RCX[1]	CIX	HMX	URX	NRX	Additional Regulations[3, 4, 5] (also see footnotes at bottom of table)
Student housing	P	P	P	P	P	P	P	N	Prohibited at street level along frontage of designated core pedestrian streets in NCX and CCX Districts.[2]
Surface mining	CU	CU	CU	CU	CU	CU	CU	N	
Temporary uses	TU	TU	TU	TU	TU	TU	TU	TU	See Section 13.06.635
Theater	P	P	P	N	P	N	N	N	Theaters only permitted up to 4 screens in NCX and CCX. Theaters only permitted up to 6 screens in CIX.
Transportation/ freight terminal	P	P	P	N	P	P	N	N	
Urban Horticulture	N	N	N	N	P	N	N	N	
Utilities	CU	CU	CU	CU	CU	CU	CU	CU	In NCX and CCX Districts, prohibited at street level along frontage of designated core pedestrian streets.[2] Not subject to RCX residential requirement.[1]
Vehicle rental and sales	N*	P	P	N	P	N	N	N	In CCX Districts, prohibited at street level along frontage of designated core pedestrian streets.[2] *Use permitted in the ~~56th Street and~~ South Tacoma Way ~~Mixed Use~~Neighborhood Center NCX only, if all activities occur within buildings; outdoor storage repair, and sales are prohibited.
Vehicle service and repair	N*	P	P	N	P	N	N	N	All activities must occur within buildings; outdoor storage and/or repair is prohibited. Subject to development standards contained in Section 13.06.510.E. In CCX Districts, prohibited along frontage of designated core pedestrian streets.[2] *Use permitted in the ~~56th Street and~~ South Tacoma Way ~~Mixed Use~~Neighborhood Center NCX only, provided all activities occur entirely within buildings; outdoor storage and/or repair is prohibited.
Vehicle service and repair, industrial	N	N	P	N	P	N	N	N	Subject to additional development standards contained in Section 13.06.510.E.
Vehicle storage	N	N	N	N	P	N	N	N	Subject to development standards contained in Section 13.06.510.D.
Warehouse, storage	N	N	N	N	P	N	N	N	
Wholesale or distribution	N	N	N	N	P	N	N	N	
Work/Live	P	P	P	P	P	P	P	P	Projects incorporating work/live in new construction shall contain no more than 20 work/live units. Subject to additional requirements contained in Section 13.06.570.

Uses	NCX	CCX	UCX	RCX[1]	CIX	HMX	URX	NRX	Additional Regulations[3, 4, 5] (also see footnotes at bottom of table)
Wireless communication facility	P*/ CU**	P*/ CU**	P*/ CU**	P*/ CU**	P*/ CU**	P*/ CU**	P*/ CU**	P*/ CU**	*Wireless communication facilities are also subject to Section 13.06.545.D.1. **Wireless communication facilities are also subject to Section 13.06.545.D.2.
Work release center	N	N	CU	N	CU	N	N	N	Permitted with no more than 15 residents in the UCX and no more than 25 residents in the CIX, subject to a Conditional Use Permit and the development regulations found in Section 13.06.550.
Uses not prohibited by City Charter and not prohibited herein	N	N	N	N	N	N	N	N	

Footnotes:

1. The floor area of any development in RCX must be at least 75 percent residential, unless otherwise noted.
2. For uses that are restricted from locating at street-level along designated pedestrian or core pedestrian streets, the following limited exception is provided. Entrances, lobbies, management offices, and similar common facilities that provide access to and service a restricted use that is located above and/or behind street-level uses shall be allowed, as long as they occupy no more than 50-percent or 75 feet, whichever is less, of the site's street-level frontage on the designated pedestrian or core pedestrian street. See Section 13.06.300.C. for the list of designated pedestrian and core pedestrian streets.
3. For historic structures and sites, certain uses that are otherwise prohibited may be allowed, subject to the approval of a conditional use permit. See Section 13.06.640.F for additional details, limitations and requirements.
4. Commercial shipping containers shall not be an allowed type of accessory building in any mixed-use zoning district. Such storage containers may be allowed as a temporary use, subject to the limitations and standards in Section 13.06.635.
5. Additional restrictions on the location of parking in mixed-use zoning districts are contained in the parking regulations – see Section 13.06.510.A.1 Table 2

E. Building envelope standards.

1. The following table contains the primary building envelope requirements. See Section 13.06.501 for additional requirements:

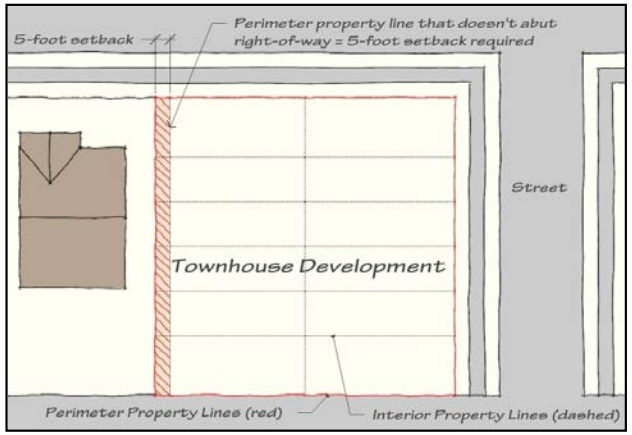
	NCX	CCX	UCX	RCX	CIX	HMX	URX	NRX	Additional Requirements
Minimum lot area	0 square feet	0 square feet	0 square feet	0 square feet	0 square feet	0 square feet	0 square feet	3,500 square feet for single-family dwellings; 2,500 square feet per unit for duplexes; 6,000 square feet for triplexes and multi-family dwellings; 5,000 square feet total per townhouse development	
Minimum lot width	0 feet	0 feet	0 feet	0 feet	0 feet	0 feet	0 feet	25 feet for single-family dwellings, duplexes and triplexes; 14 feet for townhouses	

<table>
<tr><th></th><th>NCX</th><th>CCX</th><th>UCX</th><th>RCX</th><th>CIX</th><th>HMX</th><th>URX</th><th>NRX</th><th>Additional Requirements</th></tr>
<tr><td rowspan="3">Minimum setbacks:</td><td>0 feet</td><td>0 feet</td><td>0 feet</td><td>0 feet</td><td>0 feet</td><td>0 feet</td><td>0 feet</td><td rowspan="2">For single, two- and three-family dwellings and townhouses:
10-foot front, 5-foot sides, 15-foot rear

For other uses:
10-foot front,
7.5-foot sides,
20-foot rear</td><td rowspan="3">Maximum setbacks may apply (see Section 13.06.300.F).

If a buffer is required, a minimum setback is created (see Section 13.06.503).

Townhouse setback standards apply to the perimeter property lines of the development and not to individual internal property lines between townhouses in the same development.

See 13.06.501.N for additional requirements applicable to duplex, triplex and townhouse developments.</td></tr>
<tr><td colspan="7">For townhouse developments, a setback of at least 5 feet shall be provided along the perimeter of the development on all sides that do not abut public street or alley right-of-way.
 
</td></tr>
<tr><td colspan="7">For X District property across a non-designated Pedestrian Street from R-1, R-2 or R-2SRD District property, the following front yard setback shall be provided:
• Minimum 10-foot front yard setbacks are required along non-designated Pedestrian Streets.
• Limited exception: For corner lots that also front on a designated Pedestrian Street, this setback shall not apply for the first 130 feet from the corner, as measured along the edge of the right-of-way.
• Covered porches and entry features may project up to 6 feet into the setback.
• The setback area may include landscaping, walkways, pedestrian plazas, private patios, porches, or vehicular access crossings (where allowed), but not include parking.</td></tr>
</table>

	NCX	CCX	UCX	RCX	CIX	HMX	URX	NRX	Additional Requirements
Maximum height of structures (feet)	45 feet[1]; 65 feet in the ~~Stadium Mixed-Use Center~~ Stadium District of the DRGC.[1]	60 feet; 75 feet, if at least 25 percent of floor area is residential or through use of TDRs from an identified TDR sending area[4].	75 feet; 120 feet, if at least 25 percent of floor area is residential or through use of TDRs from an identified TDR sending area[4].	60 feet[1]	75 feet	150 feet	45 feet[2]	35 feet	Height will be measured consistent with Building Code, Height of Building. Maximum heights, shall be superseded by the provisions of Section 13.06.503.A. Certain specified uses and structures are allowed to extend above height limits, per Section 13.06.602.
	[1] In NCX, RCX, and CIX Districts, additional height above these standard height limits may be allowed is certain areas through the X-District Height Bonus Program – see Section 13.06.300.E.2.								
	[2] In the McKinley ~~Mixed-Use~~ Neighborhood Center, the portion of the URX District that is north of the alley between East Wright Avenue and East 34th Street has a height limit of 35 feet instead of 45 feet.								
Upper story setback	See Section 501.C.2 for stepback standards along pedestrian streets.	See Section 501.C.2 for stepback standards along pedestrian streets.	None	None	None	None	None	None	See Section 13.06.503; residential transition standards may also apply.

	NCX	CCX	UCX	RCX	CIX	HMX	URX	NRX	Additional Requirements
Maximum floor area	30,000 square feet per business; 45,000 square feet for full service grocery stores only; offices shall be exempt from these limits.	45,000 square feet per business for retail uses, unless approved with a conditional use permit. See Section 13.06.640.J	45,000 square feet per business for retail uses, unless approved with a conditional use permit. See Section 13.06.640.J	30,000 square feet per business; 45,000 square feet for full service grocery stores only.	45,000 square feet per business for retail uses, unless approved with a conditional use permit. See Section 13.06.640.J	7,000 SF per business for eating and drinking, retail and personal services uses	None	None	See Section 13.06.300.D for limitations on the amount of non-residential space allowed in developments in RCX Districts.
Minimum density (units/ acre)	30; 40 on designated pedestrian streets (see Section 13.06.300.C)	30; 40 on designated pedestrian streets (see Section 13.06.300.C)	40	30; 40 on designated pedestrian streets (see Section 13.06.300.C)	None	None	25	None	Projects that do not include residential uses, and mixed-use projects (such as residential & commercial, residential & industrial, or residential & institutional) are exempt from minimum-density requirements.
	For purposes of this provision, density shall be calculated by dividing the total number of dwelling units in a development by the area, in acres, of the development site, excluding any accessory dwelling units or areas dedicated or reserved for public rights-of-way or full private streets. In the same manner, to determine the minimum number of units required to meet this standard, multiply the size of the property, in acres, by the required minimum density, then round up to the nearest whole number. For example, the minimum number of units required on a 7,000 square foot (.16-acre) property located in the UCX District would be 7 units (.16 x 40 = 6.4, which rounds up to 7 units).								

2. X-District Height Bonuses. The ~~X-District~~ Height Bonus program provides a mechanism to allow for additional height for projects within certain portions of the ~~Neighborhood~~ Mixed-Use Centers designated in the Comprehensive Plan. It is designed to encourage new growth and foster economic vitality within the centers, consistent with the State Growth Management Act and the City's Comprehensive Plan, while balancing taller buildings and greater density with public amenities that help achieve the community's vision for the centers, with improved livability, enhanced pedestrian and transit orientation, and a quality built environment, and realize other City-wide goals. Through this program, projects within certain areas may qualify for additional building height, above and beyond the standard maximum height limits outlined above, under Subsection E.1. In order to achieve these increased height limits, projects are required to provide one or more public benefit bonus features.

a. Applicability. Where applicable in the Mixed-Use Centers, the height bonus provision allows for projects to be eligible to increase the standard maximum height limit through the incorporation of one or more public benefit features into the development of the project. These pubic benefit features are divided into two levels, each of which is outlined below (see graphic on the next page). The following table details the areas within the various neighborhood centers that are eligible for this height bonus program and the maximum additional height allowed through each of the two bonus levels:

Zoning District & Center	**Base Height Limit** (allowed without any bonus items)	**Maximum Height Allowed Through Level 1**[3]	**Maximum Height Allowed Through Level 2**[3]
NCX – Neighborhood Commercial Mixed-Use District (Proctor, Lincoln, 6th ~~& Pine~~Ave, McKinley, and Narrows ~~Centers~~)	45 feet	65 feet	Not Available
NCX – Neighborhood Commercial Mixed-Use District (Stadium District, ~~-~~ DRGC ~~Center~~)	65 feet	75 feet	85 feet
NCX – Neighborhood Commercial Mixed-Use District (~~56th &~~ South Tacoma Way ~~Center~~)	45 feet	65 feet	85 feet
NCX – Neighborhood Commercial Mixed-Use District (~~MLK Center~~Hilltop Neighborhood, DRGC – property within 200 ft of Core Pedestrian Street)[1]	45 feet	65 feet	85 feet
NCX – Neighborhood Commercial Mixed-Use District (~~MLK Center~~Hilltop Neighborhood, DRGC – property not within 200 ft of core pedestrian street)[1]	45 feet	65 feet	Not Available
RCX – Residential Commercial Mixed-Use District (Hilltop Neighborhood, DRGC~~MLK Center~~ – east of MLK Jr. Way and between 9th and 13th Streets)	60 feet	70 feet[2]	80 feet
CIX – Commercial-Industrial Mixed-Use District (~~56th &~~ South Tacoma Way ~~Center~~)	75 feet	90 feet	100 feet

Exhibit A: Open Space Corridors
From TMC 13.06.502 Landscaping and buffering standards.

(1) ~~Habitat~~ Open Space Corridors. A minimum of 50 percent of required landscaping located within Comprehensive Plan designated ~~Habitat~~ Open Space Corridors, and a minimum of 25 percent in adjacent areas within 20 feet of ~~Habitat~~ Open Space Corridors, must be native plant species. Reductions are permitted when necessary to follow coordinated plans to address slope stability, habitat health, streetscape or area-wide plans.

c. Required landscaping areas are encouraged to incorporate vegetated LID BMPs, as defined in the City of Tacoma Stormwater Management Manual. A vegetated LID BMP may be used to meet landscaping requirements. Limited flexibility shall be granted to specific landscaping standards as applicable to accommodate LID BMPs.

d. Visibility and safety. Except in cases where required landscaping is intended to provide dense visual buffers or to enhance natural conditions, trees and shrubs shall be selected and maintained to maximize visibility at eye level for safety. To meet this requirement, shrubs shall be chosen that will readily remain under 3 feet in height. Trees shall be selected and pruned (once tall enough) to maximize views below 7 feet in height.

e. Trees.

(1) Tree Species Selection – Small, Medium and Large species. Trees are categorized as small, medium or large based on their height and crown spread at maturity and on their growth rate. Trees size categories are determined according to the Canopy Factor, which is calculated using the following formula: (mature height in feet) x (mature crown spread in feet) x (growth rate number) x 0.01 = Canopy Factor. The growth rate number is 1 for slow growing trees, 2 for moderately growing trees, and 3 for fast growing trees. Large Trees have a Canopy Factor greater than 90; Medium Trees have a Canopy Factor from 40 to 90; Small Trees have a Canopy Factor less than 40.

(a) Small, Medium and Large Tree lists are included in the UFM. To determine the size category of a tree not listed in the UFM, the applicant must provide an authoritative source of information about the tree's mature height, crown spread and growth rate. Objective information must come from published sources or from the nursery providing the tree growth information, often called "cut sheets".

(2) Species shall be selected to avoid or minimize potential conflicts with infrastructure and utilities. Trees under power lines shall have a maximum mature height (at 25 years of age) not greater than 25 feet. New tree plantings shall be a minimum of 2 feet from pavement (curb, sidewalk, alley, street), 5 feet from a structure, 5 feet from underground utilities, and 10 feet from light standards. Distances may be reduced, with staff approval, upon a demonstration that the species selected will not cause infrastructure conflicts. The UFM contains additional guidelines on this subject.

(3) Tree variety. For projects that involve the planting of between four and ten trees, at least two different kinds (Genera) of trees shall be included. For projects involving the planting of more than ten trees, at least three different kinds (Genera) of trees, and a mixture of tree types (evergreen and deciduous) shall be included. For projects that involve planting more than twenty-five trees, no more than 25 percent shall be from one Genera and a minimum of 20 percent must be evergreen.

(4) Tree size at planting. Trees provided to meet the landscaping requirements shall be consistent with the following size requirements at the time of planting: For deciduous trees, at least 50 percent of the trees provided shall be a minimum 2-inch caliper at the time of planting, with the remaining deciduous trees a minimum 1½-inch caliper. For evergreen trees, at least 50 percent of the trees provided shall be a minimum of 6 feet tall, with the remaining evergreen trees a minimum of 5 feet tall at the time of planting. Evergreen trees provided to meet these requirements shall also be species with the ability to develop a minimum branching width of 8 feet within 5 years.

f. Shrubs and Groundcover.

(1) Turf lawn and mulch are not considered groundcover for the purposes of complying with this section.

(2) Vegetated LID BMPs that incorporate trees, shrubs and/or groundcover may count as meeting tree, shrub and groundcover requirements.

(3) Shrub variety. If there are more than 25 required shrubs, no more than 20 percent of them can be of one species.

(4) Groundcover and shrub plants must be planted at a density that will cover the entire area within three years.

(5) Unless specified otherwise, shrubs provided to meet these requirements shall be from a minimum 2-gallon container.

3. Installation and Maintenance.

a. Landscaping shall be installed and maintained in a healthy, thriving, and safe condition, and replaced as necessary, during the plant establishment period and for the life of the project, consistent with the requirements, standards and specifications of this Section and the UFM.

(3) A planting plan containing information on vegetation species, quantities, and general location of planting areas including the identification of wetlands, streams, and their buffers, is required for review.

(4) Proper erosion control measures are provided.

(5) If equipment, other than hand-held equipment is utilized, list the type of equipment, methods and best management practices to prevent unnecessary impacts.

b. Community Projects

Multi-party projects within designated Open Space Corridors ~~Habitat Corridors or Open Space Areas~~, or adjacent vegetated areas that form expanded corridors are encouraged. These projects shall not include new destination facilities or high-intensity recreation facilities as described in 13.06.560. A City approved habitat management template or equivalent must be provided that has been reviewed and approved by all property owners. In addition, the project is subject to the following:

(1) The primary focus is preservation and increase in biological functions through the preservation and improvement of habitat, species diversity and natural features.

(2) Preserves and connects ~~habitat~~ Open Space C~~c~~orridors.

(3) Includes goals, objectives, and measureable performance standards.

(4) Includes a monitoring plan and contingency plan.

(5) Trails shall comply with the provisions in Section 13.11.200.B.9.

(6) Buildings and paved surfaces shall be located outside of the critical area and buffer.

(7) Picnic Tables, benches, and signage are allowed when they are located to avoid and minimize impacts.

(8) A maintenance plan that describes the proper techniques and methods used for on-going maintenance and preservation.

(9) The identification of a trained habitat steward who will be responsible for overseeing volunteers, employees, and/or contractors for all aspects of the project.

11. Hazard trees. The removal of hazard trees from the critical area or critical area buffer that are posing a threat to public safety, or posing an imminent risk of damage to an existing structure, public or private road or sidewalk, or other permanent improvement, may be allowed following City staff review, or provided that a report from a certified arborist, landscape architect or professional forester is submitted to the City for review and approval. The report must include an evaluation for tree stabilization potential and removal techniques for the hazard tree and procedures for protecting the surrounding critical area and replacement of native trees. Where possible, the hazard tree shall be left as a standing snag and the cut portions shall be left within the critical area as habitat unless removal is warranted due to fire hazard, disease, or pest control.

12. Tree Pruning. Tree pruning may be allowed provided a report from a certified arborist, landscape architect or professional forester regarding the health of the tree is submitted, and a functional impact analysis from a qualified professional evaluating the functions of the critical area as a result of the pruning, is also submitted to the City for review and approval. No topping, complete removal or impacts to the health of the tree shall be allowed.

13. Watershed restoration projects that conform to the provisions of RCW 89.08.460 shall be reviewed without fee and approved within 45 days per RCW 89.08.490.

14. Fish habitat enhancement projects that conform to the provision of RCW 77.55.181 shall be reviewed without fee and comments provided as specified in RCW 77.55.181.

15. Demolition of structures.

(Ord. 28336 Ex. C; passed Dec. 1, 2015: Ord. 28335 Ex. A; passed Dec. 1, 2015: Ord. 28230 Ex. F; passed Jul. 22, 2014: Ord. 28070 Ex. B; passed May 8, 2012: Ord. 27728 Ex. A; passed Jul. 1, 2008: Ord. 27431 § 23; passed Nov. 15, 2005: Ord. 27294 § 2; passed Nov. 16, 2004)

13.11.220 Application Types.

A. This chapter allows three types of Critical Area applications, which result in the issuance of an administratively appealable decision consistent with Chapter 13.05. After the appeal period expires, the Director's approved decision becomes the official permit. Programmatic Restoration Projects processed under either the Minor Development Permit or the Development Permit may qualify for additional time extensions according to 13.05.070.

B. The three types of permits are as follows:

Chapter 1.37

TRANSFER OF DEVELOPMENT RIGHTS PROGRAM ADMINISTRATIVE CODE

Sections:

1.37.010 Purpose.

The Transfer of Development Rights (TDR) Administrative Code establishes procedures for the operation of the City's TDR Program. The TDR Program is designed to advance the goals of the State's Growth Management Act by providing a tool to advance the City's conservation goals, historical preservation goals, and built environment goals by encouraging the voluntary redirection of development potential away from areas where the City wants less or no development potential, called sending areas, toward areas that the City has designated as suitable for bonus development potential, called receiving areas.

(Ord. 28087 Ex. A; passed Sept. 25, 2012)

1.37.020 Definitions.

"Baseline development potential" is the maximum development density or intensity allowed in TDR receiving areas when property owners choose not to use the bonus palette in Title 13 TMC to achieve bonus height.

"Bonus development" is development that exceeds baseline development potential in accordance with this chapter and the TDR provisions in Title 13 TMC.

"Receiving areas" are lands designated by this chapter which TDRs can be used in compliance with this chapter and Title 13 TMC.

"Sending areas" are lands or structures qualified to generate TDRs for use within receiving areas in compliance with this chapter.

"Sending area TDR allocation" means the number of TDRs that a sending area owner is issued per acre or lot conserved, or per landmark structure preserved.

"TDR Administrative Procedures" are procedures in Title 1 TMC that implement this chapter and the TDR bonus provisions in Title 13 TMC.

"TDR Manager" is an employee of the Tacoma Planning and Development Services Department tasked with accomplishing the duties specified by this chapter.

"Transferable development rights (TDR or TDRs)" are whole or fractional units of development potential transferred from sending areas that can be used in receiving areas to increase development density or intensity in compliance with this chapter.

(Ord. 28230 Ex. A; passed Jul. 22, 2014: Ord. 28087 Ex. A; passed Sept. 25, 2012)

1.37.030 Sending Areas.

The following five categories of land or structures qualify as sending areas:

A. Pierce County Farm Land: Farm land designated as Agriculture Resource Land (ARL) in unincorporated Pierce County situated in Pierce County's Puyallup Valley (Alderton-McMillin or Mid County Community Planning Areas).

B. Pierce County Forest Land: Forest land designated as Forest Land (FL) situated in unincorporated Pierce County.

C. Resource lands in King County and Snohomish County.

D. Tacoma Habitat: Lands providing high habitat and natural value located within, or in proximity to, designated ~~Habitat Corridors~~ Open Space Corridors in the Comprehensive Plan, and lands providing exceptional habitat and natural value located within the City and outside of the designated ~~Habitat~~ Open Space Corridors.

13.02.041 Quorum.

A simple majority of appointed, filled positions shall constitute a quorum for the transaction of official business.

