



TO: Elizabeth Pauli, City Manager
FROM: Peter Huffman, Director, Planning and Development Services
Steve Atkinson, Principal Planner, Planning and Development Services
SUBJECT: Final Reading of Ordinance – November 12, 2019 Re: Tideflats Interim Regulations
DATE: November 7, 2019

At the City Council meeting on November 12, 2019, the City Council will be considering the final reading of Ordinance No. 28619 for the proposed 6-month extension of the Tideflats Interim Regulations. In support of the City Council’s deliberations, staff is providing written responses to questions submitted by the City Council during this review.

1. What is the process for developing regulations to replace the interim ordinance?

There are three primary pathways to adopt permanent regulations to replace the interim ordinance. The following is a brief summary of these paths:

Pathway 1: Complete the Subarea Plan

The current pathway for the resolution of the interim regulations is to conduct the Tideflats Subarea Planning process. The interim regulations were, from the outset, tied directly to the Subarea Plan: the interim regulations ordinance was intended as “a temporary protective measure to prevent vesting of rights under existing zoning and development regulations,” while the City engaged in the planning process. The initial 1-year authorization of the interim regulations, rather than the standard 6-month authorization, was based on the City’s intent to conduct the Subarea Planning process with our partners.

Since adoption of the interim regulations, the City has formalized an Intergovernmental Agreement and Work Plan to guide the Subarea Planning process and to, ultimately, replace the interim regulations. The goal for that process is to have a recommendation to the City Council within two years from the time of the consultant selection. The Steering Committee is currently in the process of selecting a consultant and a consultant contract will be coming to City Council shortly.

Pathway 2: Initiate a Parallel Process

The City Council could initiate a new process, parallel to the Subarea Planning process, to develop replacement regulations to be effective until superseded by the Subarea Plan. This process would follow the standard procedures prescribed by state law and the Tacoma Municipal Code. The Planning Commission would consider regulatory options, develop a proposal, and conduct a public hearing and environmental review prior to forwarding a recommendation to the City Council. This process would likely take between 9-12 months and would occur concurrently with the Subarea Plan process.

Pathway 3: Phased Subarea Plan

During the June 20, 2019 meeting of the Tideflats Steering Committee, Mayor Woodards and Council Member Mello brought forward the Council’s questions regarding the potential to address the issues identified in the interim regulations at an earlier phase of the Subarea Planning process. The Steering



Committee requested that the Project Management Team consider options for a nearer term resolution of the issues. The Steering Committee will be discussing this request at the November 7, 2019 meeting.

The assessment of the Project Management Team is that undertaking a phased approach to the Subarea Plan would entail an amendment to the agreed-upon Steering Committee Work Plan and would likely result in at least a 6-12 month delay in the overall planning effort if a second legislative process were added at a mid-point in the plan development.

Other Considerations:

- **Policy Review:** The development of the interim regulations did not include an extensive Comprehensive Plan policy review or determination of consistency with the Comprehensive Plan, as the intent was to put a temporary pause on new use and development while policy updates were conducted through the Subarea Planning process. A permanent ordinance would require a more extensive policy review to ensure consistency with the Comprehensive Plan.
- **Environmental Review:** The City did not conduct a full environmental review (SEPA) as part of the development of the interim regulations. The Subarea Plan will include a full Planned Action Environmental Impact Statement as part of the plan development. The development of permanent regulations ahead of the completion of the Subarea Plan would require a substantial environmental review.
- **Impact to the Subarea Plan:** If the Council were to move forward with a separate process to develop or approve permanent regulations, that process will likely delay the Subarea Plan and result in impacts on staff's ability to concurrently manage other work program projects, as well as create the potential for community confusion between parallel processes.

2. What was the Planning Commission's recommendation for the expansion of existing uses and what findings supported that recommendation?

The Planning Commission considered expansion of existing uses under two aspects of the interim regulations: 1. Heavy Industrial Use Restrictions, and 2. Non-Industrial Use Restrictions. The following is a summary of the Commission's Findings and Recommendations for each.

Expansion of Heavy Industrial Use Types

These limitations apply only to the following five use types: oil and liquefied fossil fuel industries, chemical manufacturing, coal facilities, smelting, and mining and quarrying. The interim regulations prohibit the establishment of new uses and allow the expansion of existing uses without a specific limitation.