(Ord. 28336 Ex. C; passed Dec. 1, 2015: Ord. 28157 Ex. C; passed Jun. 25, 2013: Ord. 27172 § 5; passed Dec. 16, 2003)

13.02.043 Definitions.

For the purpose of this chapter, certain words and terms used herein are defined as follows:

A. An "area-wide zoning reclassification" is a legislative action to change the zoning classification(s) on an area-wide basis in order to implement and maintain the consistency of the Comprehensive Plan. It is comprehensive in nature and deals with homogenous communities, distinctive geographic areas, and other types of districts having unified interests within the City, including those associated with annexation and overlay special review zoning districts. Area-wide zoning reclassifications, unlike parcel zoning reclassifications, are generally of area-wide significance, usually involving many separate properties under various ownerships, and often utilize several of the City's zoning classifications to implement the City's Comprehensive Plan. An area-wide zoning reclassification consisting of a single ownership but having a broader impact of significance on the community may be considered to be an area-wide reclassification if it is being undertaken in order to maintain consistency of the City's Comprehensive Plan.

B. "Department," as used in this chapter, refers to the Planning and Development Services Department.

C. "Development regulations" are any regulations and regulatory procedures placed on or involving development or land use activities of the City, including, but not limited to, zoning ordinances, critical area ordinances, shoreline master programs, official controls, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances (RCW 36.70A).

D. An "emergency" situation is one in which human health or safety is jeopardized and/or public or private property is imminently endangered. For the purposes of this section, an "emergency" situation shall also include one demanding the immediate amendment of the Comprehensive Plan outside of the annual amendment cycle, without which capital facilities concurrency is likely to be compromised and/or levels of service are expected to drop below an acceptable level.

E. "Interim zoning" is an immediate change in existing zoning classifications or regulations where new zoning classifications or regulations are temporarily imposed. Such temporary zoning controls are designed to regulate specific types of development so that, when new plans and/or zoning are adopted, they will not have been rendered moot by intervening development; or are necessary to prevent harm or to preserve the status quo. Interim zoning can be an area-wide reclassification of a temporary nature or modification to specific requirements of a zoning classification.

F. "Comprehensive Plan land use designation" indicates the intended ~~is a designation for all property that indicates the~~ future land use pattern for all properties in the City, as depicted on the Future Land Use Map of the Comprehensive Plan. ~~development influence based on factors such as size, scale, bulk, nuisance level, density, activity level, amount of open space, and traffic generation. Such designations are depicted on the Generalized Land Use Plan map which illustrates the future land use pattern for the City.~~ This land use pattern was a result of analysis of the urban form policies, existing land use and zoning, development trends, anticipated land use needs and desirable growth and development goals. The Future Land Use Map and the designations provide a basis for applying zoning districts and for making land use decisions. The map is to be used in conjunction with the adopted policies of the Comprehensive Plan for any land use decision.

G. "Moratorium" (or collectively, "moratoria") is the suspension of accepting or processing new applications for building, zoning, subdivision (platting), or other types of development in order to preclude development from occurring for a specified period of time. A moratorium on development may be imposed on all development, on all permit applications, or on specific types of development or permit applications.

H. "Plan amendment" is a proposed change to the Comprehensive Plan that may include adoption of a new plan element; a change to an existing plan element, including goals, policies and narrative text; a change to the objectives, principles, or standards used to develop the Comprehensive Plan; a revision to the land use designation as shown on the ~~Generalized~~ Future Land Use ~~Plan~~ M~~m~~ap; or a change to implementation strategies or programs adopted as part of the Comprehensive Plan, including updates to inventories and financial plans.

(Ord. 28157 Ex. C; passed Jun. 25, 2013: Ord. 28157 Ex. C; passed Jun. 25, 2013: Ord. 28109 Ex. O; passed Dec. 4, 2012: Ord. 27466 § 34; passed Jan. 17, 2006: Ord. 27172 § 6; passed Dec. 16, 2003)

13.02.044 Comprehensive Plan.

A. The Comprehensive Plan is the City's official statement concerning future growth and development. It sets forth goals, policies, and strategies to protect the health, welfare, safety, and quality of life of Tacoma's residents. The Comprehensive Plan must be consistent with and advance the goals of RCW 36.70A ("Growth Management Act"), the Multicounty Planning

2. Proposed projects located within the Downtown Regional Growth Center, as set forth in the Growth Strategy and Development Concept Element of the City Comprehensive Plan, provided that the real property involved is subject to a significant measure of public ownership or control, and provided that the project includes a building footprint of at least 15,000 square feet and a proposed height of at least 75 feet;

3. Proposed projects located within the Downtown Regional Growth Center where the City Landmarks Commission formally certifies that the proposed project is either a historic structure or is directly associated with and supports the preservation of an adjacent historic structure;

4. Proposed projects located on a public facility site, as defined in subsection 13.06.700.P TMC, that are at least five acres in size and are not a public utility site.

C. Application process. An application for a Development Regulation Agreement may only be made by a person or entity having ownership or control of real property within one of the qualifying areas identified in subsection B above. Applications for a Development Regulation Agreement shall be made with the Planning and Development Services Department, solely and exclusively on the current form approved by said Department, together with the filing fee set forth in the current edition of the City's Fee Schedule, as adopted by resolution of the City Council. The City Council shall be notified once a complete application has been received. The City shall give notice under Sections 13.02.057 and 13.02.045.H TMC as if the application were for a land use ~~intensity~~ designation change.

D. Review criteria. The City Manager, and such designee or designees as may be appointed for the purpose, shall negotiate acceptable terms and conditions of the proposed Development Regulation Agreement based on the following criteria:

1. The Development Regulation Agreement conforms to the existing Comprehensive Plan. Except for projects on a public facility site of at least five acres in size, conformance must be demonstrated by the project, as described in the Development Regulation Agreement, scoring 800 points out of a possible 1,050 points, according to the following scoring system (based on the Downtown Element of the City Comprehensive Plan):

a. Balanced healthy economy. In any project where more than 30 percent of the floorspace is office, commercial, or retail, one point shall be awarded for every 200 square feet of gross floorspace (excluding parking) up to a maximum of 290 points.

b. Achieving vitality downtown. Up to 40 points shall be awarded for each of the following categories: (i) CPTED design ("Crime Prevention Through Environmental Design"), (ii) sunlight access to priority public use areas, (iii) view maximization, (iv) connectivity, (v) quality materials and design, (vi) remarkable features, (vii) access to open space, and (viii) street edge activation and building ground orientation.

c. Sustainability. Up to 50 points shall be awarded for each of the following categories: (i) complete streets, (ii) transit connections, (iii) energy conservation design to a L.E.E.D. (Leadership in Energy and Environmental Design) certification to a platinum level or certified under another well-recognized rating system to a level equivalent to certification to a platinum level, and (iv) Low Impact Development Best Management Practices and Principles.

d. Quality Urban Design. Up to 60 points shall be awarded for each of the following categories: (i) walkability, (ii) public environment, (iii) neighborliness, and (iv) support for public art.

2. Appropriate project or proposal elements, such as permitted uses, residential densities, nonresidential densities and intensities, or structure sizes, are adequately provided to include evidence that the site is adequate in size and shape for the proposed project or use, conforms to the general character of the neighborhood, and would be compatible with adjacent land uses.

3. Appropriate provisions are made for the amount and payment of fees imposed or agreed to in accordance with any applicable provisions of state law, any reimbursement provisions, and other financial contributions by the property owner, inspection fees, or dedications.

4. Adequate mitigation measures including development conditions under chapter 43.21C RCW are provided. The City shall be the lead agency in the SEPA process for all projects.

5. Adequate and appropriate development standards such as maximum heights, setbacks, drainage and water quality requirements, landscaping, and other development features are provided.

6. If applicable, targets and requirements regarding affordable housing are addressed.

7. Provisions are sufficient to assure requirements of parks and open space preservation.

8. Best available science and best management practices shall be used to address critical areas within the property covered by a Development Regulation Agreement adopted pursuant to this section. Review of a development activity's critical area impacts that go beyond those exempted activities identified in Section 13.11.140 TMC shall occur during the Development Regulation Agreement review process, and a separate critical areas permit is not required. Any Development Regulation

7. Religious assembly facilities which can demonstrate that the design standards impose a substantial burden, administratively or financially, on their free exercise of religion, shall be exempt from compliance.

8. Floor area. For purposes of this section of the code (Section 13.06.501), "floor area" shall not include spaces below grade.

9. Parks, recreation and open space uses. Accessory or ancillary structures, such as restroom buildings, playground equipment and picnic shelters, are exempt from the design standards of this section.

B. General Mass Reduction Standards. The following requirements apply to the C1, C2, T, and PDB zoning districts. See Section 13.06.501.H, below, for X-District requirements. The design choices of this item are intended to help reduce the apparent mass of structures and achieve a more human scale environment by providing physical breaks in the building volume that reduce large, flat, geometrical planes on any given building elevation.	
1.Size to choice ratio for 2 below	a. Buildings under 7,000 square feet of floor area are not required to provide mass reduction. b. Buildings from 7,000 square feet of floor area to 30,000 square feet of floor area shall provide at least one mass reduction feature. c. Buildings over 30,000 square feet of floor area shall provide at least two mass reduction features.
2.Mass reduction choices	a. Upper story. Buildings with a maximum footprint of 7,000 square feet of floor area, that do not exceed 14,000 square feet of floor area, may count use of a second story as a mass reduction feature. b. Upper story setback. An 8 feet minimum setback for stories above the second story for elevations facing the street or parking lots over 20 stalls. This requirement applies to a maximum of 2 elevations. c. Wall modulation. Maximum 100 feet of wall without modulation, then a minimum 2 feet deep and 15 feet wide offset of the wall and foundation line on each elevation facing the street, parking lots over 20 stalls, or residential uses. d. Public plaza. A public plaza of at least 800 square feet or 5 percent of building floor area, whichever is greater. The plaza shall be located within 50 feet of and visible to the primary public entrance; and contain a minimum of a bench or other seating, tree, planter, fountain, kiosk, bike rack, or art work for each 200 square feet of plaza area. Plaza contents may count toward other requirements when meeting the required criteria. Walkways do not count as plazas. Plazas shall not be used for storage. Required parking stalls may be omitted to the minimum necessary if needed to provide the plaza. Where public seating is provided, it shall utilize designs that discourage long-term loitering or sleeping, such as dividers or individual seating furniture. Plazas may be permeable pavement or pavers where feasible. Low Impact Development vegetated stormwater features may be used for up to 30% of the plaza requirement where feasible. e. Housing. The provision of upper story residential dwelling units at a site density consistent with the applicable land use ~~intensity~~ designation of the Comprehensive Plan.

13.06.650 Application for rezone of property.

A. Application submittal. Application for rezone of property shall be submitted to Planning and Development Services. The application shall be processed in accordance with the provisions of Chapter 13.05. Final action on the application shall take place within 180 days of submission.

B. Criteria for rezone of property. An applicant seeking a change in zoning classification must demonstrate consistency with all of the following criteria:

1. That the change of zoning classification is generally consistent with the applicable land use ~~intensity~~ designation of the property, policies, and other pertinent provisions of the Comprehensive Plan.

2. That substantial changes in conditions have occurred affecting the use and development of the property that would indicate the requested change of zoning is appropriate. If it is established that a rezone is required to directly implement an express provision or recommendation set forth in the Comprehensive Plan, it is unnecessary to demonstrate changed conditions supporting the requested rezone.

3. That the change of the zoning classification is consistent with the district establishment statement for the zoning classification being requested, as set forth in this chapter.

4. That the change of the zoning classification will not result in a substantial change to an area-wide rezone action taken by the City Council in the two years preceding the filing of the rezone application. Any application for rezone that was pending, and for which the Hearing Examiner's hearing was held prior to the adoption date of an area-wide rezone, is vested as of the date the application was filed and is exempt from meeting this criteria.

5. That the change of zoning classification bears a substantial relationship to the public health, safety, morals, or general welfare.

C. Amendment of boundaries of districts.

1. Whenever this chapter has been, or is hereafter, amended to include in a different district, property formerly included within classified district boundaries of another district, such property shall be deemed to thereupon be deleted from such former district boundaries.

2. Unless specifically classified otherwise, zoning district boundaries shall be considered to extend to the centerline of rights-of-way. Right-of-way, which has had prior approval for vacation pursuant to Chapter 9.22 or which is hereafter approved for vacation, shall be deemed to be added to the district boundaries of the property which the vacated right-of-way abuts. In instances where a vacated right-of-way is bordered on one side by a district which is different from the district on the other side, the right-of-way shall be deemed to be added apportionately to the respective districts.

D. Limitation on rezones in downtown districts. After the area-wide reclassification establishing the downtown district boundaries has occurred, no property shall be reclassified to a downtown district, except through a subsequent area-wide reclassification.

E. Limitations on rezones in Mixed-Use Centers. After adoption of the area-wide reclassifications establishing and confirming the Mixed-Use Center zoning district boundaries in 2009, no property shall be reclassified to or from a Mixed-Use Center zoning district (X-district) except through a subsequent area-wide reclassification.

F. Limitations on rezones in certain overlay zoning districts. The boundaries of the following area-wide zoning overlay districts can only be amended through another area-wide reclassification: view-sensitive, groundwater protection, manufacturing/industrial center, and historic and conservation overlay districts.

G. Area-wide reclassifications adopted by the City Council supersede any previous reclassifications and any conditions of approval associated with such previous reclassifications.

H. Affordable housing – privately initiated upzones. Privately initiated residential upzones shall be conditioned to provide for inclusion of affordable housing. For development proposals meeting the thresholds and criteria of TMC 1.39, a certain number of the dwelling units shall be entered by the project proponent into the City's Affordable Housing Incentives Program. That number may be designated at the time of the upzone, or alternatively the upzone shall be conditioned to provide that designated percentage of affordable units at such time as a specific residential development proposal is submitted to the City.

I. Affordable housing – City-initiated upzones. In order to ensure consistency with the housing policies of the Comprehensive Plan which promote mixed-income neighborhoods citywide, the City shall analyze the supply of affordable housing in the vicinity of the proposed upzone, and assess whether the upzone would substantially exacerbate affordability challenges. If there are affordability issues associated with the proposed upzone, the City shall consider actions to address them, potentially including placing special conditions on the upzone, targeting City programs or funding to increase the affordable housing supply, or other methods.

(Ord. 28157 Ex. C; passed Jun. 25, 2013: Ord. 27813 Ex. A; passed Jun. 30, 2009: Ord. 27172 § 7; passed Dec. 16, 2003)

13.02.045 Adoption and amendment procedures.

A. Adoption and amendment. The Comprehensive Plan and its elements, as well as development regulations and regulatory procedures that implement the Comprehensive Plan shall be adopted and amended by ordinance of the City Council, following the procedures identified in this section. Adoption and amendment of the Comprehensive Plan and development regulations must be consistent with the procedural requirements of RCW 36.70A and in compliance with applicable case law.

B. Timing for proposed amendments. Amendments to the Comprehensive Plan shall be considered no more frequently than once each year except that amendments may be considered more frequently under the following circumstances:

1. An emergency exists;

2. The initial adoption of a sub-area plan;

3. The adoption or amendment of a shoreline master program under the procedures set forth in RCW 90.58;

4. The amendment of the ~~capital facilities element.~~ Public Facilities and Services element and Capital Facilities Program of the Comprehensive Plan that occurs concurrently with the adoption or amendment of the City's biennial budget; or

5. To resolve an appeal of the Comprehensive Plan decided by the Growth Management Hearings Board or a decision of the state or federal courts.

All proposed plan amendments shall be considered concurrently and, as appropriate, along with proposed amendments to development regulations, so that the cumulative effect of the various proposals can be ascertained. Proposed amendments may be considered annually, for which the annual amendment process shall begin in July of any given year and be completed, with appropriate actions taken by the City Council in accordance with Sections 13.02.045.G and H, by the end of June of the following year. Amendments proposed to comply with the update requirements of RCW 36.70.A.130 will occur according to the time frames established therein.

C. Applicants of proposed amendments. A proposed amendment to the Comprehensive Plan or development regulations may be submitted by any private individual, organization, corporation, partnership, or entity of any kind, including any member(s) of the City Council or the Planning Commission or other governmental Commission or Committee, the City Manager, any neighborhood or community council or other neighborhood or special purpose group, a department or office, agency, or official of the City of Tacoma, or of any other general or special purpose government.

D. Application for proposed amendments. Items initiated by the City Council, the Planning Commission, or the Department do not require an application. For all other items, the Department shall prescribe the form and content for applications for amendments to the Comprehensive Plan and development regulations. Application fees shall be as established by City Council action. The application deadline for any given annual amendment cycle shall be established by the Department no later than the last day of May. Those applications for amending the Comprehensive Plan received after the established deadline are less likely to be considered in the current annual amendment cycle and are more likely to be considered in a subsequent amendment cycle, unless determined otherwise by the Planning Commission. Applications for changing development regulations or area-wide zoning classifications which are consistent with the Comprehensive Plan and do not require an amendment to the Comprehensive Plan can be submitted at any time. The application shall include, but not be limited to, the following:

1. A description of the proposed amendment, including the existing and proposed amendatory language, if applicable;

2. The current and proposed Comprehensive Plan land use designation and zoning classification for the affected area;

3. A statement regarding the reason the amendment is needed;

4. A description, along with maps if applicable, of the affected area and the surrounding areas, including identification of affected parcels, ownership, current land uses, site characteristics, and natural features;

5. A description of how the proposed amendment enhances the applicable neighborhood;

6. A description of any community outreach and response to the proposed amendment;

7. A demonstration of consistency with the applicable policies of the Comprehensive Plan, and the criteria for amending the Comprehensive Plan or development regulations;

8. Additional information as requested by the Department, which may include, but is not limited to, completion of an environmental checklist, wetland delineation study, visual analysis, or other studies.

13.06.620 Severability.

Should any section, clause, or provision of this chapter be declared by the court to be invalid, the same shall not affect the validity of the chapter as a whole or any part thereof, other than the part so declared to be invalid.

(Ord. 26933 § 1; passed Mar. 5, 2002)

13.06.625 Violations – Penalties. ***Repealed by Ord. 27912.***

(Ord. 27912 Ex. A; passed Aug. 10, 2010: Ord. 26933 § 1; passed Mar. 5, 2002)

13.06.630 Nonconforming parcels/uses/structures.

A. Scope and purpose. Within the zones established by this title there exist parcels, uses, and structures which were lawful when established, but whose establishment would be prohibited under the requirements of this title. The intent of this section is to allow the beneficial development of such nonconforming parcel, to allow the continuation of such nonconforming uses, to allow the continued use of such nonconforming structures, and to allow maintenance and repair of nonconforming structures. It is also the intent of this section, under certain circumstances and controls, to allow the enlargement, intensification, or other modification of nonconforming uses and structures, consistent with the objectives of maintaining the economic viability of such uses and structures, and protecting the rights of other property owners to use and enjoy their properties. However, relief for nonconforming uses shall be narrowly construed, recognizing that nonconforming uses are disfavored by state law.

Parcels, uses, and/or structures shall be considered legally nonconforming if such parcel, uses, and/or structure were legally created prior to May 18, 1953, or if such legally created parcel, use, and/or structure became nonconforming by reason of subsequent changes in this chapter.

Pre-existing uses or structures located within a wetland, stream or their associated buffers that were lawfully permitted prior to adoption of the Tacoma Municipal Code (TMC) Chapter 13.11, Critical Areas Preservation Ordinance (CAPO), but were not in compliance with the CAPO, shall be subject to the applicable provisions of this section and shall comply with the requirements of TMC Chapter 13.11.

B. Nonconforming parcels. Except as otherwise required by law, a legal nonconforming parcel, which does not conform to the minimum lot area, minimum lot width, and/or minimum lot depth requirements of this title, nevertheless, may be developed subject to all other development standards, use restrictions, and other applicable requirements established by this title.

Parcel modifications, such as boundary line adjustments, property combinations, segregations, and short and long plats shall be allowed, without need for a variance, to modify existing parcels that are nonconforming to minimum lot size requirements, such as minimum area, width or frontage, and minimum dimensional requirements, such as setbacks, yard area, and lot coverage, as long as such actions would make the nonconforming parcel(s) more conforming to the existing requirements and would not create any new or make greater any existing nonconformities.

C. Nonconforming use.

1. Continuation of nonconforming use. Except as otherwise required by law, a legal nonconforming use, within a building or on unimproved land, may continue unchanged. In the event that a building, which contains a nonconforming use, is damaged by fire, earthquake, or other natural calamity, such use may be resumed at the time the building is restored; provided that the restoration is commenced in accordance with applicable codes and regulations and that any degree of nonconformity to the land use regulations is not increased. Further, such restoration shall be undertaken only under a valid building permit for which a complete application was submitted within 18 months following said damage, which permit must be actively pursued to completion.

The use of unimproved land which does not conform to the provisions of this chapter shall be discontinued one year from the adoption date of the change to this chapter that creates the nonconformity; provided, however, exception may be made for the nonconforming use of unimproved land abutting a lot occupied by a building containing a nonconforming use and which nonconforming use is continuous and entire in the building and over said abutting land, all being in one ownership, and such use shall have been legally established prior to the adoption date of the change to the chapter that creates the nonconformity.

2. Allowed changes to and expansions of nonconforming use. Changes to a nonconforming use shall be allowed only under the following circumstances:

a. A nonconforming use, or a portion of a nonconforming use, may be changed to a use that is allowed in the zoning district in which it is located.

b. A nonconforming use, or a portion of a nonconforming use, may be expanded or changed to another nonconforming use when nonconforming rights for the subject use have been verified by the City of Tacoma. The applicant must provide

evidence to show that the subject use was lawfully permitted prior to May 18, 1953, or if such legal use became nonconforming by reason of subsequent changes in this Chapter, prior to the date of the code change that made the use nonconforming. An application for a review of nonconforming rights shall include the following:

(1) The name, address and phone number of the applicant(s) or applicant's representative.

(2) The name address and phone number of the property owner, if other than the applicant.

(3) Location of the property. This shall, at a minimum, include the property address and/or parcel number(s).

(4) A general description of any proposed change of use and/or proposed expansion.

(5) A general description of the property as it now exists including its physical characteristics and improvements and structures.

(6) A site development plan consisting of maps and elevation drawings, drawn to an appropriate scale to clearly depict all required information.

(7) Documenting evidence to prove that the nonconforming use was allowed when established and maintained over time, which may include: photographs, permit documentation, zoning codes or maps, tax/license/utility records, insurance maps, directories, inventories or data prepared by a government agency.

c. If a determination of nonconforming rights concludes that a use is lawfully in existence, then it may be expanded or changed to another nonconforming use, subject to the limitations and standards provided herein.

(1) Changes in use shall be limited to those uses allowed in the lowest intensity zoning district where the existing nonconforming use is currently permitted outright.

(2) The proposed change or expansion will not increase the cumulative generation of vehicle trips by more than 10 percent, as estimated by the City Traffic Engineer; nor will the change or expansion result in an increase in the number of parking spaces that would be required by this chapter by more than 10 percent. In no event shall multiple changes or expansions be approved that would, in the aggregate, exceed the 10 percent requirement as calculated for the initial request for a change or expansion in use;

(3) The proposed change or expansion will not result in an increase in noise such that it exceeds maximum noise levels identified in ~~-~~TMC 8.122~~WAC 173-60~~;

(4) The proposed change or expansion will not result in substantial additional light or glare perceptible at the boundary lines of the subject property;

(5) The proposed change or expansion will not result in an increase in the outdoor storage of goods or materials; and

(6) The proposed change or expansion will not result in an increase in the hours of operation.

d. Any change from one nonconforming use to another nonconforming use, as allowed herein, shall not be considered converting such nonconforming use to a permitted use.

e. Changes in use that would exceed the standards herein may be approved through the issuance of a conditional use permit subject to the criteria in 13.06.640.P.

3. Abandonment or vacation of nonconforming use. When a nonconforming use is vacated or abandoned for 12 consecutive months or for 18 months during any three-year period, the nonconforming use rights shall be deemed extinguished and the use shall, thereafter, be required to be in accordance with the regulations of the zoning district in which it is located.

D. Continued occupancy of nonconforming structure. Except as otherwise required by law and consistent with all other requirements of this chapter, a legal nonconforming structure may continue unchanged.

E. Nonconforming structure and nonconforming commercial, industrial, and institutional uses. A legal nonconforming structure, that is also nonconforming as to use, may only be expanded and/or modified in the following cases:

1. Ordinary repairs and maintenance, including painting, repair, or replacement of wall surfacing materials and the repair or replacement of fixtures, wiring, and plumbing are permitted; provided, such repair or maintenance will not result in noise exceeding levels identified in ~~WAC 173-60~~TMC 8.122, light, or glare at the boundary lines of the subject property.

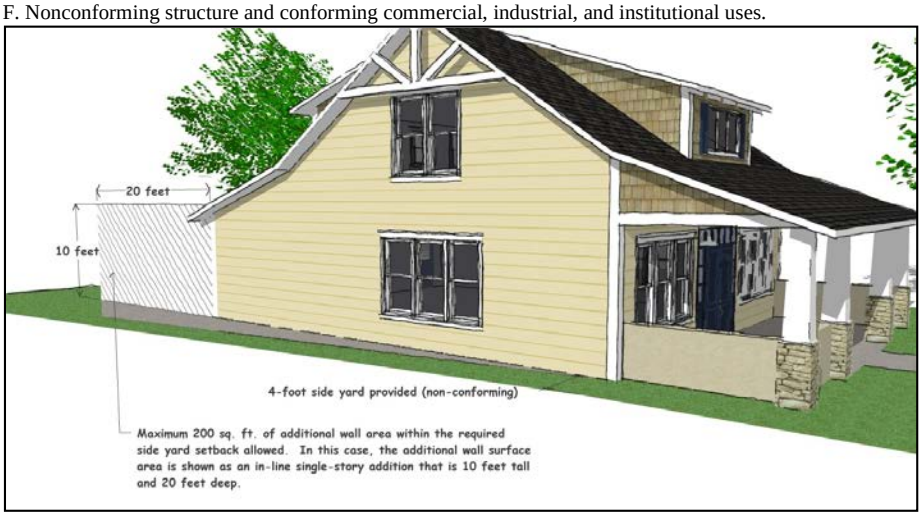
2. The enlargement or modification is required for safety upon order of the City, or otherwise required by law to make the structure conform to any applicable provisions of law.

3. Such enlargement and/or modification does not result in an intensification of the use as addressed by Section 13.06.630.C.2.~~b.~~

4. Such enlargement and/or modification complies with the requirements of TMC Chapter 13.11.

5. Changes in use or expansion that would exceed the limitations of 13.06.630.C.2. may be approved through the issuance of a conditional use permit subject to the criteria in 13.06.640.P.

F. Nonconforming structure and conforming commercial, industrial, and institutional uses.



A legal conforming use located in a structure that is nonconforming as to setback, location, maximum height, lot coverage, or other development regulations may be replaced, enlarged, moved, or modified in volume, area, or space; provided, such replacement, enlargement, movement, or modification does not increase the degree of nonconformity. Any structure's replacement, enlargement, movement, or modification of volume, area, or space must comply with all other current applicable regulations as provided by this chapter, and with the requirements of TMC Chapter 13.11.

G. Nonconforming structure and nonconforming residential use. Nothing in this chapter shall prohibit the enlargement of a residential structure, which is nonconforming as to use and development regulations, if such expansion does not increase the number of dwelling units or reduce existing lot area or off-street parking. Such expansion, including the construction of accessory buildings, shall be limited to compliance with the setback, height, and location requirements of the zoning district in which the subject site is located, and with the requirements of TMC Chapter 13.11.

H. Nonconforming residential structures and conforming residential uses.

1. A legal nonconforming structure which is nonconforming as to setback, location, maximum height, lot area, lot coverage, or other development regulation may be replaced, enlarged, moved, or modified in volume, area, or space; provided, such replacement, enlargement, movement, or modification complies with the setback, height, and location requirements of the zoning district in which the subject site is located, and with the requirements of TMC Chapter 13.11.

2. Certain additions to existing, nonconforming single-, two-, three-, or multi-family or townhouse dwellings may extend into a required front, side, or rear yard setback when the existing dwelling is already legally nonconforming with respect to that setback. The nonconforming portion shall be at least 60 percent of the total width of the respective wall of the structure prior to the addition and any other additions added since May 18, 1953. Additions may extend up to the height limit of the zoning district and extend into the required front, side and/or rear yard setback as follows:

a. Front and rear yard setbacks: The addition may extend five feet into the required front or rear yard setback or to the extent of the setback line formed by the nonconforming portion, whichever is less.

b. Side yard setbacks: The addition may extend into the required side yard setback up to the setback line formed by the nonconforming wall, except in no case shall the addition be closer than 3 feet from the side property line. Furthermore, the size of the addition shall be limited to an additional wall surface area within the required side setback area of no more than 200 square feet. (See example on following page.) For purposes of this provision, "wall surface area" is defined as the length (measured parallel to the side property line) multiplied by the height of the vertical wall surface of any building addition within the required side yard setback area. Any windows, doors or architectural features present are counted toward the total permissible wall surface area. Additions below the current ground level finished floor will not be counted toward the maximum permissible wall surface area.

b. Availability of public services which may be necessary or desirable for the support of the use. These may include, but shall not be limited to, availability of utilities, transportation systems (including vehicular, pedestrian, and public transportation systems), education, police and fire facilities, and social and health services.

c. The adequacy of landscaping, screening, yard setbacks, open spaces, or other development characteristics necessary to mitigate the impact of the use upon neighboring properties.

4. Freight movement will not be negatively impacted by the proposed use and related traffic generation.

5. The proposed use is not located adjacent to or within 500 feet of a primary rail or truck access for an industrial or manufacturing use.

6. The proposed use is not likely to negatively impact adjacent industrial and manufacturing uses or displace an existing industrial or manufacturing user.

An application for a conditional use permit shall be processed in accordance with the provisions of Chapter 13.05.

K. Duplex, Triplex and Townhouse Development in NRX Districts. In addition to the standard decision criteria for conditional use permits, as outlined above under subsection C, a conditional use permit for a duplex, triplex or townhouse in the NRX District shall only be approved upon a finding that such development is consistent with all of the following additional criteria:

1. The intent and regulations of the NRX district.

2. The proposed use and development shall be compatible with the quality and character of surrounding residential development, shall be designed in a manner consistent with existing neighboring structures, and shall not be materially detrimental to the overall residential environment and character of the general area. In the case of conversion of an existing single-family dwelling to a two- or three-family dwelling, the existing architectural features shall be maintained to the maximum extent practicable.

An application for a conditional use permit shall be processed in accordance with the provisions of Chapter 13.05.

L. Pre-existing uses which were not required to obtain a Conditional Use Permit at the time they were developed, but which have subsequently become Conditional Uses, shall be viewed for zoning purposes in the same manner as if they had an approved Conditional Use Permit authorizing the extent of development as of August 1, 2011. If proposed modifications or expansions to such uses exceed the Major Modification thresholds of Section 13.05.080, or for park and recreation facilities the expansion/modification thresholds of Section 13.06.560.C.2, a Conditional Use Permit will be required for the new development activities proposed.

M. Large Scale Retail

1. Purpose. The purpose of the conditional use permit review process for large scale retail uses is to determine if the proposal is appropriate in the location and manner proposed and, recognizing the size and scale of such developments and their significant impact on the ability for the community to achieve its long-term vision and goals, to ensure that such developments represent an exceptional effort to support the intent and policies of the Comprehensive Plan and respond to the vision, issues, and concerns of the specific neighborhood. It is critical to ensure that such proposals incorporate design strategies, beyond the typical design and development standards, that will ensure such projects represent a positive contribution to the community and mitigate their size, scale, traffic volumes, and other potential impacts that are typically associated with large scale retail developments.

2. Applicability. This section shall apply to the development of large scale retail uses that exceed the applicable size thresholds for the zoning district in which the proposal is located (as noted in the use tables found in Sections 13.06.200, 13.06.300, and 13.06.400). This section shall not apply to existing large scale retail uses or the reuse of existing buildings, unless such projects involve additions to the existing building(s) that exceed the minor modification thresholds in Section 13.05.080 or expansions within buildings permitted after February 16, 2012, that exceed 50 percent of the previously permitted use area.

3. Criteria. Where allowed, a conditional use permit for a large scale retail use shall only be approved upon a finding that such development is consistent with all of the standard decision criteria for conditional use permits, as outlined above under Subsection D~~C~~, and all of the following additional decision criteria at subsections a. through f. below. For projects that involve expansions to an existing large retail use but do not involve significant building expansion (as outlined above under Subsection ~~J~~M.2) these additional decision criteria shall be applied as deemed appropriate by the Hearing Examiner, recognizing the limitations of incorporating significant site design modifications as part of such a remodel/expansion project.

a. The proposed development is designed in a manner that allows for future reuse of the building(s) by multiple tenants. This may be accomplished by incorporating a variety of different design elements, including provision of several tenant spaces of

varying sizes within the building(s) or the ability to practicably modify the building(s) in the future with building separations and modifications to access, mechanical systems, and other components that would accommodate multi-tenant reuse.

b. The design of off-street parking areas represent a substantial effort to ensure enhanced pedestrian safety and comfort. Appropriate parking lot design strategies include segmenting surface parking areas into smaller groupings with interspersed buildings, pedestrian features, frequent pedestrian pathways, landscaping, and other focal points, limiting the quantity of off-street parking provided, and/or provision of structured parking for a portion of the on-site parking provided.

c. The type and volume of traffic and existing and proposed traffic pattern allows for accessibility for persons and various modes of transportation. Adequate landscaping, screening, open spaces, and/or other development components are provided as necessary to mitigate the traffic impact upon neighboring properties. In addition, pedestrian-oriented design is further emphasized within Mixed-Use Centers to maintain connectivity between uses and all modes of transportation, including bicycle, pedestrian, and mass transit options.

d. Business activity, including delivery and hours of operation, is limited to avoid unnecessary noise and light impacts to surrounding residential uses. Outdoor storage or garden areas are appropriately screened from view or contained within a structure.

e. In Mixed-Use Centers, the design of the overall development represents an exceptional effort to positively contribute to the desired and planned character of the district, as outlined in the Comprehensive Plan. This may be accomplished through incorporation of enhanced development features, such as providing a variety of uses, structured parking, multiple floors to allow for smaller building footprints, incorporation of residential units within the building or overall development site, smaller-scale storefront design along the street level, Low-Impact Development BMPs and Principles, and a diverse array of public spaces, including indoor and outdoor spaces, active and passive spaces, and plazas and garden spaces.

f. For projects on sites along a designated pedestrian street or core pedestrian street (see Sections 13.06.200.E and 13.06.300.C) the site and building design provides a significant emphasis on pedestrian-orientation over vehicular-orientation. This may be accomplished through encouraging direct, continuous, and regular pedestrian access, incorporating an internal pedestrian circulation system that provides connections between buildings, through parking areas, to the street and transit linkages, and to surrounding properties and neighborhoods, incorporating continuous and active uses and spaces along pedestrian street frontages and internal pedestrian pathways, and limiting conflicts between pedestrians and vehicles, particularly along the designated street.

4. An application for a conditional use permit for large scale retail use shall be processed in accordance with the provisions of Chapter 13.05, except with the following additional requirement:

Pre-application community meeting. Prior to submitting an application to the City for a conditional use permit for a large scale retail use, it is recommended that the applicant hold a public informational meeting with adjacent community members. The purpose of the meeting is to provide an early, open dialogue between the applicant and the neighborhood surrounding the proposed development. The meeting should acquaint the neighbors of the proposed development with the applicant and/or developers and provide for an exchange of information about the proposal and the community, including the characteristics of the proposed development and of the surrounding area and any particular issues or concerns of which the applicant should be made aware. It is recommended that the applicant provide written notification of the meeting, at least 30 calendar days prior to the meeting date, to the appropriate neighborhood council pursuant to TMC 1.45 and neighborhood business district pursuant to TMC 1.47, qualified neighborhood and community organizations, and to the owners of property located within 1,000 feet of the project site.

5. Upon issuance, the Hearing Examiner’s decision may be appealed subject to procedures contained in Chapter 1.23.

N. Discontinued conditional uses. Any authorized conditional use that has been discontinued for a period of three or more years may not be reestablished or recommenced except pursuant to a new conditional use permit. The Director may, in specific cases, authorize an extension of up to one year. In reviewing requests for this extension, the Director shall consider the following:

1. Impacts to the community that may result from the reestablishment of the use; and

2. Whether a reasonable effort has been made by the owner/applicant to maintain the property and use.

O. Master plan process for conditional uses. Master plans provide conditional uses the flexibility to receive overall approval of long-term development plans which may occur in phases and extend beyond the standard timeframe for conditional use permits. This process is especially appropriate for large, campus-like facilities with multiple uses and/or buildings that may undergo continuous expansion/improvement. The master plan serves as an overall review in which general development intentions are outlined, implementation phasing is determined and conditions, improvements, and mitigations are outlined consistent with the project phases. The decision shall identify the duration of the master plan approval, any required periodic

reviews, and any additional future notification and review requirements, which may be appropriate for future phases that may not have complete detail in the initial master plan approval.

P. Change of Use or Expansion of Nonconforming Uses and Structures. A conditional use permit for a change of use or expansion of a nonconforming use or structure that exceeds the standards of 13.06.630.C or E shall only be approved upon a finding that such development is consistent with all of the standard decision criteria for conditional use permits, as outlined above under Subsection D, and all of the following additional decision criteria at subsections 1. through 3. below:

1. A rezone of the site would be inappropriate;

2. The change or expansion of the nonconforming use will have a positive impact on the surrounding uses and the area overall;

3. To the extent practicable, the nonconforming use or structure comes into compliance with the following development standards that apply to the site per the least intensive zoning district in which the use is allowed:

a. Landscaping and buffering;

b. Pedestrian and bicycle support standards;

e. Off-street parking and storage areas.

(Ord. 28336 Exs. B,C; passed Dec. 1, 2015: Ord. 28109 Ex. O; passed Dec. 4, 2012: Ord. 28077 Ex. C; passed Jun. 12, 2012: Ord. 28050 Ex. C; passed Feb. 14, 2012: Ord. 27995 Ex. D; passed Jun. 14, 2011: Ord. 27818 Ex. A; passed Jul. 28, 2009: Ord. 27771 Ex. C; passed Dec. 9, 2008: Ord. 27539 § 19; passed Oct. 31, 2006: Ord. 27432 § 17; passed Nov. 15, 2005: Ord. 27296 § 28; passed Nov. 16, 2004: Ord. 27245 § 21; passed Jun. 22, 2004: Ord. 27079 § 49; passed Apr. 29, 2003: Ord. 26966 § 22; passed Jul. 16, 2002: Ord. 26933 § 1; passed Mar. 5, 2002)

13.06.645 Variances.

A. Administration.

1. All variances shall be processed in accordance with provisions of Chapter 13.05. Certain regulatory relief may be sought consistent with sections below that provide for potential variances in specified development situations.

2. A minor variance is one in which the code relief requested is within 10 percent of the quantified standard contained in the code and shall be processed in accordance with 13.05.020.B. Minor variances may be granted for quantitative development regulations other than height, accessory building height, design, sign regulations, and off street quantity standards. Examples of quantitative standards are building setback, parking quantity, lot size, and minimum density requirements.

3. A variance is one in which the code relief requested is beyond the threshold outlined above for minor variances and shall be processed in accordance with 13.05.020.C.

4. Both types of variances shall be subject to the same decision criteria found in this section. Minor variances shall not be granted for height in the View Sensitive Overlay District and for qualitative standards to which a 10 percent threshold would not apply.

5. In the exercise of his or her powers to grant variances to, or interpret, the regulations contained in this chapter, the Director and Hearing Examiner may not, by any act or interpretation, change the allowed use of a structure or land, change the boundaries of a zoning district, or change the zoning requirements regulating the use of land.

B. Specified variances.

1. Variance to development regulations (bulk, area).

a. Applicability. These shall include variances to building setbacks, building location, building height, lot coverage, lot area, lot width, lot frontage, yard space, and minimum-density requirements. These shall not include variance to sign development standards, to design standards, parking lot development standards, or off-street parking quantity standards.

b. Criteria. The Director may, in specific cases, authorize a variance to the development regulations, subject to the criteria set forth below. In granting a variance, the Director or Hearing Examiner may attach thereto such conditions regarding the location, character and other features of the proposed structure as may be deemed necessary to ensure consistency with the intent of the Code and Comprehensive Plan and to ensure that the use of the site will be as compatible as practicable with the existing development on the site and surrounding uses. In instances in which a variance to building height is approved, no occupiable space above the district height limit shall be added.

c. Construction of trails, roadways, and parking;

d. New utility lines and facilities; and

e. Stormwater conveyance facilities.

C. Modification of a shoreline or critical area buffer is subject to the site review requirements in TSMP Section 2.4.2 General Mitigation Requirements

1. If modification to a critical area or ~~marine shoreline, wetland, stream, FWHCA, or~~ buffer is unavoidable, all adverse impacts resulting from a development proposal or alteration shall be mitigated so as to result in no net loss of shoreline and/or critical area functions or processes.

2. Mitigation shall occur in the following prioritized order:

a. Avoiding the adverse impact altogether by not taking a certain action or parts of an action, or moving the action;

b. Minimizing adverse impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology and engineering, or by taking affirmative steps to avoid or reduce adverse impacts;

c. Rectifying the adverse impact by repairing, rehabilitating or restoring the affected environment;

d. Reducing or eliminating the adverse impact over time by preservation and maintenance operations during the life of action;

e. Compensating for the adverse impact by replacing, enhancing, or providing similar substitute resources or environments and monitoring the adverse impact and the mitigation project and taking appropriate corrective measures;

f. Monitoring the impact and compensation projects and taking appropriate corrective measures.

3. Type and Location of Mitigation

a. Preference shall be given to mitigation projects that are located within the City of Tacoma. Prior to mitigating for impacts outside City of Tacoma jurisdiction, applicants must demonstrate that the preferences herein cannot be met within City boundaries.

b. Natural, Shoreline Residential and Urban Conservancy Environments:

i. Compensatory mitigation for ecological functions shall be either in-kind and on-site, or in-kind and within the same reach, subbasin, or drift cell, except when all of the following apply:

- There are no reasonable on-site or in subbasin opportunities (e.g. on-site options would require elimination of high functioning upland habitat), or on-site and in subbasin opportunities do not have a high likelihood of success based on a determination of the natural capacity of the site to compensate for impacts. Considerations should include: anticipated marine shoreline/wetland/stream mitigation ratios, buffer conditions and proposed widths, available water to maintain anticipated hydrogeomorphic classes of wetlands, or streams when restored, proposed flood storage capacity, potential to mitigate riparian fish and wildlife impacts (such as connectivity); and
- Off-site mitigation has a greater likelihood of providing equal or improved critical area functions than the impacted critical area.

c. High-Intensity and Downtown Waterfront Environments:

i. The preference for compensatory mitigation is for innovative approaches that would enable the concentration of mitigation into larger habitat sites in areas that will provide greater critical area or shoreline function.

ii. The Director may approve innovative mitigation projects including but not limited to activities such as advance mitigation, mitigation banking and preferred environmental alternatives. Innovative mitigation proposals must offer an equivalent or better level of protection of critical area functions and values than would be provided by a strict application of on-site and in-kind mitigation. The Director shall consider the following for approval of an innovative mitigation proposal:

- Creation or enhancement of a larger system of natural areas and open space is preferable to the preservation of many individual habitat areas;
- Consistency with Goals and Objectives of the Shoreline Restoration Plan and the Goals and Objectives of this Program;
- The applicant demonstrates that long-term management and protection of the habitat area will be provided;
- There is clear potential for success of the proposed mitigation at the proposed mitigation site;

l. Where applicable, a depiction of the impacts to views from existing residential uses and public areas.

m. On all variance applications the plans shall clearly indicate where development could occur without approval of a variance, the physical features and circumstances on the property that provide a basis for the request, and the location of adjacent structures and uses.

10. The Director may accept a JARPA in lieu of these submittal requirements where applicable.

11. The Director may waive permit submittal requirements on a case by case basis and may request additional information as necessary.

2.4.2 Critical Areas

A. Shoreline Critical Areas Review

1. City staff will provide an initial site review based on existing information, maps and a potential site visit to identify ~~marine buffers, wetlands, streams, FWHCA,~~ all critical areas and their associated buffers within 300 feet of a proposed project. The review distance for FWHCA management areas will be based on the type of priority habitat or species and WDFW recommendations. Site reviews are completed on a site by site basis and the City may provide preliminary information or require an applicant provide information regarding the ordinary high water mark location, wetland delineation, wetland categorization, stream type, hydrology report, or priority fish and wildlife species and habitat presence information. Formal Priority Habitats and Species (PHS) information is available from WDFW.

2. The Planning and Development Services Department may utilize information from the United States Department of Agriculture Natural Resource Conservation Service, the United States Geological Survey, the Washington Department of Ecology, the Coastal Zone Atlas, the Washington Department of Fish and Wildlife stream maps and Priority Habitat and Species maps, Washington DNR Aquatic Lands maps, the National Wetlands Inventory maps, Tacoma topography maps, the City's Generalized Wetland and Critical Areas Inventory maps, and Pierce County Assessor's maps to establish general locations and/or verify the location of any wetland, or stream, or FWHCA site. The City's Generalized Wetland and Critical Area Inventory maps and other above-listed sources are only guidelines available for reference. The actual location of critical areas must be determined on a site by site basis according to the classification criteria.

3. The Director shall determine whether application for a shoreline permit or exemption will be required to include the marine shoreline and critical areas information specified in 2.4.2(B), below.

4. The Director may require additional information on the physical, biological, and anthropogenic features that contribute to the existing ecological conditions and functions to make this determination.

B. Application Requirements

1. Application for any shoreline development permit for a project or use which includes activities within a marine shoreline buffer, wetland, stream, fish and wildlife habitat conservation area (FWHCA) or their associated buffer shall comply with the provisions of this section and shall contain the following information:

a. A Joint Aquatic Resources Permit Application and vicinity map for the project.

b. A surveyed site plan that includes the following:

i. Parcel line(s), north arrow, scale and two foot contours.

ii. Location and square footage for existing and proposed site improvements including, utilities, stormwater and drainage facilities, construction and clearing limits, and off-site improvements. Include the amounts and specifications for all draining, excavation, filling, grading or dredging.

iii. The location and specifications of barrier fencing, silt fencing and other erosion control measures.

iv. Base flood elevation, floodplain type and boundary and floodways, if site is within a floodplain.

v. Critical Areas including all surveyed, delineated wetland boundaries, and the ordinary high water mark of any stream and their buffers, and all Fish and Wildlife Conservation Areas (FWHCA), marine buffers, ~~and any~~ FWHCA Management Areas, floodplain boundaries, and top and toe of slopes related to geologically hazardous areas.

vi. The square footage of the existing critical areas and buffers located on-site and the location and square footage of any impacted areas.

vii. Locations of all data collection points used for the field delineation and general location of off-site critical areas and any buffer that extends onto the project site. Location and dominant species for significantly vegetated areas.

viii. The location and square footage of impact areas, mitigation areas and remaining critical areas and buffers; including areas proposed for buffer modification.

c. A Critical Area report prepared by a qualified professional. The report must include the following where appropriate:

i. Delineation, characterization and square footage for critical areas on or within 300 feet of the project area and proposed buffer(s). Delineation and characterization is based on the entire critical area. When a critical area is located or extends off-site and cannot be accessed, estimate off-site conditions using the best available information and appropriate methodologies.