This issue of expansion of existing heavy industrial uses was one of the central discussion points throughout the Planning Commission and City Council review. The Commission initially released a public review document that included no limitations on the expansion of existing uses. The proposed



limitation on existing uses was introduced by the Planning Commission after the public hearing, for several reasons:

- Public comment overwhelmingly identified expansion of existing uses as a central issue of concern;
- The likelihood of new development is perhaps greater from existing uses than entirely new uses as the existing uses already have the supportive infrastructure in place;
- Expansion of existing uses can be so significant as to be equivalent to the introduction of an entirely new use;
- A limitation on new uses while allowing unlimited expansion of existing uses could simply enable businesses to creatively circumvent the restrictions on new uses;
- Limiting expansion helps to preserve an existing baseline for environmental review.

Throughout the initial adoption process, and subsequent extensions, multiple approaches for regulating the expansion of existing uses were considered, including:

- 10 percent expansion allowed outright, and up to 20 percent expansion allowed subject to a conditional use permit (staff recommendation to Planning Commission);
- 10 percent cumulative limit, subject to a conditional use permit (Planning Commission recommendation);
- Unlimited expansion, subject to a conditional use permit (introduced as a Substitute Ordinance during the first extension review, but not approved by Council);
- Limits on expansion based on parking quantity and trip generation (not recommended);
- Unlimited expansion allowed outright under existing regulations (approved by Council).

The Commission opted to recommend a 10 percent cumulative limitation given existing precedent: The 10 percent limit was based on established City allowances in the nonconforming use code and was designed to apply to the existing facilities' capacity for storage, production, and throughput.

Non-Industrial Use Types

These limitations applied to certain types of residential uses, agriculture, hospitals, schools, high intensity park and recreation facilities, and other cultural institutions. The purpose of these regulations is to limit the conversion of industrial lands to non-industrial uses that could reduce the available industrial land supply and interfere with industrial operations.

Limitations: The Commission's recommendation was to apply the City's established non-conforming use provisions in the Zoning Code. The City's standard non-conforming use regulations allow expansion of existing uses up to 10 percent, based on parking quantity and trip generation. Expansions can exceed the 10 percent threshold with a conditional use permit and subject to additional criteria.

The Commission recommended a limit on existing non-industrial uses in part to maintain an equitable approach to regulating existing uses under the interim ordinance.



General Summary of the Planning Commission's Findings

There is a likelihood of development during the planning process:

- The Puget Sound Regional Council is forecasting substantial growth in regional industrial employment, while industrial lands are shrinking around the region;
- The Port Tideflats is a designated manufacturing/industrial center with a significant share of the region's vacant and underutilized industrial lands;
- Gross U.S. energy exports have risen significantly since 2003, resulting in an increased demand for new bulk storage and export facilities in West Coast ports;
- The national ban on export of crude oil that had been in place since 1975 was lifted in 2015, enabling new markets for export;
- The City received two permit applications for bulk energy storage and production facilities, including the PSE LNG facility and the proposed methanol plant;
- The City has significant existing pipelines and fossil fuel facilities that position the Port Tideflats for continued investment;
- The anticipated length of the planning process increases likelihood of new development activity.

Tideflats area vulnerabilities and sensitive areas:

- **Emergency Response:** According to the City's Tideflats Emergency Response Plan, the Tideflats is the highest risk zone for hazardous material incidents, with a mix of land uses and operations with the potential for serious fire or EMS emergencies. In addition, emergency response times to the Tideflats have increased over the past decade, due to multiple factors, including temporary blockage of roadways, traffic congestion, poor roadway surfaces, road closures, and closures of bridges.
- **Environmental Assets:** The Tideflats area has multiple environmentally sensitive areas, including fish and wildlife habitat, streams, wetlands, and aquifer recharge areas;
- **Environmental Risks:** The Tideflats is an area with potential risks and vulnerabilities of geologic, flood, and other natural disasters, including vulnerabilities to sea level rise;
- **Climate policy:** The 2015 update of the City's Comprehensive Plan, *One Tacoma*, included new goals and policies pertaining to the assessment of climate risks, adaptation measures, mitigation of climate causing greenhouse gas emissions, and the promotion of community resilience strategies.