- Wetland Delineations will be conducted in accordance with the ~~current manual designated by the Department of Ecology, including federally~~ approved federal manual~~s~~ and applicable regional supplements.
- The wetland characterization shall include physical, chemical, and biological processes performed as well as aesthetic, and economic values and must use a method recognized by local or state agencies. Include hydrogeomorphic and Cowardin wetland type.
- Ordinary high water mark determination shall be in accordance with methodology from the Department of Ecology.
- Priority species and habitat identification shall be prepared according to professional standards and guidance from the Washington Department of Fish and Wildlife. Depending on the type of priority species, the review area may extend beyond 300 feet.

ii. Field data sheets for all fieldwork performed on the site. The field assessment shall identify habitat elements, rare plant species, hydrologic information including inlet/outlets, water depths, and hydro-period patterns based on visual cues, and/or staff/crest gage data.

iii. Provide a detailed description of the project proposal including off-site improvements. Include alterations of ground or surface water flow, clearing and grading, construction techniques, materials and equipment, and best management practices to reduce temporary impacts.

iv. Assess potential direct and indirect physical, biological, and chemical impacts as a result of the proposal. Provide the square footage for the area of impact with the analysis. The evaluation must consider cumulative impacts.

v. Identification of priority species/habitats and any potential impacts. Incorporate Washington State Department of Fish and Wildlife and/or US Department of Fish and Wildlife management recommendations where applicable. When required, plan shall include at a minimum the following:

- Special management recommendations which have been incorporated and any other mitigation measures to minimize or avoid impacts, including design considerations such as reducing impacts from noise and light.
- Ongoing management practices which will protect the priority species and/or habitat after development, including monitoring and maintenance programs.

vi. A hydrologic report or narrative demonstrating that pre and post development flows to wetlands and streams will be maintained.

vii. Runoff from pollution generating surfaces proposed to be discharged to a critical area shall receive water quality treatment in accordance with the current City's Surface Water Management Manual, where applicable. Water quality treatment and monitoring may be required irrespective of the thresholds established in the manual. Water quality treatment shall be required for pollution generating surfaces using all known, available and reasonable methods of prevention, control and treatment.

viii. Studies of potential flood, erosion, geological or any other hazards on the site and measures to eliminate or reduce the hazard.

ix. Documentation of the presence of contaminated sediments or soils if publically available and a description of planned management actions.

d. For shoreline permits that will have impacts to ~~Wetland/Stream/FWHCA or marine buffers~~critical areas or buffers defined in Section 6.4.2, the additional following information is required;

i. A description of reasonable efforts made to apply mitigation sequencing pursuant to TSMP Section 6.4.2(C);

ii. An analysis of site development alternatives including a no development alternative that demonstrates why the use or development requires a buffer reduction and the minimum reduction necessary to support the use or development;

iii. An assessment and documentation of the shoreline and/or critical areas functional characteristics, along with its ecological, aesthetic, economic, and other values. Functional analysis must be done using a functional assessment method recognized by local or state agency staff and shall include a reference for the method and all data sheets.

5. Bald eagle habitat shall be protected pursuant to the Washington State Bald Eagle Protection Rules (WAC 232-12-292). The City shall verify the location of eagle management areas for each proposed activity. Approval of the activity shall not occur prior to approval of the habitat management plan by the Washington Department of Fish and Wildlife.

6. All activities, uses and alterations proposed to be located in water bodies used by anadromous fish or in areas that affect such water bodies shall give special consideration to the preservation and enhancement of anadromous fish habitat.

7. No structures of any kind shall be placed in or constructed over critical saltwater habitats unless they result in no net loss of ecological function, are associated with a water-dependent or public access use, comply with the applicable requirements within this Program and meet all of the following conditions:

a. The project, including any required mitigation, will result in no net loss of ecological functions associated with critical saltwater habitat;

b. Avoidance of impacts to critical saltwater habitats by an alternative alignment or location is not feasible or would result in unreasonable and disproportionate cost to accomplish the same general purpose;

c. The project is consistent with the state's interest in resource protection and species recovery;

d. The public's need for such an action or structure is clearly demonstrated and the proposal is consistent with protection of the public trust, as embodied in RCW 90.58.020;

e. Shorelands that are adjacent to critical saltwater habitats shall be regulated per the requirements within this Program;

f. A qualified professional shall demonstrate compliance with the above criteria in addition to the required elements of a critical area report as specified in this Chapter.

C. FWHCA Mitigation Requirements

1. All FWHCA mitigation shall comply with applicable mitigation requirements specified in TSMP Section 6.4.2 including, but not limited to, mitigation plan requirements, monitoring and bonding.

2. Where a designated FWHCA geographically coincides with a marine shoreline, stream or wetland, mitigation will comply with applicable mitigation requirements for those resources as described within this Program.

3. Mitigation sites shall be located to preserve or achieve contiguous wildlife habitat corridors, in accordance with a mitigation plan that is part of an approved critical area report, to minimize the isolating effects of development on habitat areas, so long as mitigation of aquatic habitat is located within the same aquatic ecosystem as the area disturbed.

4. Mitigation shall achieve equivalent or greater biological and hydrological functions and shall include mitigation for adverse impacts upstream or downstream of the development proposal site. Mitigation shall address each function affected by the alteration to achieve functional equivalency or improvement on a per function basis.

6.4.5 Wetlands

Wetlands are those areas that are inundated or saturated by ground or surface water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. A wetland directly impacts water quality and stormwater control by trapping and filtering surface and ground water. Wetlands also provide valuable habitat for fish and wildlife. Because of the difficulty in replacing these rare and valuable areas, these regulations control development adjacent to and within wetlands, and limit the amount of wetlands, which may be altered. The purpose of these regulations is to protect the public from harm by preserving the functions of wetlands as recharge for ground water, flood storage, floodwater conveyance, habitat for fish and wildlife, sediment control, pollution control, surface water supply, aquifer recharge and recreation.

A. Wetland Classification

1. Wetlands shall be classified Category I, II, III, and IV, in accordance with the criteria from the 2014 Washington State Wetlands Rating System for Western Washington, Washington Department of Ecology publication No. 14-06-029, published October 2014. ~~August 2004, Revised Annotated Version, August 2006, Publication Number 04-06-025, August 2004.~~

2. Category I wetlands are those that 1) represent a unique or rare wetland type; or 2) are more sensitive to disturbance than most wetlands; or 3) are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or 4) provide a high level of functions. Category I wetlands include the following types of wetlands: Estuarine wetlands, Natural Heritage wetlands, Bogs, Mature and Old-growth Forested wetlands; wetlands that perform many functions very well and that score 23-27 ~~70 or more~~ points in the 2014 Washington Wetlands Rating System for Western Washington.

3. Category II wetlands are those that are difficult to replace, and provide high levels of some functions. These wetlands occur more commonly than Category I wetlands, but still need a relatively high level of protection. Category II wetlands include the following types of wetlands: Estuarine wetlands, and wetlands that perform functions well and score between ~~51-69~~20-22 points.

4. Category III wetlands are those that perform functions moderately well and score between ~~30-50~~16-19 points~~, and~~. These wetlands have generally been disturbed in some way and are often less diverse or more isolated from other natural resources in the landscape than Category II.

5. Category IV wetlands are those that have the lowest levels of functions, between 9 and 15 points, ~~(less than 30 points)~~ and are often heavily disturbed. These are wetlands that may be replaced, and in some cases may be improved.

6. In addition, wetlands that require special protection and are not included in the general rating system shall be rated according to the guidelines for the specific characteristic being evaluated. The special characteristics that should be taken into consideration are as follows:

a. The wetland has been documented as a habitat for any Federally -listed Threatened or Endangered plant or animal species. In this case, “documented” means the wetland is on the appropriate state or federal database.

b. The wetland has been documented as a habitat for State- listed Threatened or Endangered plant or animal species. In this case “documented” means the wetland is on the appropriate state database.

c. The wetland contains individuals of Priority Species listed by the WDFW for the State.

d. The wetland has been identified as a Wetland of Local Significance.

B. Wetland Buffers

1. A buffer area shall be provided for all uses and activities adjacent to a wetland area to protect the integrity, function, and value of the wetland. The buffer shall be measured horizontally from the delineated edge of the wetland.

2. Wetland buffer widths shall be established according to the following tables (Tables 6-2 through 6-3):

Table 6-2. Wetland Buffer Widths

Wetland Category	Buffer Width (feet)
Category I	200
Category II	100
Category III	75
Category IV	50
*Best Available Science Review, City of Tacoma, Critical Areas Preservation Ordinance, Tacoma, Washington, June 15, 2004, prepared by GeoEngineers	

Table 6-3. Lakes of Local Significance*

Site	Buffers (feet)
Wapato Lake and associated wetlands	200, but not to exceed the centerline of Alaska Street.
*Best Available Science Review Recommendation from City of Tacoma Critical Areas Task Force June 2004	

C. Wetland Buffer Reductions

1. A wetland buffer may be reduced only for a water-oriented use, per 6.4.2(B) and in accordance with the provisions of this Section, when mitigation sequencing has been applied to the greatest extent practicable. The buffer shall not be reduced to any less than ¾ of the standard buffer width. The remaining buffer on-site shall be enhanced or restored to provide improved wetland function. Any other proposed wetland buffer reduction shall require a shoreline variance.

2. Low impact uses and activities consistent with the wetland buffer function may be permitted within a buffer that has not been reduced depending upon the sensitivity of wetland and intensity of activity or use. These may include pedestrian trails,

Exhibit A: Definition of Mobile Home/Trailer Court

From TMC 13.06.700 Definitions and illustrations.

Mansard roof. A roof with two slopes or pitches on each of the four sides, the lower slopes steeper than the upper.

Marijuana. As defined in RCW 69.50.101 and provided herein for reference. All parts of the plant Cannabis, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable or germination.

Marijuana processor. As defined in RCW 69.50.101 and provided here for reference. A person licensed by the state liquor control board to process marijuana into useable marijuana and marijuana-infused products, package and label useable marijuana and marijuana-infused products for sale in retail outlets, and sell useable marijuana and marijuana-infused products at wholesale to marijuana retailers.

Marijuana producer. As defined in RCW 69.50.101 and provided here for reference. A person licensed by the state liquor control board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers

Marijuana-infused products. As defined in RCW 69.50.101 and provided here for reference. Products that contain marijuana or marijuana extracts and are intended for human use. The term “marijuana-infused products” does not include useable marijuana.

Marijuana retailer. As defined in RCW 69.50.101 and provided here for reference. A person licensed by the state liquor control board to sell useable marijuana and marijuana-infused products in a retail outlet.

Massing study. A massing study is an architectural method to visualize the way that the shape and size of buildings will impact the neighborhood and site character. Massing refers to the general shape and size of buildings. A massing study shall detail the building bulk, height and articulation on the site as well as the site setbacks, yards and open spaces.

Mature or maturity, tree. A tree that has achieved at least 75 percent of its anticipated crown growth or a tree that is over 15 years of age.

Microbrewery/winery. An establishment primarily engaged in the production and distribution of beer, ale, or other malt beverages, or wine, and which may include accessory uses such as tours of the microbrewery/winery, retail sales, and/or on-site consumption, e.g., “taproom.” This classification allows a microbrewery to sell beer/wine at retail and/or act as wholesaler for beer/wine of its own production for off-site consumption with appropriate state licenses.

Mixed-rate housing. Includes both affordable and market-rate housing units in the same housing or mixed-use development.

~~Mobile home/trailer court. A movable dwelling unit designed for year-round occupancy and including a flush toilet and bath or shower, except that an automobile house trailer located on the same lot with a building providing a private flush toilet and bath or shower shall constitute a mobile home for purposes of this chapter. This shall refer to and include all portable contrivances capable of being moved by their own power, towed, or transported by another vehicle.~~

Mobile home/trailer court. Any real property which is rented or held out for rent to others for the placement of two or more mobile homes/trailers for the primary purpose of production of income, except where such real property is rented or held out for rent for seasonal recreational purpose only and is not intended for year-round occupancy.

Modification (wireless communication facility). The changing of any portion of a wireless communication facility from its description in a previously approved permit. Examples include, but are not limited to, changes in design and the addition of an antenna to the site.

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memorandum

date June 29, 2015

to Steve Atkinson, City of Tacoma

from Ilon Logan and Teresa Vanderburg, Environmental Science Associates (ESA)

subject City of Tacoma Comprehensive Plan Update: Best Available Science Review

The City of Tacoma (City) is in the process of updating its Comprehensive Plan and Critical Areas Preservation Ordinance (CAPO, Tacoma Municipal Code [TMC] Chapter 13.11) in accordance with the requirements of the Growth Management Act (GMA) (RCW 36.70A). The GMA requires jurisdictions to consider best available science in the development of critical areas policies and regulations. In 2005, the City reviewed the best available science and updated the CAPO to comply with the GMA. More recently, the City updated its Shoreline Master Program (SMP), which was approved by the State Department of Ecology (Ecology) in 2013. The City recently completed a minor update to its CAPO in November 2014 to remove marine fish and wildlife habitat conservation areas and their protections which are covered by the newly adopted SMP.

ESA reviewed the best available science literature and data compiled by the City and reviewed the environmental element in the current Comprehensive Plan and the existing CAPO regulations. Our review is specific to wetlands, streams, floodplains, and fish and wildlife habitat areas. This memo summarizes our brief review of the City's compilation of information and our recommendations for policy and code updates.

Compilation of Best Available Science Literature and Data

The City provided a list of best available science references to ESA in March 2015 (see Appendix A). The list was compiled by Misty Blair, an environmental specialist for the City's Planning and Development Services Department, and is attached to this memo for reference. ESA reviewed the list and found that it generally captures most of the relevant sources. Additional sources that could be added to the list and considered during the update of policies and regulations are included in the following sections. The additional references build upon the City's list to support general topic areas as well as more specific areas such as fish and wildlife conservation habitat areas, streams, wetlands, and flood hazard areas. Many of the sources for these references are recent regional and federal guidance documents.

Best available science literature related to general critical area topics

The following two citations are considered essential sources for critical area ordinance updates. Although an older publication, the Community, Trade, and Economic Development (CTED) Handbook is still a key reference that includes primary descriptions of approaches to critical areas protection and regulation. It also contains a sample critical areas ordinance that is commonly used and adapted for use by local municipalities.

Washington State Department of Community, Trade, and Economic Development (CTED). 2007. Critical Areas Assistance Handbook: Protecting Critical Areas within the Framework of the Washington Growth Management Act. http://www.commerce.wa.gov/Documents/GMS-Critical-Areas-Assist-Handbook.pdf.

Best available science literature related to fish and wildlife habitat conservation areas (FWHCAs)

The following citations are regarded as essential for FWHCA updates and guidance. The technical memorandum prepared by ESA Adolfson in 2008 is a key resource for classifying priority habitats and species specific to the City of Tacoma.

ESA Adolfson. 2008. Technical memorandum: Fish and Wildlife Habitat Conservation Areas in the City of Tacoma, Washington. Prepared for the City of Tacoma by ESA Adolfson.

Fischer, J., and D.B. Lindenmayer. 2007. Landscape modification and habitat fragmentation: a synthesis. Global Ecology and Biogeography, Vol. 16, pp. 265-280.

Knutson, K. L., and Naef, V. L. 1997. Management recommendations for Washington's priority habitats: Riparian. Washington Department of Fish and Wildlife. 181 pp.

Rodrick, E. and R. Milner, eds. 1991. Management Recommendations for Washington's Priority Habitats and Species. Washington Department of Wildlife, Olympia.

Best available science literature related to streams

The citations listed below are considered important data sources and guidance for stream protection. As a recent update to water crossings, the guidelines from Washington Department of Fish and Wildlife (WDFW) provide key instructions to help jurisdictions comply with state regulations.

Barnard, R. J., J. Johnson, P. Brooks, K. M. Bates, B. Heiner, J. P. Klavas, D.C. Ponder, P.D. Smith, and P. D. Powers (2013). Water Crossings Design Guidelines. Washington Department of Fish and Wildlife. Olympia, Washington.

Mantua, N.J., I.Tohver, and A. Hamlet. 2009. Impacts of Climate Change on Key Aspects of Freshwater Salmon Habitat in Washington State. Climate Impact Group, 2009, Ch. 6, pp. 217-253; in The Washington Climate Change Impacts Assessment. M. McGuire Elsner, J. Little and L. Whitely Binder (eds). Center for Science in the Earth System, Joint Institute for the Study of the Atmosphere and Oceans, University of Washington, Seattle, Washington.

May, C.W. 2003. Stream-riparian ecosystems in Puget Sound lowland eco-region: A review of best available science. Watershed Ecology LLC.

Mayer, P.M., S.K. Reynolds, M.D. McCutchen, and T.J. Canfield. 2006. Riparian buffer width, vegetative cover, and nitrogen removal effectiveness: A review of current science and regulations. EPA/600/R-05/118. Cincinnati, OH, U.S. Environmental Protection Agency, 2006.

Best available science literature related to wetlands

The following sources are regarded as essential updates, guidance, and data sources for wetlands. The Ecology two-volume publication *Wetlands in Washington State* (Sheldon et al. 2005 and Granger et al., 2005) provides fundamental science and guidance for protecting and managing wetlands that has been incorporated by many local jurisdictions into their regulations. In addition, many of the regional and federal sources listed below

include updates for compliance with federal and state wetland regulations, specifically the identification of wetlands and wetland mitigation.

Granger, T., T. Hruby, A. McMillan, D. Peters, J. Rubey, D. Sheldon, S. Stanley, E. Stockdale. April 2005. Wetlands in Washington State - Volume 2: Guidance for Protecting and Managing Wetlands. Washington State Department of Ecology. Publication #05-06-008. Olympia, WA.

Hruby, T. 2014. Washington State Wetland Rating System for Western Washington: 2014 Update. Publication #14-06-029. Olympia, WA: Washington Department of Ecology.

Sheldon, D., T. Hruby, P. Johnson, K. Harper, A. McMillan, T. Granger, S. Stanley, and E. Stockdale. March 2005. Wetlands in Washington State - Volume 1: A Synthesis of the Science. Washington State Department of Ecology. Publication #05-06-006. Olympia, WA. http://www.ecy.wa.gov/pubs/0506006.pdf

U.S. Army Corps of Engineers (Corps and U.S. Environmental Protection Agency (U.S. EPA). 2008. Compensatory Mitigation for Losses of Aquatic Resources. Final Rule. Federal Register 73(70): 19594-19705.

U.S. Army Corps of Engineers (Corps). 2010. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region. Version 2. Wetlands Regulatory Assistance Program. May 2010. ERDC/EL TR-10-3. http://www.usace.army.mil/CECW/Documents/cecwo/reg/west_mt_finalsupp.pdf

Washington State Department of Ecology (Ecology). 2008. Making Mitigation Work: The Report of the Mitigation that Works Forum. Ecology Publication No. 08-06-018. https://fortress.wa.gov/ecy/publications/publications/0806018.pdf

Washington State Department of Ecology (Ecology), U.S. Army Corps of Engineers (USACE), and US Environmental Protection Agency (U.S. EPA). 2006. Wetland Mitigation in Washington State. http://www.ecy.wa.gov/pubs/0606011a.pdf

Washington State Department of Ecology (Ecology), U.S. Army Corps of Engineers (USACE), and Washington Department of Fish and Wildlife (WDFW). 2012c. Advance Permittee-Responsible Mitigation. Ecology Publication No. 12-06-015. https://fortress.wa.gov/ecy/publications/publications/1206015.pdf

Washington Department of Ecology (Ecology). Isolated Wetlands Information webpage: www.ecy.wa.gov/programs/sea/wetlands/isolated.html

Best available science literature related to frequently flooded areas

The citations listed below are key sources for updates and guidance regarding frequently flooded areas, including flood hazard areas. This includes Ecology's recent guidance document, which is an important source for updating the designation and protection of these critical areas.

Federal Emergency Management Agency (FEMA). 2013. Model Ordinance for Floodplain Management under the National Flood Insurance Program and the Endangered Species Act. FEMA - Region 10. Bothell, WA. April 2011.

Huppert, D.D., A. Moore and K. Dyson. 2009. Impacts of Climate Change on the Coasts of Washington State. Available: http://cses.washington.edu/db/pdf/wacciach8coasts651.pdf

Kusler, J.A. 2011. Functions of floodplains: Issues and approaches; future directions. Prepared for the Association of State Wetland Managers, Inc. Berne, NY. October 18, 2011.

U.S. National Archives and Records Administration. Code of Federal Regulations. "National Flood Insurance Program: Criteria for Land Management and Use." 44 CFR Part 60.

Washington State Department of Ecology (Ecology). 2015. Guidance to Local Governments on Frequently Flooded Area Updates in CAOs. Shorelands and Environmental Assistance Program. Olympia, WA.

Comprehensive Plan - Environment Element

ESA worked directly with the City on our review of the environment policy element of the Comprehensive Plan and this section summarizes those efforts. We met with the Planning Commission on May 20th, 2015 to discuss high level changes to the environmental goals and policies. Our review of the City's environment element found that there were opportunities to reduce redundancies, focus on key issues, address climate change and sustainability, ensure compliance with best available science for critical areas, and reduce narrative text (see ESA memo dated March 24th, 2015). Specific to the protection of critical areas, we noted that the element currently includes a policy for ensuring the use of best available science to prevent impacts (existing policy E-ER-6) and provides a set of policies for aquifer recharge areas (i.e., CARAs), fish and wildlife habitats, wetlands and stream corridors, and wetlands and streams of local significance. However, we noted that the element lacked policies for geologic hazard areas or flood hazard areas. We recommended that a policy basis for the protection of these critical areas be added to the element as well as increased emphasis on the avoidance and minimization of impacts to all critical areas to ensure that the City achieves no-net-loss of ecological functions over time. We also noticed that policies to incorporate the consideration of climate science in City decision-making was lacking, and thus suggested a new set of policies specific to climate action.

The element was revised in a comprehensive manner to address these issues and include a new set of goals and policies related to watershed planning. We worked with the City to add watershed planning to the element and provided draft goals and policies for consideration.

Critical Areas Protection Ordinance

ESA reviewed the City's current CAPO as part of this best available science review and found some areas of consistency and inconsistency with the City's compilation of literature. In general, we note that the City's CAPO is consistent with best available science in its general provisions, purpose, and administrative process. As discussed in the following sections, a few of the regulations for the individual critical areas were found to be inconsistent with recent regional updates and new federal guidance. Specifically, regional updates in wetland delineation, and wetland and stream classifications, and buffers.

Many of the provisions we highlighted for review correspond to those found by the City and were in agreement with the recommendations made in a document dated October 13, 2014 by Misty Blair, a former Environmental Specialist with the City (see Appendix A). This document notes several areas that should be revised and includes a strike-through/underline version of Chapter 13.11.

Applicability

To be more consistent with best available science this chapter could include language specifying that critical areas permit approval does not constitute compliance with other federal, state, and local regulations and permit requirements. This specific language is highly suggested by Ecology and they recommend clarifying specific laws that regulate activities in wetlands.

ESA agrees with the City's recommendation that the 'Allowed Activities' and 'Allowed Activities with Staff Review' sections be formatted into one section to improve clarity.

Wetlands

ESA agrees with the City's recommendations for the wetlands chapter, which references the 2004 outdated wetland rating system. The chapter should instead refer to the updated 2014 Washington State Wetland Rating System for Western Washington from Ecology per WAC 365-190-090. The subsequent definitions and buffer requirements in the chapter will need to reflect this update as well.

As with the existing code, the wetland buffers recommended for Tacoma should be based upon wetland category, level of function, and whether or not the wetland is considered locally significant. The City's wetland buffers range between 50 to 300 feet based upon wetland category with larger buffers protecting wetlands designated as locally significant. This is consistent with best available science sources that recommend buffer widths between 40 and 225 feet (Bunten et al. 2012).

Streams

The City uses an adaptation of the Washington Department of Natural Resources (DNR) stream typing system as described in WAC 222-16-030. The state stream typing system is widely used across the region and allows for comparison with other streams to be made more easily. However, we note that the City further classifies Type F streams into F1 and F2 (based upon salmonid presence) and Type Ns streams in Ns1 and Ns2 (based upon connection to downstream waters). Although generally consistent with state recommendations, the additional criteria used in the CAPO could result in confusion or additional work for applicants that need both local and state permits. The City should consider the benefits of these additional criteria during this CAPO update process and whether or not the current system is preferred.

The stream buffer requirements listed in this chapter are consistent with best available science. The City protects the most important streams (shorelines of the state and streams of local significance) with the largest buffers (150 feet). The other buffer widths are generally consistent with state guidance (e.g., Knutson and Naef, 1997) and the National Marine Fisheries Service (NMFS), which recommends a 100-foot minimum buffer for surface water currently or historically accessed by anadromous or listed fish species and a 50-foot minimum buffer for surfaces that do not have current or historic access (Appendix L in Ecology, 2013).

Stream standards for culverts/stream crossing structures could be more consistent with best available science by referencing the 2013 Washington Department of Fish & Wildlife Water Crossing Design Guidelines.

Fish and Wildlife Habitat Conservation Areas

This chapter is consistent with best available science and was the subject of ESA Adolfson's review in 2008. We agree with the City's recommendations for the FWHCAs chapter, which includes lists of priority habitats and species that may be outdated. The City should review WDFW's Priority Habitats and Species database and update the lists if changes have occurred.

Flood Hazard Areas

ESA agrees with the recommendations made by the City for flood hazard areas. This chapter could be more consistent by including additional mitigation measures listed in the 2013 FEMA Habitat Assessment and Floodplain Mitigation guidance document. However, this chapter also needs to define and designate frequently flooded areas, a critical area under the GMA, and describe the relationship to flood hazard areas. The City should consult Ecology's recent publication Guidance to Local Governments on Frequently Flooded Area Updates in CAOs (Ecology, 2015) and the CTED Handbook (CTED, 2007) for guidance on how to revise this section to be consistent with state law.

Definitions

This chapter should to be revised with updated "buffer" and "wetland" definitions according to the GMA (RCW 36.70A.030) and Bunten et al. (2012). The chapter should also be revised to include a definition for "mitigation bank."

Summary and Conclusions

ESA conducted a brief summary review of the City of Tacoma's CAPO and the City's compilation of the best available science literature. We found the compilation of best available science literature and data to be largely complete. There were some sources not included in the compilation, which ESA has provided within this memo. During the best available science review of the City's CAPO regulations, ESA matched many of the recommendations for inconsistencies from the City's review. These recommendations included updates to wetland ratings and buffers, flood hazard area mitigation, as well as general formatting suggestions.

Agenda Item D-3

City of Tacoma
Planning and Development Services

To:	Planning Commission
From:	Lihuang Wung, Planning Services Division
Subject:	**Wireless Communication Facilities**
Date of Meeting:	March 16, 2016
Date of Memo:	March 10, 2016

At the next meeting on March 16, 2016, the Planning Commission will continue to review (from February 17th meeting) the subject of wireless communication facilities, which is a part of the 2016 Annual Amendment.

Specifically, the Commission will review the proposed amendments to the Tacoma Municipal Code (TMC), Section 13.06.545 Wireless Communication Facilities and Section 13.06.700 Definitions. Upon completing the review, the Commission will be requested to consider releasing the proposal, as may be modified, for public review, in preparation for the public hearing on the 2016 Annul Amendment package tentatively scheduled for May 4, 2016.

Attached to facilitate the Commission's review and discussion is a staff analysis report, prepared pursuant to TMC 13.02.045.F, that summarizes the proposal as well as the rationale for and the potential effects of the proposal. Attached to the staff report is the text of the proposed code amendments. Note that two other attachments to the report are not being provided; they have been distributed to the Commission at the February 17th meeting.

If you have any questions, please contact me at 253-591-5682 or lwung@cityoftacoma.org.

Attachments

c: Peter Huffman, Director

2016 Annual Amendment
to the Comprehensive Plan and Land Use Regulatory Code

Staff Analysis Report

Proposed Amendment:	Wireless Communication Facilities Code Revisions
Applicant:	Planning and Development Services Department
Location & Size of Area:	Citywide
Current Land Use & Zoning:	Various
Neighborhood Council Area:	Citywide
Staff Contact:	Lihuang Wung, Planning Services Division (253) 591-5682, lwung@cityoftacoma.org
Date of Report: **(Planning Commission review date; draft or final)**	March 16, 2016 (for Planning Commission's Review)

I. Description of the Proposed Amendment:

Proposal

The proposal would amend the development regulations pertaining to wireless communication facilities as set forth in the Tacoma Municipal Code (TMC), Section 13.06.545 Wireless Communication Facilities and relevant terms as contained in Section 13.06.700 Definitions. (See Exhibit A)

The intent of the proposed amendment is to comply with the new wireless communication regulations and rules adopted by the Federal Communications Commission in October 2014 and meet the community's goals for urban design and aesthetics concerning wireless communication facilities.

Background

In 2012 Congress passed the "Middle Class Tax Relief and Job Creation Act of 2012" (codified at 47 U.S.C. § 1455(a)). Section 6409 of the Act requires that "a State or local government may not deny, and shall approve, any eligible facilities request for a modification [i.e., collocation, removal or replacement of transmission equipment] of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station." (See Exhibit B)

The Federal Communications Commission (FCC), pursuant to its rule making authority as empowered by the Telecommunication Act of 1996, issued a Report and Order (FCC 14-153) on October 21, 2014 (which became effective on April 8, 2015), establishing rules for implementing Section 6409. The Order, among other things, defines when a proposed modification constitutes a substantial change to the physical dimensions of the antenna support structure, establishes application requirements limiting the information that can be required from an applicant, and implements a 60-day "shot clock" for the local government's review and decision making on such applications. (See Exhibit C)

The FCC's rules are intended to spur wireless broadband deployment, in part, by facilitating the sharing of infrastructure that supports wireless communications through incentives to collocate on structures that already support wireless facilities. The Order is subject to appeal, however, even if an appeal is filed, the appeal will not automatically result in delay of implementation of the rules.

Key Revisions

The proposed amendment includes the following key revisions to the code: (1) incorporation of the "substantial modifications" per FCC rules; (2) provisions to further reduce visual impacts; and (3) clarifications and improvements of code language. Specifically, as shown in Exhibit A, revisions are being proposed to the following subsections of TMC 13.06.545 and 13.06.700:

- 13.06.545.A – Add to the purpose statement a reference to the Federal legislation and the associated FCC rules.
- 13.06.545.D.1 – Consolidate items "h" and "i" to improve the code language concerning permit applicants and FCC-licensed providers.
- 13.06.545.E.1 – Require that the wireless communication facility use category of "Level 1", i.e., modifications of an existing tower, be limited to a cumulative increase in height and/or width from the originally permitted facility as set forth in the "substantial changes" criteria.
- 13.06.545.E.1 – Prohibit attaching an antenna to the roof of a building under Level 1.
- 13.06.545.E.1 – Clarify that Level 2 also includes building or structure-mounted antennae that exceed the associated limitations of Level 1 facilities.
- 13.06.545.E.1 – Reorganize the use table to group the zoning districts into, generally, residential, commercial, light industrial and heavy industrial, and remove footnote #3 which is redundant to the text above.
- 13.06.545.F – Provisions in this subsection are either applicable to all wireless facilities or redundant; the subsection is being deleted and some of the provisions relocated elsewhere.
- 13.06.545. G.1.g.(2)(a) – Change "structures in excess of the permitted height of the applicable district" to "structures that are at least the height of the proposed facility", necessitating the applicant to contact the owner of the tallest building in the area which may not be exceeding the permitted height.
- 13.06.545.G.3.a – Modify (1), (2) and (3) of this subsection and add a (4) to clarify that concealed/camouflaged freestanding facilities have a higher preference over attached, non-concealed, non-camouflaged facilities.
- 13.06.545.G – Add a new subsection "4.", which is taken from part of the removed subsection 13.06.545.F.
- 13.06.545.H.1 – Strengthen the intent statement concerning "visual impacts" by adding a facility siting criterion taken from the removed subsection 13.06.545.F and by adding a notion that the View Sensitive, Historic and Conservation Overlay Districts are also in the same category of residential districts where visual impacts shall be properly addressed.
- 13.06.545.H.1.a – Add two provisions pertaining to "location of antennas on the side of parapet/wall and painted to match" and "alternative designs" to the existing seven measures for consideration for site location and development, and reorganize the list of these measures to better illustrate the general priority of their application.
- 13.06.545.H.1.a – Add two photos to illustrate examples of flush-mounting and color-matching wireless facilities.
- 13.06.545.H.2.a & b – Clarify that the setback requirements apply to towers as well as other support structures.
- 13.06.545.H.8 – Incorporate the criteria for "substantial changes" as set forth in the FCC's rules.

- 13.06.545.H.9 – Change the waiver process to variances, because there is no longer a waiver process in TMC 13.05.
- 13.06.700 – Revise the definition of "Camouflaged (wireless communication facility)" to improve the code language and better clarify its intent.
- 13.06.700 – Modify the definition of "Facility location (wireless communication facility)" because the current language may be misinterpreted as the sole purpose of the facility is to hold antennas and having multiple support structures on the roof of one building would be collocation.
- 13.06.700 – Modify the definition of "Wireless communication tower" to include building-mounted support structures where equipment is mounted directly to the building's structure.

II. Analysis of the Proposed Amendment:

1. How does the proposed amendment conform to applicable provisions of State statutes, case law, regional policies, the Comprehensive Plan, and development regulations?

The proposed amendment would align the City's development regulations concerning wireless communication facilities with the latest changes to the relevant Federal legislation and rules. In addition, the proposed amendment is intended to further reduce the visual and aesthetic impacts of wireless communication facilities, which is consistent with the following policies as set forth in the Design + Development ("DD") and the Public Facilities + Services ("PFS") elements of *One Tacoma: Comprehensive Plan*:

Policy DD-6.5	Reduce and minimize visual clutter related to billboards, signs, utility infrastructure and other similar elements.
Policy DD-1.6	Encourage the development of aesthetically sensitive and character-giving design features that are responsive to place and the cultures of communities.
Policy DD-4.10	Utilize landscaping elements to improve the livability of residential developments, block unwanted views, enhance environmental conditions, provide compatibility with existing and/or desired character of the area, and upgrade the overall visual appearance of the development.
Policy PFS-7.9	Promote the co-location of public facilities, when feasible, to enhance efficient use of land, reduce public costs, reduce travel demand, and minimize disruption to the community.
Policy PFS-7.14	Encourage public facilities visible to the public or used by the public to be of the highest design quality by implementing a City-sponsored design review process.

2. Would the proposed amendment achieve any of the following objectives?

- **Address inconsistencies or errors in the Comprehensive Plan or development regulations;**
- **Respond to changing circumstances, such as growth and development patterns, needs and desires of the community, and the City's capacity to provide adequate services;**
- **Maintain or enhance compatibility with existing or planned land uses and the surrounding development pattern; and/or**
- **Enhance the quality of the neighborhood.**

The proposal responds to and would maintain the City's compliance with the latest updates of Federal legislation and rules pertaining to wireless communication facilities. The proposal would also enhance the quality of the neighborhood by modifying certain provisions of the code intended to minimize the visual impacts of wireless communication facilities.

3. **Assess the proposed amendment with the following measures: economic impact assessment, sustainability impact assessment, health impact assessment, environmental determination, wetland delineation study, traffic study, visual analysis, and other applicable analytical data, research and studies.**

   The FCC's rules are intended to incentivize collocation of wireless facilities and equipment on structures that already support such facilities, thus spurring wireless broadband deployment and minimizing visual impacts of such facilities. The proposal would align the City's code with the FCC's rules and is expected to achieve the same objectives.

4. **Describe the community outreach efforts conducted for the proposed amendment, and the public comments, concerns and suggestions received.**

   This proposal, albeit containing numerous revisions, does not make substantial changes to the current code. Public comments will be solicited during the public review process through the Planning Commission's public hearing in May 2016.

5. **Will the proposed amendment benefit the City as a whole? Will it adversely affect the City's public facilities and services? Does it bear a reasonable relationship to the public health, safety, and welfare?**

   This proposal would benefit the City as a whole by encouraging collocation of wireless communication facilities, minimizing potential proliferation and visual impacts of such facilities, and stimulating economic development,. This proposal does not make any significant changes to the requirements applicable to public or quasi-public facilities, thus is not expected to adversely affect such facilities. By discouraging potential proliferation of wireless facilities, this proposal also bears a reasonable relationship to the public health by not amplifying potential health hazards caused by the microwaves from cell towers.

III. Staff Recommendation:

Staff recommends that the proposed amendments to the Tacoma Municipal Code, Section 13.06.545 Wireless Communication Facilities and Section 13.06.700 Definitions, as depicted in Exhibit A, be distributed for public review prior to the Planning Commission's public hearing tentatively scheduled for May 4, 2016.

IV. Exhibits:

A. Proposed Amendments to Tacoma Municipal Code, Section 13.06.545 Wireless Communication Facilities and Section 13.06.700 Definitions.

B. Middle Class Tax Relief and Job Creation Act of 2012, Section 6409 Wireless Facilities Deployment (47 U.S.C. § 1455(a)), February 22, 2012.

C. Federal Communications Commission's Report and Order 14-153, Subpart CC, §1.40001 Wireless Facility Modifications, released October 21, 2014 and effective April 8, 2015.

Wireless Code Amendments

DRAFT LAND USE REGULATORY CODE CHANGES
March 10, 2016

Note: These amendments show all of the changes to existing Land Use regulations. The sections included are only those portions of the code that are associated with these amendments. New text is underlined and text that has been deleted is shown as ~~strikethrough~~.

Chapter 13.06

ZONING

* * *

13.06.545 Wireless communication facilities.

A. Purpose. These standards were developed to protect the public health, safety, and welfare, and minimize visual impacts on residential areas and Mixed-Use Center Districts, while furthering the development of wireless communication services in the City. These standards were designed to comply with the Telecommunication Act of 1996, as well as the relevant provisions of the Middle Class Tax Relief and Job Creation Act of 2012 and the associated Federal Communications Commission's Report and Order of 2014 (FCC 14-153). The provisions of this section are not intended to and shall not be interpreted to prohibit or to have the effect of prohibiting wireless communication services. This section shall not be applied in such a manner as to unreasonably discriminate among providers of functionally equivalent wireless communication services. This section shall not be used to regulate uses and development activity located within street rights-of-way.

To the extent that any provision of this section is inconsistent or conflicts with any other City ordinance, this title shall control. Otherwise, this section shall be construed consistently with the other provisions and regulations of the City.

B. Exemptions. The following are exempt from the provisions of this section and shall be permitted in all zones:

1. Antennas and related equipment no more than three feet in height.

2. Wireless radio utilized for temporary emergency communications in the event of a disaster.

3. Licensed amateur (ham) radio stations not exceeding the permitted height requirements of the underlying zone. Amateur radio towers or antenna support structures exceeding the height limit shall be allowed only with approval of a Conditional Use Permit, in accordance with the provisions of Section 13.06.640. Modification or use of such towers for commercial use shall require full compliance with this section.

4. Satellite dish antennas less than seven feet in diameter, including direct to home satellite services, when used as an accessory use of the property.

5. Routine maintenance or repair of a wireless communication facility and related equipment (excluding structural work or changes in height or dimensions of antenna, tower, or buildings), provided that compliance with the standards of this regulation are maintained.

6. A COW or other temporary wireless communication facility shall be permitted for a maximum of 90 days during the construction of a permitted, permanent facility or during an emergency.

7. Residential television antennas as an accessory installation on a residential dwelling unit.

C. Permits required.

1. Where a transmission tower or antenna support structure is located in a zoning district, which allows such use as a permitted use activity, administrative review, and a building permit shall be required, subject to the project's consistency with the development standards set forth in Section 13.06.545.H. In instances where the antenna height exceeds the height limit of the zoning district or is not allowed as a permitted use activity, a conditional use permit and building permit shall be required in addition to a demonstration of consistency with all required development standards. ~~Table A, below,~~The table in Section 13.06.545.E specifies the permits required for the various types of wireless service facilities that meet the standards of this ordinance.

D. Required submittals.

1. Administrative review-building permit. Application for administrative review and building permit shall include the following:

a. A site elevation and landscaping plan indicating the specific placement of the facility on the site, the location of existing structures, trees, and other significant site features, the type and location of plant materials used to screen the facility, including the related equipment facilities, and the proposed color(s) of the facility. The landscape plan shall address the required method of fencing, finished color, and, if applicable, the method of camouflage and illumination.

b. A signed statement indicating that:

(i) the applicant for a new tower has provided notice to all other area wireless service providers of its application to encourage the collocation of additional antennas on the structure. Notice shall be published in a newspaper of general circulation once per week, for a minimum period of 30 days, and an affidavit of publication shall be provided at the time of application as proof that the required notice has occurred. This requirement shall not apply to the development of concealed or camouflaged towers; and

(ii) the applicant and/or landlord agree to remove the facility within one year after abandonment.

c. Copies of any environmental documents required, pursuant to the State Environmental Policy Act ("SEPA") (WAC 197-11). Project actions which are categorically exempt from SEPA shall also be exempt from this requirement. Copies of any environmental documents required by a federal agency. These shall include the environmental assessment required by FCC Para. 1.1307, or, in the event that a FCC environmental assessment is not required, a statement that describes the specific factors that obviate the requirement for an environmental assessment.

d. An engineered and stamped site plan clearly indicating the location, type, and height of the proposed tower and antenna, the anticipated antenna capacity of the tower, on-site land uses and zoning, adjacent land uses and zoning, adjacent roadways, proposed means of access, setbacks from property lines, elevation drawings of the proposed tower, and any other proposed structures.

e. Legal description of the parcel and Pierce County Assessor's Parcel Number.

f. A letter signed by the applicant stating the tower will comply with all FAA regulations and applicable standards, and all other applicable federal, state, and local laws and regulations.

g. A signed statement indicating that such installation, repair, operation, upgrading, maintenance, and removal of antenna(s) by the wireless communication provider shall be lawful and in compliance with all applicable laws, orders, ordinances, and regulations of federal, state, and local authorities having jurisdiction.

h. Where applicable, proof that the applicant is an FCC-licensed wireless communication provider or that it has agreements with an FCC-licensed wireless communication provider for use or lease of the proposed facility.~~The wireless communication service provider must demonstrate that it is licensed by the FCC if required to be licensed under FCC regulations.~~

~~i. The applicant, if not the wireless communication service provider, shall submit proof of lease agreements with an FCC licensed wireless communication provider, if such wireless communication provider is required to be licensed by the FCC.~~

2. Conditional use permit-building permit. Application for conditional use permit and building permit shall include the following:

a. All the required submittals set forth in Section 13.06.545.D.1 above.

b. Photo-simulations of the proposed facility. The required photo-simulations shall be taken from at least four line-of-site views. The photo-simulations shall be labeled as to the view depicted, the maximum height and elevation of the structure, including antennas, the elevation from which the photo-simulation was taken, proposed color scheme, and method of screening.

c. A current map showing the location of the proposed tower and associated wireless service facilities, the locations of other wireless service facilities operated by the applicant, and those proposed by the applicant that are within the City or outside of the City, but within one-half mile of the City boundary.

d. The approximate distance between the proposed tower or antenna and the nearest residentially-zoned property.

e. At the time of site selection, the applicant should demonstrate how the proposed site fits into its existing overall network within the City.

f. Confirmation from the applicant and/or the applicable Neighborhood Council Board ("NCB") that a pre-application public meeting has been held, or is scheduled to occur (unless the requirement for the meeting has been waived by the NCB), with the applicant to discuss the siting of the proposed wireless communication tower or antenna and any issues related to such siting.

E. Wireless communication towers and facilities use category.

1. Wireless communication towers or wireless communication facilities. Wireless communication towers or wireless communication facilities use type refers to facilities used in the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means. These types of facilities also include central office switching units, remote switching units, telecommunications radio relay stations, and ground level equipment structures.

Level 1: Modification of an existing wireless tower. ~~, including~~This may include the complete replacement of an existing wireless communication tower or antenna support structure to its existing height~~,~~ or modifications to accommodate collocation~~,~~ or the installation of a concealed antenna. Such modifications are limited to a cumulative increase in height and/or width from the originally permitted facility, as specified in the criteria pertaining to substantial changes as set forth in subsection 13.06.545.H.8. ~~Also,~~Level 1 also includes an antenna attached to the ~~roof or~~ sides of a building, an existing tower, water tank, or a similar structure. This level is limited to the following types of antenna(s): an omni-directional or whip antenna no more than seven inches in diameter and extending no more than 16 feet above the structure to which it is attached; a panel antenna no more than 16 square feet in total area per panel and extending above the structure to which it is attached by no more than 16 feet; or a parabolic dish no greater than three feet in diameter per dish and extending no more than 16 feet above the structure to which it is attached.

Level 2: Wireless communication towers with associated antennas or dishes to a height of 60 feet, as well as building or structure-mounted antennae that exceed the associated limitations of Level 1 facilities outlined above.

Level 3: Wireless communication towers with associated antennas or dishes over 60 feet in height and not exceeding 140 feet in height.

Level 4: Wireless communication towers with associated antennas or dishes over 140 feet in height.

Wireless Communication Tower or Wireless Facility Use Category	Zoning District Classifications - Table A					
	R-1; R-2; R-2SRD; R-3; R-4; R-4-L; R-5; PRD; T; HM; HMX; DR; NRX	PDB	C-1; C-2	NCX; CCX; RCX; URX	UCX; CIX; M-1; M-2; PMI	DCC; DMU; WR
Level 1	A [1, 3, 4]	A[3]	A[3]	A[3]	A	A
Level 2	S[4]	S[2]	S[2]	S[2]	A	A
Level 3	S[4]	S	S	S	A	S
Level 4	S[4]	S	S	S	S	S

~~Notes – Symbols~~

~~A – Administrative review – Subject to building permit.~~

~~S – Requires conditional use permit and building permit.~~

~~1 – Permitted on public facility sites, subject to administrative review and building permit.~~

~~2 – Allowed 16 feet above underlying zoning district height limit, except in the C-1, C-2, and NCX Districts.~~

~~3 – Attached, rooftop antennas are permitted outright, a maximum of 16 feet over the height of an existing building or water tank, regardless of the height of the structure~~

~~4 – New wireless communication towers and antennas prohibited in R-1, R-2, R-2SRD, and R-3 Districts, except on public or quasi-public property developed with existing public or quasi-public facilities and properties developed with existing wireless communication facilities.~~

Wireless Facility Use Category	**Zoning District Classifications**			
	R-1; R-2; R-2SRD; R-3; R-4; R-4L; R-5; T; HMX; DR; NRX	**PDB; C-1; C-2, NCX; CCX; RCX; URX; UCX; DCC; DMU; WR**	**CIX; M-1**	**M-2; PMI**
Level 1	A [1, 3]	A	A	A
Level 2	C[3]	C[2]	A	A
Level 3	C[3]	C	C	A
Level 4	C[3]	C	C	C

Symbols:

A - Allowed with administrative review

C - Allowed only with approval of a Conditional Use Permit

Footnotes:

1 - Permitted on public facility sites, subject to administrative review and building permit.

2 - Allowed 16 feet above underlying zoning district height limit, except in the C-1, C-2, and NCX Districts.

3 - New wireless communication towers and antennas prohibited in R-1, R-2, R-2SRD, and R-3 Districts, except on public or quasi-public property developed with existing public or quasi-public facilities and properties developed with existing wireless communication facilities.

~~F. Site selection criteria. The following criteria shall be utilized to evaluate all conditional use permits, in addition to the criteria set forth in Section 13.06.640.C:~~

~~1. Any applicant proposing to construct an antenna support structure, or mount an antenna on an existing structure, shall demonstrate by engineering evidence that the antenna must be located at the site to satisfy its function in the applicant's grid system. Further, the applicant must demonstrate, by engineering evidence, that the height requested is the minimum height necessary to fulfill the site's function within the grid system, and that collocation is not feasible. If a technical dispute arises, the Director may require a third-party technical study to resolve the dispute. The cost of the technical study shall be borne by the applicant or wireless service provider.~~

~~2. Applications for necessary permits will only be processed when the applicant demonstrates either that it is an FCC licensed wireless communication provider or that it has agreements with an FCC licensed wireless communication provider for use or lease of the support structure.~~

~~3. Wireless service facilities shall be located and designed to minimize any significant adverse impact on residential uses. Facilities shall be placed in locations where the existing topography, vegetation, buildings, or other structures provide the greatest amount of screening.~~

~~4. In all zones, location and design of facilities shall consider the impact of the facility on the surrounding neighborhood and the visual impact within the zoning district.~~

G. Priority for siting and type of facility. The order of priority for the siting of new wireless communication towers and facilities is intended as guidance to applicants for the development of sites with wireless communication towers, antennas, and associated facilities. The priority for the type of facility shall be subject to the provisions set forth in Section 13.06.545.G.3.a(4).

1. Priority for siting.

a. Place antennas on appropriate rights-of-ways and existing public and private structures, such as buildings, towers, water towers, and smokestacks.

b. Place antennas and any necessary support structures, on public property developed with existing public facilities and properties developed with existing telecommunication facilities and, if practical, on non-residentially-zoned sites.

c. Place antennas and any necessary support structures, in ~~M-1,~~ M-2~~,~~ and PMI Industrial Districts.

d. Place antennas and any necessary support structures in ~~UCX~~ M-1 and CIX Mixed-Use Center Districts.

e. Place antennas and any necessary support structures in other non-residentially-zoned property.

f. Place antennas and any necessary support structures on public property developed with existing public facilities and, if practical, on multiple-family structures in residentially-zoned sites.

g. Place antennas and any necessary support structures in R-4-L, R-4, R-5, NCX, URX, RCX, CCX, T, and HMX~~, and HM~~ Districts. Such placement shall be subject to the following criteria:

(1) An applicant that proposes to locate a new antenna support structure in a residential, mixed commercial, or transitional zone shall demonstrate that a diligent effort has been made to locate the proposed wireless communications facility on a public facility, a private institutional structure, or other appropriate existing structures within a non-residential zone, and that due to valid considerations including physical constraints, and economic, or technological feasibility, no appropriate location is available.

(2) Applicants are required to demonstrate:

(a) That in the R-4-L, R-4, R-5, NCX, URX, RCX, CCX, T, and HMX~~, and HM~~ Districts, they have contacted the owners of structures that are at least the height of the proposed facility~~in excess of the permitted height of the applicable district~~ within a one-quarter mile radius of the site proposed and which, from a location and height standpoint, could provide part of a network for transmission of signals; and

(b) After proposing a lease agreement for the site consistent with the documented average market rate for similar properties, were denied permission to use such property or, due to other onerous lease-related terms, chose not to pursue the lease.

(3) The information submitted by the applicant shall include:

(a) a map of the area served by the tower or antenna;

(b) its relationship to other cell sites in the applicant's network; and

(c) an evaluation of existing buildings as addressed by Section 13.06.545.G.1.g(2)(a) within one-quarter mile of the proposed tower or antenna, which, from a location and height standpoint, could provide part of a network to provide transmission of signals.

h. Place antennas and any necessary support structures on public property developed with existing public facilities and properties developed with existing wireless communication facilities in R-1, R-2, R-2SRD, NRX, and R-3 Districts.

i. New antennas and necessary support structures shall be prohibited in R-1, R-2, R-2SRD, NRX, and R-3 Districts, except as noted above.

2. Siting priority on public property. Where public property is sought to be utilized by an applicant, priority for the use of City-owned land for wireless communication facilities shall be given to the following entities in descending order:

a. City of Tacoma, General Government and Public Utilities; and

b. Other governmental agencies.

3. Priority for type of facilities.

a. Facility preference. Proposed antennas, associated structures, and placement shall be evaluated, based on available technologies, for approval and use in the following order of preference:

(1) Collocation of facilities and the installation of concealed and/or flush mounted antenna~~es and attached facilities~~;

(2) Concealed/camoflauged f~~F~~ree-standing facilities, which extend no more than 16 feet above adjacent existing vegetation or structures, only when subsection (1) cannot be reasonably accomplished;

(3) Concealed/camoflauged f~~F~~ree-standing facilities, which extend more than 16 feet above adjacent existing vegetation or structures, only when subsections (1) and (2) cannot be reasonably accomplished; or

(4) New building/structure-mounted facilities that are not concealed within a new or existing building feature or are flush-mounted to the side of the building/structure; or

(5) If the applicant chooses to construct new free-standing facilities, the burden of proof shall be on the applicant to show a facility of a higher order of preference cannot reasonably be accommodated on the same or other properties. The City reserves the right to retain a qualified consultant, at the applicant's expense, to review the supporting documentation for accuracy.

4. For Conditional Use Permits, in addition to the criteria set forth in Section 13.06.640.C, any applicant proposing to construct an antenna support structure, or mount an antenna on an existing structure, shall demonstrate by engineering evidence that the antenna must be located at the site to satisfy its function in the applicant's grid system. Further, the applicant must demonstrate, by engineering evidence, that the height requested is the minimum height necessary to fulfill the site's function within the grid system, and that collocation is not feasible. If a technical dispute arises, the Director may require a third-party technical study to resolve the dispute. The cost of the technical study shall be borne by the applicant or wireless service provider.

H. Development standards. The following special requirements and performance standards shall apply to any wireless communication tower or wireless facility:

1. Visual impacts. Wireless communication towers or antenna support structures and related facilities shall be located and installed in such a manner so as to minimize the visual impact on the skyline and surrounding area. Facilities shall be placed in locations where the existing topography, vegetation, buildings, or other structures provide the greatest amount of screening. The use of attached antennas, concealed facilities, or the camouflaging of towers, antennas, and associated equipment shall be used, to the greatest degree technically feasible, in and adjacent to all residential districts, in and adjacent to the View Sensitive, Historic and Conservation Overlay Districts, and in the URX, NRX, RCX, NCX, UCX, and CCX Mixed-Use Center Districts. Visual impacts shall be addressed in the following manner:

a. Site location and development shall preserve the pre-existing character of the surrounding buildings, land use, and the zoning district to the extent possible, while maintaining the function of the communications equipment. Wireless communication facilities shall be integrated through location, siting, and design to blend in with the existing characteristics of the site through application of as many of the following measures as possible (examples are also provide below):

~~(1) Existing on-site vegetation shall be preserved, insofar as possible, or improved, and disturbance of the existing topography shall be minimized, unless such disturbance would result in less visual impact of the site to the surrounding area;~~

~~(2) Towers or mounts shall be screened by placement of the structure among and adjacent to, within 20 feet, of three or more trees at least 50 percent of the height of the facility;~~

~~(3) Location of facilities close to structures of a similar height;~~

~~(4) Location of facilities toward the center of the site, and location of roof-mounted facilities toward the interior area of the roof and the use of screening, in order to minimize view from adjacent properties and rights-of-way;~~

~~(5) Provision of required setbacks;~~

~~(6) Incorporation of the antenna, associated support structure, and equipment shelter as a building element or architectural feature; and~~

~~(7) Designing freestanding towers to appear as another structure or object that would be common in the area, such as a flagpole or tree.~~

(1) Provide required setbacks;

(2) Incorporate the antenna, associated support structure, and equipment shelter as a building element or architectural feature;

(3) Locate facilities toward the center of the site, and locate roof-mounted facilities toward the interior area of the roof;

(4) Flush mount the antenna to the side of an existing building or structure and paint to match;

(5) Use screening of building-mounted support structures and antennas in order to minimize view from adjacent properties and rights-of-way;

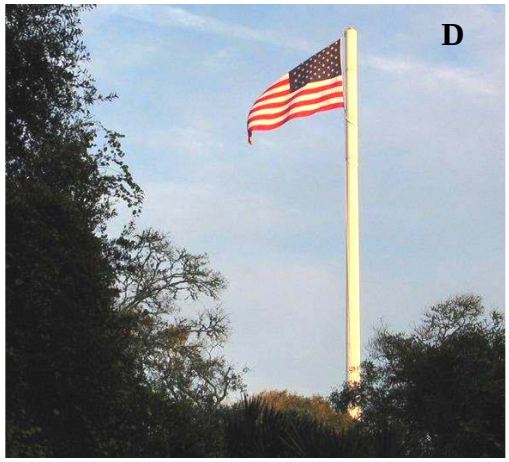
(6) Preserve and improve existing on-site vegetation insofar as possible, and minimize disturbance of the existing topography, unless such disturbance would result in less visual impact of the site to the surrounding area;

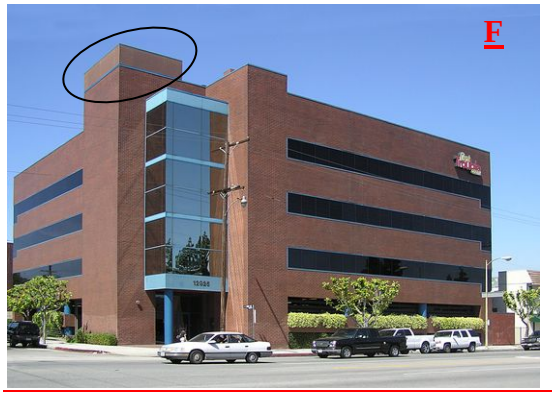
(7) Screen towers or mounts by placement of the structure among and adjacent to, within 20 feet, of three or more trees at least 50 percent of the height of the facility;

(8) Locate facilities close to structures of a similar height;

(9) Design freestanding towers to appear as another structure or object that would be common in the area, such as a flagpole or tree; and

(10) Alternative designs which meet the same intent may be considered.





The examples of methods used to minimize the visual impacts of wireless facilities shown above include the preservation and use of existing vegetation (examples A and C), flush mounting and color-matching wireless facilities (examples B, F and G), screening above-ground equipment (example C), disguising a wireless facility as another freestanding structure, (example D, as a flagpole; examples A and C, as a tree), and incorporation of wireless facilities into a building feature (example E, inside the cupola; example F, top left looking like a brick parapet; and example G).

b. Related equipment facilities used to house wireless communications equipment shall be located within buildings or placed underground when possible. When they cannot be located in existing buildings or placed underground, equipment shelters or cabinets shall be limited to a maximum floor area of 400 square feet and a maximum height of 12 feet, shall be screened, and shall be insulated to ensure noise levels do not exceed the ambient pre-development noise level at any residential receiving property abutting the site with a maximum sound pressure level of 40 dB, pursuant to the 1993 ASHRAE Hardbook. Alternate methods for screening may include the use of building or

parapet walls, sight-obscuring fencing and/or landscaping, screen walls, or equipment enclosures or camouflaging; and

c. Wireless communication facilities and related equipment facilities shall be of neutral colors such as white, gray, blue, black, or green, or other appropriate color designed to disguise, conceal, or camouflage the facility or equipment, or similar in building color in the case of facilities incorporated as part of the features of a building, unless specifically required to be painted another color by a federal or state authority. Other screening methods, such as the use of siding which is architecturally compatible with adjacent buildings, or site-obscuring fencing materials may also be utilized. Wooden poles are not required to be painted.

2. Setbacks.

a. Towers and other support structures up to 60 feet in height shall provide the setbacks required for the underlying zone. Where a conditional use permit is required, minimum setbacks of 20 feet from all property lines or the setbacks of the underlying zone, whichever are greater, shall be required. Towers over 60 feet shall provide one additional foot of setback for every foot over 60 feet of height.

b. Towers and other support structures located in M-1, M-2, and PMI Districts, which meet the height limit of the underlying zone and abut residential zones, shall provide the required setback of the underlying zone. Towers located in M-1, M-2, and PMI Districts, which exceed the height of the underlying zone, shall be setback from the abutting residential district one additional foot for each foot of height over the maximum height permitted by the zone.

c. All setbacks shall be measured from the property lines of the site to the base of a monopole, lattice tower, or equipment mount, or in the case of a guyed tower, from the property lines of the site to the base of the guy wires which support it.

d. Attached facilities located on existing structures, which are nonconforming as to setback requirements, shall be allowed no closer to a property line than the nonconforming structure.

e. Equipment structures shall comply with the setback requirements of the underlying zone, except in the R-1, R-2, R-2SRD, NRX, and R-3 Districts, in which case a minimum setback of 20 feet from all property lines shall be provided, or the minimum setback of the underlying zone, whichever is greater.

3. Tower separation. An applicant will be required to demonstrate why it is necessary, from a technical standpoint, to have a tower within one-half mile of a tower, whether it is owned or utilized by the applicant or another provider, as well as why collocation is not feasible. The distance shall be measured tower-to-tower regardless of property lines and rights-of-way. If a technical dispute arises, the Director may require a third-party technical study to resolve the dispute. The cost of the technical study shall be borne by the applicant or wireless service provider.

4. Security fencing. Security fencing a minimum of six feet in height shall be required around the perimeter of any tower site. The required fencing shall be colored or should be of a design which blends into the character of the existing environment. No razor or ribbon wire may be utilized in conjunction with the fence installation.

5. Signage. No signs shall be permitted on towers. One non-illuminated identification sign, with a maximum area of six square feet for all faces, shall be required per development site. The design of the sign and its location on the site shall be subject to the approval of the Director and shall include the name and telephone number of the provider(s).

6. Lights and signals. No lights or signals shall be permitted on towers unless required by the FCC or the FAA. Building-mounted lighting and aerial-mounted floodlighting shall be shielded from above in such a manner that the bottom edge of the shield shall be below the light source. Ground-mounted floodlighting or light projecting above the horizontal plane is prohibited. All lighting, unless required by the FAA, or other federal or state authority, shall be shielded so that the direct illumination is confined to the property boundaries of the sight source.

7. Noise. No equipment shall be operated so as to produce noise in violation of Section 13.06.545.H.1.b and the maximum noise levels set forth in WAC 173-60.

8. Minor modifications. Minor modifications to existing wireless communication facilities, including the installation of additional antenna and associated equipment, for which a valid conditional use permit exists, may be approved by Planning and Development Services, provided it is determined there is ~~minimal or~~ no substantial change in the visual appearance or the physical dimensions of the facilities and said modifications comply with the performance

standards set forth in this section. A modification substantially changes the physical dimensions of a facility if it meets any of the following criteria, as set forth in the FCC's Report and Order of 2014 (FCC 14-153):

a. For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater;

(1) Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act;

b. For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;

c. For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;

d. It entails any excavation or deployment outside the current site;

e. It would defeat the concealment elements of the eligible support structure; or

f. It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is noncompliant only in a manner that would not exceed the thresholds identified above.

9. Variance to~~Waiver of~~ development standard~~s requirements~~. The Director may, in such cases as deemed appropriate, modify~~waive~~ any of the aforementioned development standards upon a finding that: (a) reasonable alternatives are to be provided to said standards which are in the spirit and intent of this section; or (b) strict enforcement of the standards would cause undue or unnecessary hardship due to the unique character or use of the property. Applications for variances~~waivers~~ shall be processed in accordance with the provisions of Chapter 13.05. ~~In the case where a conditional use permit is required, the waiver's consistency with the criteria necessary to be met for the authorization shall be addressed under the conditional use permit and shall not require a separate application and fee~~.

I. Non-Use/Abandonment. Not less than 30 days prior to the date that a wireless communication provider plans to abandon the operation of a facility, the provider must notify the City, by certified mail, of the proposed date of abandonment. In the event that such notice is not provided, the records of the City of Tacoma, Department of Public Utilities, shall be utilized to determine the date of abandonment. Upon such abandonment, the provider shall have one year to reactive the use of the facility or dismantle and remove it. If the tower, antenna, foundation, and/or associated facility are not removed within one year, the City may remove them at the expense of the wireless communication providers.

Nothing in this subsection shall be construed to require the removal of architectural elements, including, but not limited to, false church steeples or flag poles that have been installed, pursuant to a valid building or conditional use permit, to conceal wireless communication facilities.

J. Enforcement. Enforcement of the provisions set forth in this section shall be in accordance with the provisions set forth in Section 13.05.100.

* * *

13.06.700 Definitions and illustrations.

* * *

Abandonment of wireless facility. The termination or shutting-off of electrical power to a wireless communication tower and/or associated antenna and equipment facility for a period of one calendar year or more. The records of the City of Tacoma, Department of Public Utilities, shall be utilized to determine the date of power termination.

* * *

Antenna. Any system of poles, panels, rods, reflecting discs, or similar devices used for the transmission or reception of radio or electromagnetic frequency signals.

1. Directional antenna (also known as "panel" antenna). An antenna which transmits and receives radio frequency signals in a specific directional pattern of less than 360 degrees.

2. Omni-directional antenna (also known as a "whip" antenna). An antenna that transmits and receives radio frequency signals in a 360 degree radial pattern.

3. Parabolic antenna (also known as a dish antenna). An antenna that is a bowl-shaped device for the reception and/or transmission of radio frequency communication signals in a specific directional pattern.

4. Concealed antenna. An antenna and associated equipment enclosure, installed inside a non-antenna structure or camouflaged to appear as a non-antenna structure.

Antenna height. The vertical distance measured from the base of the antenna support structure at a grade to the highest point of the structure, even if said highest point is an antenna. Measurement of tower height shall include antenna, base pad, and other appurtenances, and shall be measured from the finished grade of the parcel. If the support structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the antenna height.

Antenna support structure. Any pole, telescoping mast, tower, tripod, or other structure which supports a device used in the transmitting or receiving of radio frequency signals.

* * *

Camouflaged (wireless communication facility). A wireless communication facility that is integrated with a building or the landscape in terms of design, colors, materials and height, so as to be disguised, hidden, concealed, masked, or ~~integrated with an existing structure that is not a monopole or tower, or a wireless communication facility that is placed within an existing or proposed structure, or new structure, tower, or mount within trees so as to be significantly~~ screened from view.

* * *

Facility location (wireless communication facility). Location may include placement of facilities in one or more of the following manners:

1. Attached Facility is a facility that is affixed to an existing structure, such as a building or water tower, and is not considered a component of the attached wireless communication facility.

2. Collocation Facility is a ~~single~~ support structure, such as a ~~building,~~ monopole, or lattice tower to which more than one wireless communications provider mounts equipment.

3. Free-standing Facility is a facility that includes a separate support structure including, but not limited to, monopoles, lattice towers, wood poles, or guyed towers.

* * *

Wireless communication tower. Any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guyed towers, or monopole towers. The term encompasses wireless communication facilities, radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, wireless communication towers, building-mounted structural supports and/or the building where equipment is mounted directly to the building's structure, and alternative tower structures, and the like.

Agenda Item D-4

City of Tacoma
Planning and Development Services

To: Planning Commission

From: Lihuang Wung, Planning Services Division

Subject: **Short-Term Rentals**

Date of Meeting: March 16, 2016

Date of Memo: March 10, 2016

As part of the 2016 Annual Amendment to the Comprehensive Plan and Land Use Regulatory Code efforts, consideration has been given to amending the Tacoma Municipal Code to regulate the short-term rentals of homes and rooms (generally less than 30 days). This relatively new industry has been facilitated by on-line "sharing" sites such as Airbnb, VRBO and HomeAway. It is positioned somewhere between traditional residential rentals and traditional hotels, and thus does not often fit cleanly into current regulatory or licensing structures.

At the meeting on March 16, 2016, the Planning Commission will review background information, key issues relating to short-term rentals, and the proposed approach and framework for code amendments.

Attached to facilitate the Commission's review is a discussion outline, supplemented with the proposed approach and framework for code amendments (Exhibit 1) and several pieces of background information (Exhibits 2, 3 and 4).

If you have any questions, please contact me at 253-591-5682 or lwung@cityoftacoma.org.

Attachment

c: Peter Huffman, Director

Short-Term Rentals
Discussion Outline

(For Planning Commission's Review, March 16, 2016)

A. Scope of work:

Amending the land use regulations pertaining to short-term rentals, including bed-and-breakfasts.

B. Goals:

To acknowledge and track the growing peer-to-peer short-term rental market, proactively address potential impacts (especially concerning life-safety, liability and residential neighborhood character) of this rapidly emerging sharing economy, and set the stage for a boarder policy discussion and a more coordinated regulatory update that includes zoning, tax and licensing, nuisance code, and administration and enforcement program components.

C. Background:

The relatively new industry of short-term rentals of homes and rooms (generally less than 30 days) has been facilitated by on-line "sharing" sites such as Airbnb, VRBO and HomeAway. It is positioned somewhere between traditional residential rentals and traditional hotels, and thus does not fit cleanly into current regulatory or licensing structures. (See Exhibits 2, 3 & 4)

Currently there are approximately 53 units listed on VRBO and 245 units listed on Airbnb within the City limits. A majority of the VRBO listings are rentals of entire houses or apartment/condo units. A majority of the Airbnb units are either bedrooms or mother-in-law style units within a house. In both cases, most of the units are in the North End.

Potential Concerns

- Non-Residential/Commercial Use in residential areas
- Maintaining "residential character"
- Tenant behavior/accountability
- Owner oversight
- Increased safety concerns due to transient nature of short term renters

Potential Benefits

- Alternative form of lodging
- Supports tourism/visitors
- Supplemental income
- Efficient use of structures
- Entrepreneurial opportunity

The City Council initiated a policy discussion in November 2014, followed by another review in September 2015, and has requested staff to continue to explore the need for a legislative change to the Tacoma Municipal Code (TMC) that would create a definition and regulatory and licensing construct for short-term rentals.

D. Existing Regulations:

When renting a bedroom, the activity meets the definition of "lodging house" – a building with not more than nine guest rooms where lodging or lodging and boarding is provided for compensation. This use, which includes bed and breakfasts, is often operated in conjunction with and within a single-family detached dwelling. Lodging is prohibited in the "R-1" District; limited to one guest room in the "R-2", "R-2SRD", and "HMR-SRD"; limited to two guest rooms in the "R-3" and "R-4L" Districts; and in the "R-4" and "R-5" Districts lodging is limited to two units unless a Conditional Use Permit is approved.

When renting an entire house/apartment/condo, the definition of "family" applies – one or more persons related either by blood, marriage, adoption, or guardianship, and including foster children and exchange students, or a group of not more than six unrelated persons, living together as a single nonprofit housekeeping unit. The code does not specifically address duration of rentals in this scenario.

E. Benchmarking:

Portland, OR

Portland, OR has Accessory Short-Term Rental (ASTR), where an individual or family resides in a dwelling unit and rents bedrooms to overnight guests for less than 30 days. ASTRs are allowed in houses, attached houses, duplexes, manufactured homes on its own lot, and accessory dwelling units. The word "accessory" in the title emphasizes that the *primary* use of the residential dwelling is long term occupancy, and only a part of the dwelling unit is used for short-term rental purposes.

Portland's code differentiates between "Type A" rentals – two or fewer units and "Type B" rentals – renting between 3-5 units. Specific to Type "A" rentals: The units are only allowed in single family dwellings – not apartments or condos. Neighborhood notice is required along with a building inspection. Owner has to reside in the residence at least 9 months of the year. The owners pay a $180.00 fee every 2-years and must pay the City's transient lodging tax of 12.5%.

San Francisco, CA

San Francisco has an Office of Short-Term Rental, and their code requires registration, occupancy of the unit by the owner not less than 275 days a year, maintenance of records for two years, payment of transient occupancy taxes, compliance with the housing code, posting the registration number on the hosting platform's listings, and a clearly printed sign inside of the front door with the locations of all fire extinguishers, gas shut-off valves, fire exits, and pull fire alarms. The application fee and renewal fee every two years is $50.

New York, NY

New York City allows short term rentals, but only permanent residences are allowed to be rented out (i.e., the property must be occupied by the same person or family for 30 or more consecutive days). Short-term listing (under 30 days) in Class A units (i.e., multi-unit buildings) where the host is not present is illegal. Hosts must obtain a license.

Austin, TX

Austin defines Short-Term Rental as the rental of a residential unit or accessory building for less than 30 consecutive days. There is a cap on the number of STR per census tract. The owner must pay a $235.00 annual operating license and hotel occupancy tax. Owner must occupy at least 51% of the time and can only rent the entire unit.

Durango, CO

The vacation rental regulations attempt to control the industry in a way that is appropriate with community needs. Short-terms rentals are allowed in limited zones, with spacing requirements (one per block – first come, first serve), no signage allowed, off-street parking only, notice required (300 ft. radius – two week window for comments), and permitted with the City ($750 application fee).

F. Proposed Approach and Framework for Code Amendments:

It is desirable and necessary to acknowledge and track the new, emerging industry of short-term rentals and proactively address its potential impacts, especially concerning life-safety, liability and neighborhood character. See Exhibit 1 for the proposed approach and framework for Short-Term Rentals.

G. Exhibits:

1. Short-Term Rentals – Proposed Approach and Framework for Code Amendments
2. "Practice Short-Term Rentals", Zoning Practice, Issue No. 10, American Planning Association, October 2015.
3. Municipal Research Services Center (MRSC) Article: “Airbnb: Regulation of Internet-Based Businesses,” August 25, 2014.
4. “Personal Home Rentals”, Washington State Department of Revenue, June 2009.

Attachment 1

SHORT TERM RENTAL STANDARDS

Proposed Approach and Framework for Code Amendments

March 10, 2016 Draft

Definition:

Short Term Rental. The rental of one or more rooms (but not more than 9 rooms) within an owner occupied dwelling, or the rental of an entire dwelling, for less than 30 days. Includes bed and breakfast.

For *all* short term rentals:

- Must pay a one-time registration fee of $250.00. This covers registration and one mandatory inspection. Then an annual fee of $150.00 to cover annual inspection. Purpose of registration/inspections is to confirm minimum building code, map the location, agree to standards, and to obtain owner/contact information.
- A Conditional Use Permit is required if STR is proposed to include accessory activities such as wedding, retirement parties, corporate events, etc.

For short term rentals that involve *rental of individual rooms* within a dwelling:

- STRs that are renting bedrooms only, the STR *must* be owner occupied during rental.
- STRs shall post a clearly printed sign inside of the bedroom door with the locations of fire extinguishers, gas shut-off valves, fire exits, and/or pull fire alarms
- No STR renting 3-9 rooms may be located within 600 feet of another STR renting entire dwelling or renting 3-9 rooms.

For short term rentals that include rental of the *entire* dwelling:

- In addition to the above, when renting the entire dwelling, the dwelling must be owner occupied a minimum of 9 months a year.
- No dwelling STR may be located within 600 feet of another STR renting entire dwelling or renting 3-9 rooms.
- All STRs shall post a clearly printed sign inside of the front door with the locations of fire extinguishers, gas shut-off valves, fire exits, and/or pull fire alarms.

Existing Short Term Rentals:

- Existing STRs have 6 months from date of ordinance to register (including paying applicable fees). Continuation of the STR will be subject to compliance with minimum life safety codes. Except for life safety standards, if an existing STR is determined to be nonconforming to any of the above standards, and provided the STR is registered within 6 months, the STR will be designated nonconforming. To demonstrate an existing STR, owner must provide documentation such as rental records. There will be a $300.00 one-time fee for a nonconforming letter (to cover research and administration time).

Use Table:

EXISTING: *Lodging house*. A building with not more than nine guest rooms where lodging or lodging and boarding is provided for compensation. This use, which includes bed and breakfasts, is often operated in conjunction with, and within a single-family detached dwelling.

	1 room	2 rooms	3-9 rooms	Dwelling*
R-1	N	N	N	?
R-2	P	N	N	?
R-2SRD	P	N	N	?
HMR-SRD	P	N	N	?
R-3	P	P	N	?
R-4L	P	P	N	?
R-4	P	P	CU	?
R-5	P	P	CU	?
T	P	P	P	?
C-1	P	P	P	?
C-2	P	P	P	?
URX	P	P	P	?
NRX	CU	CU	CU	?
RCX	P	P	P	?
NCX	P	P	P	?
UCX	P	P	P	?
HMX	P	P	P	?
*Code is silent related to short term rental of entire dwellings				

PRPOPOSED: *Short Term Rental*. The rental of one or more rooms (but not more than 9 rooms) within an owner occupied dwelling, or the rental of an entire dwelling, for less than 30 days. Includes bed and breakfast.

	1-2 rooms	3-9 rooms	dwelling*
R-1	P	N	P
R-2	P	N	P
R-2SRD	P	N	P
HMR-SRD	P	N	P
R-3	P	P	P
R-4	P	P	P
R-4L	P	P	P
R-5	P	P	P
C-1	P	P	P
C-2	P	P	P
URX	P	P	P
NRX	P	P	P
RCX	P	P	P
NCX	P	P	P
UCX	P	P	P
HMX	P	P	P
*Subject to standards			

ING **PRACTICE** OCTOBER **2015**

AMERICAN PLANNING ASSOCIATION

ISSUE NUMBER 10

PRACTICE SHORT-TERM RENTALS

Peering into the Peer Economy: Short-Term Rental Regulation

By Dwight H. Merriam, FAICP

You will recall, or if you are a millennial (18 to 34 years old), you might have read about the mantra that James Carville dreamed up for President Bill Clinton's 1992 campaign: "It's the economy, stupid."

Today, for planners, thanks to the entirely new perspective brought to us by the millennials, our theme must be "It's the sharing economy, stupid." It is called variously collaborative consumption, the peer economy, and the sharing economy. More than half of millennials have used sharing services. It is permeating our daily lives in many ways.

This new ethic about our relationship to things, to transportation, to where we bed down, and even to other people has taken us away from owning and exclusively using, to not owning, not possessing, and not using alone. We see the sharing economy in three broad spheres—transportation, goods and services, and housing. While our focus here is on short-term rentals, it helps to understand the larger context for "home sharing."

Dwight H. Merriam

This four-bedroom colonial home in Wetherfield, Connecticut, rents for $385 per night, with a four-night minimum stay.

RIDE-SHARING REVOLUTION

Transportation may be the most obvious and most pervasive face of the sharing economy. Millennials own fewer automobiles than other age cohorts. Millennials purchased almost 30 percent fewer cars from 2007 to 2011 (Plache 2013). Why? Because they use short-term car rentals, public transportation, and ride-sharing services. They are less likely to get driver's licenses. One-third of 16 to 24 year olds don't have a driver's license, the lowest percentage in over 50 years (Tefft et al. 2013). At the same time, so we don't get too carried away with this trend, as the millennials age, they will buy more cars. Forty-three percent said they are likely to buy a car in the next five years (Kadlec 2015).

Ride sharing as a generic term encompasses short-term rentals, making your car available to others, sharing rides, and driving or riding in taxi-like services brokered online through companies like Uber.

Instead of owning a car, you can rent one on a short-term basis from companies such as Zipcar and Enterprise Rent-A-Car. Why own a car when you can conveniently pick one up curbside and use it to run errands for a few hours?

Sharing a ride and splitting the cost is made easier with services like Zimride (also by Enterprise Rent-A-Car), which links drivers with riders at universities and businesses. You boomers will remember the ride-share bulletin boards on campus. Same thing.

Got a car, not making much use of it, and interested in making some money? You can make it available to others on a short-term basis through peer-to-peer car-sharing services including Getaround, which presently operates in Portland, Oregon; San Francisco; San Diego; Austin, Texas; and Chicago. They will rent your car for you while you are away. Cars are covered with a $1 million policy, and they even clean it for you. RelayRides connects neighbors to let them rent cars by the hour or the day, and if you're traveling more than 14 days, they will take your car at the airport, rent it for you, and pay you. You can even do it for boats with Boatbound. With the help of Spinlister, you can connect with others and rent a bicycle, surfboard, or snowboard.

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Want to make some money by driving others around in your car, or are you a rider who wants to be driven? Just about everyone has heard of Uber, the leader in this form of ride sharing, which includes other services such as Lyft and now Shuddle for ferrying children around and Sidecar for both people and packages. Wireless communications, the Internet, and smartphones have made such ride-sharing and delivery services possible. This is a big deal. Lyft and Uber are worth $2.5 billion and $50 billion (more than FedEx and 405 companies in the S&P 500) respectively (Dugan 2015; Tam and de la Merced 2015). And want to be a driver but don't have a car? You can rent one from Breeze just for that purpose.

GOODS AND SERVICES PEER TO PEER

Beyond transportation, the sharing economy extends to relationships between people and service providers. There is peer-to-peer or collaborative consumption through services like TaskRabbit and Skillshare which provide help, paid or bartered, or sometimes free. Instacart will grocery shop for you and claims it will deliver to your door in an hour. You can be a shopper and delivery person for them, making up to $25 an hour.

NeighborGoods lets you share all those things you have but use so little, from leaf blowers, to pressure washers, to . . . well, take a look in your garage, that place where you used to park your car. If you live in Austin, Texas; Denver; Kansas City, Missouri; Minneapolis; or San Francisco, Zaarly seeks to create a marketplace to help freelance home-service workers connect with home owners.

There seems no end to the sharing. Fon, touting over 7 million members, lets you share your home WiFi in exchange for access. The Lending Club connects borrowers and investors, enabling, so they say, better rates than credit cards and more return for lenders than what banks offer. Over $11 billion has been borrowed since it started in July 2007, with investors earning a median of 8.1 percent. Poshmark lets you show your unneeded clothing in a virtual closet and get linked with people who share your sense of style. You can even share your dog, or become a sitter, with DogVacay and Rover helping you find a local dog sitter to care for your dog at your home or theirs.

The power of the Internet in facilitating collaborative consumption was probably best evidenced first when eBay and Craigslist provided an online marketplace never experienced before. Today, we have web-based services like Freecycle where people can post things they don't want, the remnants of our overconsumption, and others can take that flotsam and jetsam for free. Yes, for free. It solves the donor's solid waste disposal problem and provides free goods for the takers.

SHARING THE ROOF OVER OUR HEADS

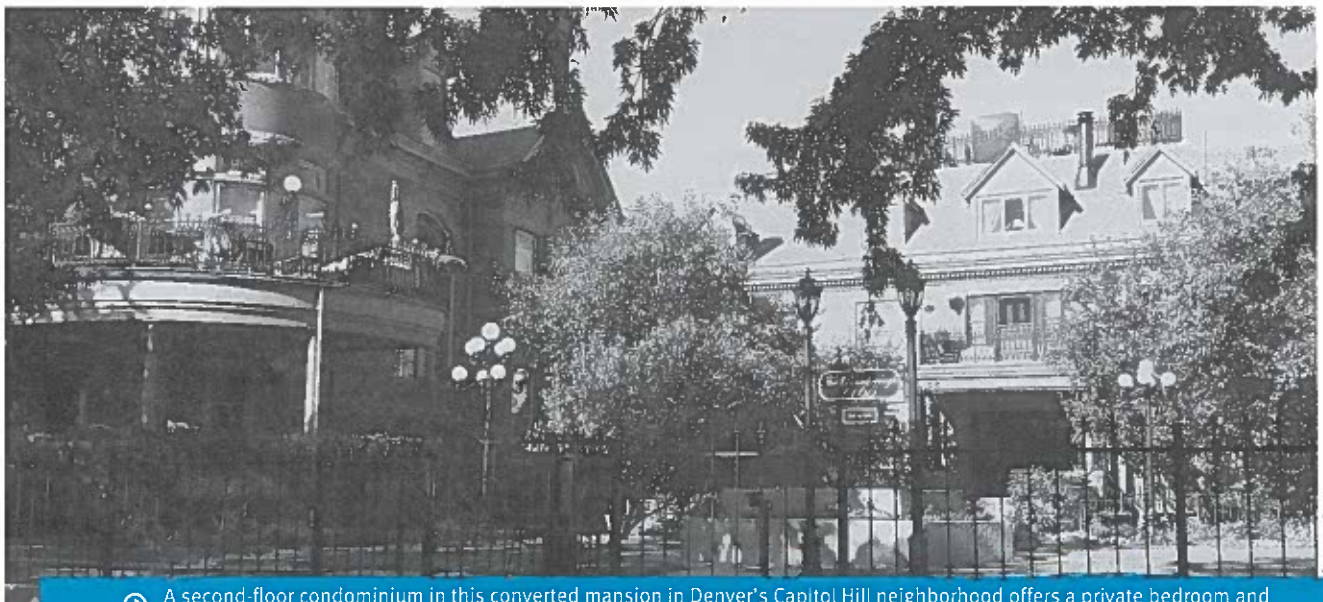
That brings us to the subject matter of greatest interest to planners—the sharing of space. Maybe it began with the sale of timeshares in the United States in 1974. These fractional interests have proved difficult to sell. Short-term vacation rentals emerged as a better way for many, linking property owners with vacationers through companies like HomeAway and its numerous related entities, claiming over one million listings. FlipKey does much the same with what it says are over 300,000 listings in 179 countries.

But Airbnb goes beyond vacation rentals. You can rent a shared or private room for a night, a whole house, an apartment for your exclusive use for a week, a British castle (Airbnb says it has 1,400-plus castles), a teepee, an igloo, a caboose, or an eight-foot by 14-foot treehouse in Illinois ($195 a night) if you wish.

The company, originally "AirBed & Breakfast," was founded in 2008 by Brian Chesky, Joe Gebbia, and later Nathan Blecharczyk. It began when Chesky and Gebbia, to help pay their rent, rented sleeping accommodations on three air mattresses in their San Francisco apartment living room and made breakfast for the guests (Salter 2012). The company is now worth $25.5 billion and joins the ranks of the rest of the great ideas we wish we had thought of first (O'Brien 2015).

GOOD OR BAD?

Are short-term rentals good or bad for your community? Like so many things, it depends.



Brian J. Connolly

A second-floor condominium in this converted mansion in Denver's Capitol Hill neighborhood offers a private bedroom and bath rental for $105 per night, with a two-night minimum stay.

Sorell E. Negro

This three-bedroom home near Miami's Coconut Grove rents for $325 per night, with a five-night minimum stay.

Affordable Housing

Short-term rentals (STRs) increase the stock of furnished, short-term accommodations. Because many of the rentals involve renting a room in a permanently occupied dwelling, they are often less expensive than commercial lodging. The benefit for home owners or long-term tenants who host STR guests is additional income, which can help offset mortgage or rent payments.

Some contend that STRs may exacerbate the shortage of lower cost rentals because landlords, attracted by the higher revenue stream from STRs, are taking apartments out of long-term rentals, especially in tight markets like New York and San Francisco (Monroe 2014; Moskowitz 2015). Others say high tenant demand and demographics are the cause of the problem, not STRs, which are a small share of the market (Lewyn 2015; Rosen 2013).

Aging in Place

Short-term rentals of rooms in homes and apartments not only provide additional revenue for those aging in place, but they may provide an opportunity for sharing of chores and bartering for services, just as accessory apartments do. This can enable older people to stay in their homes longer before transitioning to an independent or assisted living facility.

Commercial Lodging

The only possible benefit of STRs with regard to existing commercial lodging is that it may stimulate competition and lower prices for the consumer. The negatives are several. Short-term rentals may reduce commercial lodging revenues. In many situations STRs have an advantage over commercial lodging because the STRs do not pay the occupancy taxes paid by commercial lodging. Short-term rentals generally do not need the service workers employed in commercial lodging. Unions and service workers often oppose STRs.

Robert H. Thomas

This condo hotel in downtown Honolulu includes owner- and long-term renter-occupied units, privately owned units available for daily rental through the building's hotel operator, units owned by the hotel operators, and privately owned units available for short-term rental through Airbnb and similar sites.

State and Local Government

Revenues to state and local government may go down as a result of STRs because, as noted, such rentals usually do not pay the occupancy and other taxes levied on commercial lodging. Airbnb does provide 1099 forms to hosts to report their income, and it has begun collecting and remitting hotel and tourist taxes in San Francisco; San Jose, California; Chicago; and Washington, D.C. (Hantman 2015).

Health and Safety

Much of the STR market today is unregulated. Those who rent typically do not have their premises inspected to determine compliance with health, building, housing, and safety codes. For its part, Airbnb does clearly state in its terms of service that some localities have zoning or administrative laws that prohibit or restrict STRs and that "hosts should review local laws before listing a space on Airbnb."

Airbnb also provides a guide to responsible hosting on its website, and what they do address is good guidance for local planners and regulators, and thus worth reading. How many hosts read and follow up on the suggestions is another matter. Airbnb's list is still a good starting point for local action.

Many STR hosts do not have home owners and liability insurance to cover losses that may result from occupancy. There is a life safety issue here, and in the event of death, injury, or property damage, there may not be insurance coverage or sufficient assets available to cover the liability.

AN OUNCE OF PREVENTION IS WORTH A POUND OF CURE

So said Benjamin Franklin, and it is apt here. You need only take a few relatively easy steps to get out ahead of the potential problems with STRs and capitalize on the good that such rentals can provide your community.

Moratorium

This is not a recommendation, but something worth considering. As you work down this list of

steps you will have the sense that you need to do six things at once. You do. One way to get a grip on it is take a "planning pause" moratorium on all STRs for, say, six months, during which time no one can rent. However, given that the number of such rentals in many places is still relatively small, it is unlikely that much harm will come from letting them continue on while you plan and prepare to regulate. It may not be worth the effort to have a moratorium. A moratorium takes time—for drafting, maybe some legal advice, and the expenditure of political capital in most cases—and may cause some pushback from those already renting, all of which may cost more than the planning pause is worth. Moratoria sometimes serve only to delay the inevitable hard work and are often extended. Back to Ben Franklin: "Don't put off until tomorrow what you can do today."

Education

Learn what is available out there now by going to all of the websites and services that you can find, most of which are identified here. Look online to see what STRs are being offered in your community. You may be surprised at how many of your friends and neighbors are already in the STR business. Don't forget to check Craigslist as well, and use an online search engine, such as Google, with a few key terms, like "rentals Anytown" and "house-sharing Anytown," to find other STR activity.

Conduct educational sessions in your community ("Everything You Need To Know About Short-Term Rentals") even before trying to regulate, to sensitize present and potential hosts to the need for proper code compliance, fire prevention, emergency response, following rules for rent controlled units, first aid, protecting privacy (e.g., disclosing security cameras), insurance coverage, parking, noise, smoking, pets, childproofing, operation of heating and ventilating systems (including fireplaces and heating stoves), safe access, occupancy limits, deciding what to tell neighbors, home owners association approval, tax obligations, and any required zoning approvals. These sessions may also provide an opportunity to learn who is renting and to connect with them. Consider establishing a section of your municipal website as a resource portal. You will not have all the answers to all the questions as you start, but you need to start.

Planning

Yes, planning. The rational planning model in its simplest terms is what do you have, what do you want, and how do you get it. You need to know who is renting and what is being rented to whom for how long. You need to determine what you may expect in the future. What do you think the demand is for STRs, in what mix of accommodations, and for what length of tenancy? This will prove useful to deciding whether you need to limit the number of units available for STR and to regulate the length of occupancy.

Regulate

Regulation probably will come in two forms: licensing of individual hosts to insure code compliance and general regulation (either through zoning or licensing standards) as to location, number of units, and terms of tenancy. You will have to draw the line somewhere as to what is an STR and what is simply an unregulated rental.

Conduct educational sessions in your community even before trying to regulate, to sensitize present and potential hosts to the need for proper code compliance.

Is an STR a rental of less than 30 days or 90 days, or some other somewhat arbitrary number of days, and everything else is just an unregulated rental? It is for you to decide. You will also want to consider whether owner-occupied STRs might be regulated less strictly, given that the owner is present during the STR.

Austin, Texas, has a robust program with licensing. They carve out three types of STRs: owner-occupied single-family, multifamily, or duplex units (Type 1); single-family or duplex units that are not owner occupied (Type 2); and multifamily units that are not owner occupied (Type 3). There is a three percent limit by census tract on the Type 2 single-family and duplex STRs, a three percent limit per property on Type 3 STRs in any noncommercial zoning district, and a 25 percent limit per property on Type 3 STRs in any commercial zoning district. However, each multifamily property is allowed at least one Type 3 STR, regardless of these limits.

Austin has separate application forms for Type 1 primary, secondary, and partial STRs. All of these forms include owner and property identification information as well as insurance information, number of sleeping rooms, occupancy limit, and average charge per structure. To qualify as a Type 1 primary STR, the unit must be owner occupied at least 51 percent of the time and can only be rented out in its entirety and for periods of 30 days or less. To qualify as a Type 2 secondary STR, the unit must be accessory to an owner-occupied principal residence and can only be rented out in its entirety and for periods of 30 days or less. To qualify as a Type 1 partial unit, namely a room rental, the unit must provide exclusive use of a sleeping room and shared bathroom access. Only one partial unit can be rented out at a time, to a single party of individuals, and for periods of 30 days or less. Owners must be present for the duration of the rental.

The annual licensing fee for STRs in Austin is $235. Applicants must also pay a one-time notification fee of $50.

Of course, as with all regulation there are those with schemes to beat the regulation. There are sites online that advise potential STR hosts to avoid posting on Craigslist, use Airbnb's community and social features to screen the reservations (presumably to avoid enforcement types), "hide your home" by using Airbnb's public view that only shows a large circle within which the unit is located, use word of mouth (or social networking sites) to rent the unit, and "get lost in the crowd" in that there are thousands of listings in large places like Austin (but not in the rural counties, suburbs, and small towns). This advice to those interested in breaking the law suggests that it will not always be easy for code enforcement to find the STRs. Perhaps some notice to all property owners, maybe a note with the tax bill, telling them of the need to register would help. Free, simple, online registration might increase compliance. The critical issue is life safety—you need to find all of these STRs to make sure they are safe.

San Francisco has an Office of Short-Term Rental, and in 2014 the city adopted major revisions to its planning codes for STRs. Those amendments include some useful definitions of hosting platform, primary residence, residential unit, short-term residential rental, and tourist or transient use. The code requires registration, occupancy of the unit by the owner not less than 275 days a year, maintenance of records for two years, certain insurance coverage, payment of transient occupancy taxes, compliance with the

housing code, posting the registration number on the hosting platform's listing, and a clearly printed sign inside of the front door with the locations of all fire extinguishers in the unit and building, gas shut-off valves, fire exits, and pull fire alarms. The application fee and renewal fee every two years is $50. The hosting platform has numerous responsibilities, and there are fines for violations. It is a good model from which to start.

Isle of Palms, South Carolina, regulates STRs through zoning, defining an STR to be three months or less. The city's STR standards limit the number of overnight occupants to six and daytime occupants to 40 (can we assume a wedding party or the like?), set a minimum floor area per occupant, and establish off-street parking requirements.

Monterey County, California, also regulates STRs in its zoning code, defining STRs as rentals between seven and 30 consecutive calendar days. The county considers stays of less than seven days to be a motel/hotel use. The regulation provided for administrative approval of all STRs in operation at the time of its adoption in 1997 if the property owners applied within 90 days. Most of the existing, legal STRs date from that initial round of approvals. Since then, there have been some discretionary approvals, and many STRs are believed to be operating without the required permits.

San Bernardino County, California, permits STRs, defined as rentals of less than 30 days, by zoning in the "Mountain Region" by special use permit exempting multifamily condominium units in fee simple and timeshares with a previous land-use approval. The development standards include code compliance, maximum occupancy based on floor area per occupant and the number of beds, off-street parking requirements, and signage specifications. Conditions of operations address the contents of the rental agreement, posting of the property within the unit with all the conditions of use, and details of fire safety and maintenance, even including a prohibition on the use of extension cords.

Miami Beach, Florida, prohibits STRs in all single-family homes and in many multifamily buildings in certain zoning districts.

Registering all these STRs can be burdensome. Since May 1, 2015, Nashville has issued 1,000 permits, and staff estimates the city still has 800 illegal hotels and motels (Bailey 2015). Wait times for all types permits went from 30 minutes to four hours because of all the STR registrations (Bailey 2015).

THE MAKINGS OF WORKABLE PROGRAM

Overarching issues to consider include the nature of the activity you aim to regulate, the management structure of the STR, and the limits on STR use.

What Is the Nature of the Activity You Will Regulate?

Presumably, hosting a STR is a private enterprise and almost certainly not a commercial lodging business. It is a type of lodging that is largely advertised online, through social media, and on bulletin boards. How will you draw the line between that modest, private activity and a commercial operation?

How Is It Managed?

Does the host have to be the owner, and does the host need to be there during the rental? If not, will you regulate differently in terms of numbers of units allowed, number of days per year, or terms of occupancy?

Karla L. Chaffee

This building in downtown Boston includes a two-bedroom loft apartment that rents for $245 per night, with a seven-night minimum stay.

What Is the Limit of Use?

Will you require the host to live in the residence at least some minimum number of days per year? Will you limit rentals to some maximum number of days per year? Will you define STR as a rental of 30 consecutive days or less and not regulate longer rentals in any way? Will you regulate whole-house, exclusive-use rentals differently, for example by only regulating when the house is rented for less than a week or two weeks? And will you regulate renting of rooms on a different schedule, for example by including room rentals only if they are less than one month and otherwise not regulating longer room rentals, which may be covered by zoning anyway, possibly under the definition of a rooming house? There are so many questions to be answered and so many lines to be drawn.

A checklist of considerations for hosts and public officials for planning, regulation, and operation might include current zoning requirements; applicable codes (sanitation, health, building, occupancy among many); business licensing; business organization (none, limited liability corporation, general or limited liability partnership, Subchapter S, etc.); home owners association covenants and restrictions; other easements, covenants, restrictions on the land; lodging to be offered (room, whole house, host-occupied, length of stay); 911 marking at the street; emergency notifications; food service (permitted? licensed?); federal, state, and local taxes; safety inspections; fire, smoke, CO2, and other detectors; fire extinguishers; child safety; parking; insurance; emergency notifications; water and septic; safe hot water temperature; electrical and plumbing in good repair; pest/vermin-free (especially bed bugs); ventilation, heat, air conditioning adequate; no hazards; no mold or excessive moisture; working doors, windows, and screens; adequate means of egress; linen sanitation; and pool and spa maintenance.

YOU'VE MADE YOUR BED . . .

So goes the idiom from the French as early as 1590: "Comme on faict son lict, on le treuve" (As one makes one's bed, so one finds it). In planning for and regulating STRs, you will indeed be the ones making the bed, and you will have to lie in it. There are benefits and burdens in how you permit STRs and many considerations to be weighed. If you start with life-safety issues first, you can be quite certain the most important aspect of this rapidly emerging sharing economy phenomenon will be addressed. After that, it is the usual planning and politics.

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YOUR COMMUNITY
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10

Airbnb: Regulation of Internet-Based Businesses

August 25, 2014 by Carol Tobin
Category: Licensing and Regulation

It's always something. Cities and counties have been grappling recently with the regulation of rideshare services such as Uber, Lyft, and Sidecar, that have been competing for business with taxis and limousine services. The latest regulatory issue along these lines is the regulation of short-term rentals, including such popular services as Airbnb, VRBO, and HomeAway. These online person-to-person short-term rentals compete with hotels, motels, and bed and breakfasts, and often they don't pay license fees or lodging taxes. The sharing, peer-to-peer commerce concept, which started with services such as Craigslist and eBay, has evolved into a broader "shared economy" with shared rides, homes, and "maker" workspaces.

In the past, some Washington jurisdictions, including San Juan County, Port Townsend, and Westport, have regulated vacation rentals and transient accommodations, generally through zoning and/or business licensing requirements. With the popularity of online short-term home, apartment, and room rentals, pressure has mounted to regulate and collect taxes from these services, and even prohibit these uses, either in all or in part of a jurisdiction. Airbnb, for example, specifically warns property owners of possible local requirements, restrictions, and prohibitions.[i]

In July, Portland made the news when the city council adopted an ordinance to legalize one- and two-bedroom short-term rentals in privately owned homes (Ordinance No. 186736). Hosts must pay a two-year $180 permit fee, get their home inspected every six years, pay city lodging taxes (12.5%), and live on-site at least nine months out of the year. Homeowners may use a third party, such as a professional property manager or a family member, to run their in-home business. Within the next few months, Portland will consider allowing short-term rentals in apartments and condominiums as well. According to Airbnb, in one year the Airbnb service generated $16 million in economic activity in Portland and supported 660 jobs.[ii]

Founded in August of 2008 and based in San Francisco, Airbnb is a community marketplace for people to list, discover, and book short-term accommodations around the world – online or from a cell phone. Airbnb growth has been accelerating: in 2012, it booked 12 to 15 million "spaces."[iii] Airbnb and similar services offer serious competition for traditional hotels, with rates about 20-50% below market price.[iv] In Chicago, short-term rentals generated $108

million in overall economic activity in 2013, with $70.6 million directly attributable to visitor spending on short-term rentals and related expenses, such as food, recreation, and transportation.[v]

While, to our knowledge, no Washington jurisdictions have enacted ordinances explicitly to address home-share services, some tourism-oriented cities and counties (as noted above) have had provisions in place for a while addressing short-term rentals. So, we can learn from Portland and other cities that have been facing this issue head-on. In June of this year, the U.S. Conference of Mayors issued a letter of support for innovative companies that participate in the sharing economy, including services such as Airbnb.[vi]

In addition to Portland, Austin, TX, Palm Desert, CA, Myrtle Beach, SC, and Madison, WI have passed ordinances regulating these short-term rental services. Communities that are currently tackling this issue include San Francisco, Boston, New York, and New Orleans, as well as smaller cities like Berkeley and Malibu, CA, Grand Rapids, MI, and Roanoke, VA. In 2011, Florida passed a law that prohibits local governments from banning short-term rentals. Some cities like Charleston, SC have even prohibited short-term rentals. In Los Angeles, the city issued a memorandum stating that city residents may not rent out their apartments and homes for fewer than 30 days if they live in what the planning department classifies as a purely residential neighborhood. In New Orleans, the city council adopted a ban on unlicensed short-term vacation rentals.

If your jurisdiction is considering regulations to address short-term vacation rentals, MRSC would be interested in hearing from you (email: ctobin@mrsc.org).

Other Resources

The following are some additional resources that address issues associated with the regulation of Airbnb, VRBO, HomeAway, and similar short-term rental services:

- "Airbnb At The Tip Of The Spear Of The Regulatory State Versus Innovators," *Forbes*, June 18, 2014 - Discusses regulation of Airbnb and other Internet-based industries

- Airbnb Policy Blog, Airbnb – Latest news on regulatory and policy issues

- "Regulation Will Not Kill Airbnb, Says Harvard Historian Nancy Koehn," WGBH News, July 22, 2014 – Argues that the push to regulate Internet services like Airbnb will not have a major negative effect on the sharing economy

- Short Term Rental Advocacy Center – Promotes best practices in short-term rental regulation; includes links to articles and case studies

- Short Term Rental (STR) Licensing Requirements, Austin, TX – Defines an STR as the rental of a residential unit or accessory building for less than 30 consecutive days (requires $285 operating license fee, also payment of hotel occupancy tax). There is a cap on the number of STRs allowed in each census tract of non-owner occupied properties.

Endnotes:

[i] See "What legal and regulatory issues should I consider before hosting on Airbnb?" Airbnb.

[ii] Airbnb 2014 press release.

[iii] “Airbnb: A Spare Room for Debate,” by Larry Downes, Harvard Business Review Blog Network, June 26, 2013.

[iv] Id.

[v] “Studies Find STRs Boost Jobs And Local Economies in Chicago and St. Joseph,” Short Term Rental Advocacy Center, March 13, 2014.

[vi] Letter in Support of Previous USCM Policy, Airbnb Public Policy Blog.

About Carol Tobin
Carol has more than 25 years of experience as a planner and consultant to local governments in Washington State. Carol’s areas of expertise include neighborhood planning, historic preservation, tourism, urban design, and environmental planning. Carol also has a library background and started at MRSC as a librarian.

WASHINGTON STATE DEPARTMENT OF REVENUE

Personal Home Rentals

JUNE 2009

HOME RENTALS

Many property owners are not aware that they may be required by law to collect and remit retail sales tax, and possibly other lodging taxes, if they rent out their homes for periods of less than 30 days. These short term rentals are referred to as "transient rentals." This fact sheet contains important information for people who rent out their personal homes, including condominiums and time share units, located in Washington.

TRANSIENT RENTAL BUSINESS

Anyone who intends to regularly engage in a transient rental business must collect and report taxes. Examples of intent to engage in the transient rental business include advertising the availability of your personal home for transient rental in a newspaper, on the Internet, or hiring a property manager to handle the rental of your home.

The Department of Revenue will presume that if you rent your home three or more times in a year for periods of less than 30 days each you are engaged in a taxable business activity. A long term rental where the guest contracts in advance to stay more than 30 days is not a taxable business activity and is not counted in determining the threshold for collecting and reporting taxes. If you are in the transient rental business, you must register with the Department and collect and remit retail sales tax and lodging taxes on all transient rentals. The tax is reported and paid by filing a state excise tax return. Once registered with the Department, a tax return will be mailed to you.

TAX OBLIGATIONS

Tax must be collected on transient rentals during the first calendar year in which you exceed two transient rentals. The tax is collected the third time the property is rented in the first year. All subsequent years, even if you only rent your home once or twice, tax must be collected and reported on all transient rentals.

COLLECTING TAXES FROM YOUR RENTERS

Both the state and local sales tax rate must be collected from guests at the time they are billed for the rental. The state rate is 6.5 percent, and the local rate depends upon where the rental property is located. Local sales tax rates range from 0.5 to 3.0 percent.

In addition to the regular sales tax, the Special Hotel/Motel Tax may apply at rates from 1.0 to 5.0 percent in certain areas. Other lodging taxes also apply to businesses with multiple units, but these do not currently apply to single home rentals. These include the Convention and Trade Center Tax and the Tourism Promotion Area Charges.

Department of Revenue
Washington State

PROPERTY MANAGERS MUST COLLECT AND REMIT TAXES ON THE HOMEOWNER'S BEHALF

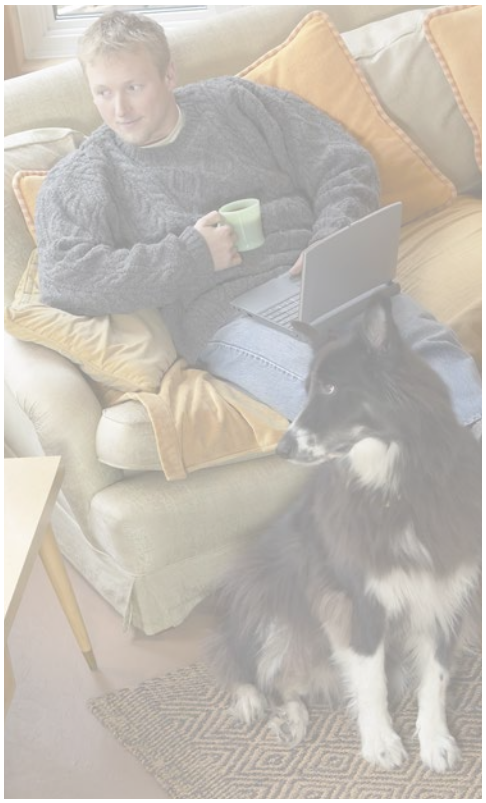
While you are not required to collect sales tax until the third transient rental in a calendar year, all transient rentals through property management services are taxable. The property manager is required to collect sales tax and lodging taxes on your behalf, even if there is only one rental listed with the property management in the first year. You should be aware that as a property owner, you may be liable for any taxes not collected by the property manager.

Examples of Taxability

	Rental Scenario	Tax Obligation
1st year	John bought a cabin as a retirement home on San Juan Island. He considered renting the cabin when he would not be using it. John had no idea how often he might rent it, but by word of mouth, he rented it out once within the first calendar year for 10 days.	John is not required to register with the Department of Revenue, or to collect sales tax and other lodging tax because he did not intend to rent his cabin out frequently, and he only entered into one rental agreement during the year.
2nd year	John rented the home five times with five separate rental agreements as follows: Rental #1 - 30 days Rental #2 - 32 days Rental #3 - 35 days Rental #4 - 14 days Rental #5 - 21 days	John is not required to register with the Department of Revenue, or collect sales tax/lodging taxes. Only the transient rentals are counted in determining the taxable threshold, and John engaged in only two transient rentals (less than 30 days) during the year.
3rd year	John rented the house four times, each for a period of less than 30 days.	John needs to register at the time he rents out his house for the third rental period during this year. John must collect tax on both the third and fourth rental periods, and remit the collected taxes to the Department of Revenue.
4th year	John rents out his house only once for a period of 29 days.	The very first transient rental is subject to sales tax/ lodging taxes because John exceeded the taxable threshold in year three. Also, for all years after this year, John must collect taxes on all transient rentals.

BUSINESS AND OCCUPATION (B&O) TAX

If you are a property owner you are responsible for paying any "retailing" B&O tax due. This is a tax calculated on gross receipts of the business. The rate is currently 0.471 percent ($4.71 per thousand dollars of taxable rental income). However, you may qualify for the Small Business B&O Tax Credit, depending on the amount of the rental income. For information on the credit, call our Telephone Information Center toll free at 1-800-647-7706, or see our Small Business B&O Tax Credit Table, available online at dor.wa.gov. The information will also be mailed to you in our new business packet once your tax reporting account has been established.



PAYING THE TAXES COLLECTED

Taxes are reported by filing a state excise tax return. On the return report your taxable rental income and calculate state and local taxes due. You will receive excise tax returns regularly once you register with the Department.

Registering with the Department of Revenue

You can register one of two ways:

- Go to our web site, dor.wa.gov, and click on "Get a form or publication." Under Forms click on "Master Business Application."
- Call us toll free at 1-800-647-7706 to request an application. Complete and send it to the address noted on the application.

Once registered, you will receive a business license and a Unified Business Identifier (UBI) from the Department of Licensing. This UBI number is a unique number assigned to you, and it is the "registration number" used for reporting to the Department of Revenue.

Electronic Filing – Reporting the Fast and Easy Way

File and pay your returns electronically using E-file. It is the fastest and easiest way to report. We also offer a variety of electronic payment methods. To learn more, go to our web site at dor.wa.gov and click on "File my taxes online," then click "Learn about E-file benefits" and watch the video. If you have questions or need assistance, you may also call our tax specialists at 1-800-647-7706.

LODGING TAXES

Examples of Lodging Taxes by location (excluding taxes currently imposed on transient rental facilities with multiple units):

City	Retail Sales Tax	Special Hotel/ Motel Tax	Calculation example*
Spokane	0.087	None if fewer than 40 rooms	$52.20 ($600 x 0.087)
Seattle	0.095	None	$57.00 ($600 x 0.095)
Leavenworth	0.080	0.03	$66.00 ($600 x 0.11)
Vancouver	0.082	0.02	$61.20 ($600 x 0.102)
Ocean Shores	0.083	0.03	$67.80 ($600 x 0.113)

* The calculation examples reflect taxes due assuming a single unit rented for $600. The tax rates reflect rates in effect as of the date of publication, and are subject to change.

TELEPHONE INFORMATION CENTER

1-800-647-7706

WEB SITE

dor.wa.gov

REQUEST FOR LETTER RULING

If you would like to request a ruling on the taxability of your activities, write to:

Taxpayer Information and Education
Washington State
Department of Revenue
PO Box 47478
Olympia, WA 98504-7478

NOTE: Personal property taxes may apply to the value of your household items, including furniture, appliances, artwork, and any other item of tangible personal property used to furnish a home that is rented out. However, there may also be certain exemptions available. Contact your county assessor for details on how to report the personal property, and how to claim any exemptions from the tax.

To inquire about the availability of this publication in an alternate format for the visually impaired, please call (360) 705-6715. Teletype (TTY) users please call 1-800-451-7985.

The information contained in this fact sheet is current as of the date of this publication and provides general information about Personal Home Rentals. It does not cover every aspect of the tax, nor does it alter or supersede any administrative regulations or rulings issued by the Department of Revenue.

Department of Revenue
Washington State

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Agenda Item E-1

City of Tacoma
Planning and Development Services

To:	Planning Commission
From:	Reuben McKnight, Historic Preservation Officer
Subject:	**Enhanced Demolition Permit Review**
Date of Meeting:	March 16, 2016
Date of Memo:	March 10, 2016

The City of Tacoma is currently working to develop improved processes for the review of demolition permits that may affect historically significant properties. The current focus of these efforts is the City's Environmental Review code (TMC 13.12), which provides the clearest mechanism and authority to achieve this objective.

Many jurisdictions utilize SEPA for assessing and mitigating adverse effects to historically significant properties resulting from demolitions and development projects, whether through administrative procedures or code language.

The key objectives are:

- To comply with the State Environmental Policy Act
- To provide additional clarity and guidance for agency reviewers and project proponents regarding the identification of historically significant properties in the City of Tacoma
- To ensure appropriate review when historically significant properties that are below the SEPA exemption threshold are proposed for demolition
- To provide clear and consistent guidelines for appropriate mitigation steps when a historically significant property is demolished.

This topic will be presented to the Planning Commission for discussion and feedback in April.

If you have any questions, please contact me at 253-591-5220 or reuben.mcknight@cityoftacoma.org.

Attachment

c: Peter Huffman, Director

Enhancements to Demolition Permit Review

Communication Item – March 16, 2016

A. Scope of work:

Amending the State Environmental Policy Act regulations (TMC 13.12) pertaining to the review of demolition permits for historically significant properties.

B. Goals:

The goals of these policy amendments include:

- To comply with the State Environmental Policy Act
- To provide additional clarity and guidance for agency reviewers and project proponents regarding the identification of historically significant properties in the City of Tacoma
- To ensure appropriate review when historically significant properties that are below the SEPA exemption threshold are proposed for demolition
- To provide clear and consistent guidelines for appropriate mitigation steps when a historically significant property is demolished.

C. Background:

Although the City of Tacoma requires review by the Landmarks Commission for properties within local historic and conservation districts, and individual City Landmarks, it does not require review for non-designated buildings that are historically significant but that are not local landmarks.

Washington State Administrative Code (WAC) 197-11 is the enabling legislation for SEPA review. Under state law, local jurisdictions can set thresholds for exempting certain projects from SEPA requirements. In Tacoma, the threshold for demolition is 12,000 SF. There has been concern from the community and City Council that the existing regulations do not provide sufficient oversight of demolition permits, which are currently issued "over-the-counter" when the permit involves a structure that is less than 12,000 square feet.

However, there is no SEPA exemption for the demolition of historically significant properties under state law. Certain jurisdictions within the State of Washington do review demolition permits for potential impacts to historically significant structures. For example, the City of Seattle has lower SEPA exemption thresholds for demolition permits – demolitions that exceed the exemption are referred to the Historic Preservation Officer. In Bellingham, all demolition permits for structures 50 years of age or older are reviewed for historic significance using SEPA's review authority.

Past discussions in Tacoma regarding historic demolition review have considered the review of demolition permits for all buildings 50 years of age or greater, or for buildings included in the City's Historic Properties Inventory. The Historic Preservation Office maintains a

Historic Properties Inventory, which was initially established in 1979 and has been periodically updated by the state historic preservation office and the City of Tacoma, dependent upon the availability of funding. Most recently, in 2011, the Historic Preservation Office contracted a consultant to create a predictive model to create a baseline inventory of "potentially significant" historic buildings. This database contains approximately 39,000 buildings ranked into categories of predicted significance based on age, construction type, condition and other information. This database could be linked to the GIS maps used by Planning and Development Services for permitting and project review purposes.

In addition to developing a mechanism for the review of demolition proposals, it is also important to consider what the outcomes should be when a property to be demolished is determined to be historically significant. Currently there are no standard approaches to mitigation included in the regulatory code, creating potential uncertainty for project proponents, the general public and City staff. Anecdotal evidence indicates that required mitigation steps vary widely from project to project and from jurisdiction to jurisdiction. However, there are standard practices that are recommended by the Washington State Department of Archaeology and Historic Preservation (DAHP) that could be adapted to the Tacoma Municipal Code. The objective would be to establish clear, predictable, reasonable and meaningful mitigation procedures to be employed when appropriate.

D. Existing Regulations:

Tacoma Municipal Code 13.12 provides the basis for environmental review under SEPA and adopts by reference the Categorical Exemptions WAC 197-11-800.

There are several areas in the municipal code where review of demolition of historic buildings is currently required:

- TMC 13.05.048 outlines the review process for the demolition of locally designated historic structures (City Landmarks and buildings within local historic overlay zones), while a companion section in TMC 13.07 provides the standards for review during the demolition process.
- TMC 13.05.115(2) requires consultation with the Historic Preservation Officer for residential infill projects that would adversely affect historic resources, including potential designation of eligible structures to the Tacoma Register of Historic Places.
- TMC 13.06.140 requires consultation with the Historic Preservation Officer for Planned Residential Development Districts that would adversely affect historic resources, including potential designation of eligible structures to the Tacoma Register of Historic Places.
- TMC 13.05.045 prohibits small lot subdivision that would result in the demolition of a historically contributing structure within a locally designated historic district.
- TMC 13.10 and the South Downtown Plan require a Cultural Resource Management Plan required for shoreline projects affecting known historic resources (including potentially eligible structures).

E. Key issues:

- Lack of a review process for determining impacts to historic resources from demolition. Currently there is no clear review process for the assessment of adverse effect resulting from the demolition of (non-listed) historically significant structures in Tacoma, although review of impacts to historic resources is a general component of SEPA review.
- Identification of historic resources affected by proposed demolitions. These may include properties identified in the City's Historic Property Inventory or predictive model.
- There is also no defined policy or regulations for mitigation of demolitions – which could include documentation, salvage, avoidance or other means.
- Ensuring proper public notice for demolition of potentially historic resources.
- Balancing the need for adequate project review with the need for efficient and predictable permit review.

F. Timeline:

Below is a tentative timeline.

February	Briefing to the Landmarks Commission
Feb – April	Policy development/Stakeholder input
April	Landmarks Commission recommendation
April	Briefing to the Planning Commission
April	IPS Committee Briefing
May	Planning Commission Public Hearing
June	Planning Commission Recommendation