Maintain baseline conditions for environmental review:

The Tideflats Subarea Plan will include an area-wide environmental review under the State Environmental Policy Act (SEPA). This review will include an inventory and assessment of the existing environmental conditions of the Port/Tideflats as well as different area-wide development scenarios. A pause on certain types of develop during this planning period (non-industrial uses in the Tideflats, new residential development, as well as certain types of heavy industrial uses) helps to ensure a more consistent and stable baseline while the environmental review is being conducted.



3. Since the interim regulations differentiate between existing and new uses, what constitutes an existing use, and does the City consider ownership in that determination?

During the City Council public hearing, public testimony highlighted the recent change in ownership of both U.S. Oil and Targa Sound Terminal (now Seaport Sound Terminal). This change in ownership has prompted questions as to whether a change in ownership of a facility is considered a change in use, for the purposes of determining if an expansion is related to an existing use (which is allowed) or a new use (which is prohibited). Existing uses are uses that have been previously permitted, or were in the permit process at the time of adoption of the interim ordinance. A change in the ownership of land, structures, or a business in the absence of a change in the activity taking place on the land is not a change in use.

4. Does the City have a baseline of environmental conditions for the Port/Tideflats, including the throughput and storage volume of oil and other liquefied fossil fuels? If not, could this information be compiled for reporting to the City Council?

The City does not have a complete baseline of environmental conditions for the Port/Tideflats, though significant baseline data is available. The interim regulations were approved with the expectation that the first phase of the Subarea Plan process would include an inventory and assessment of baseline conditions. It is likely that this assessment will be substantially underway within the next 6-9 months.

While the Subarea Plan will assess the baseline for the Tideflats, there is significant existing baseline environmental data available, though it is not necessarily specific to the Tideflats:

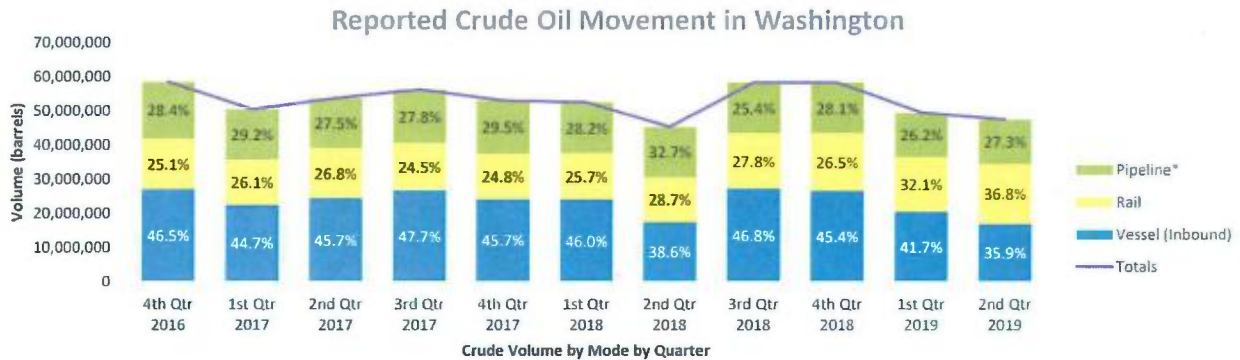
- A citywide Greenhouse Gas Inventory
- Emergency response and traffic congestion assessment
- Critical Areas data, including geologically hazardous areas and flood hazard areas

In addition, the Department of Ecology requires advance notice of oil transfers. As part of this State rule, Ecology is required to publish information collected under the rule to its website on a quarterly basis. The quarterly reports provide:

- Aggregated information on crude oil transported by rail to facilities in Washington.
- Information about crude oil movement by pipeline in or through the state.
- Reported spills during transport and delivery of crude by rail and pipeline.
- Volume of crude oil transported by vessel.



Figure 4 below depicts the reported crude oil movement in Washington by mode. The data shows that overall volumes rose statewide in the second half of 2018 and then tapered off in 2019. However, the data does show that the mode share of crude oil movement has shifted, with an increase in rail transport.

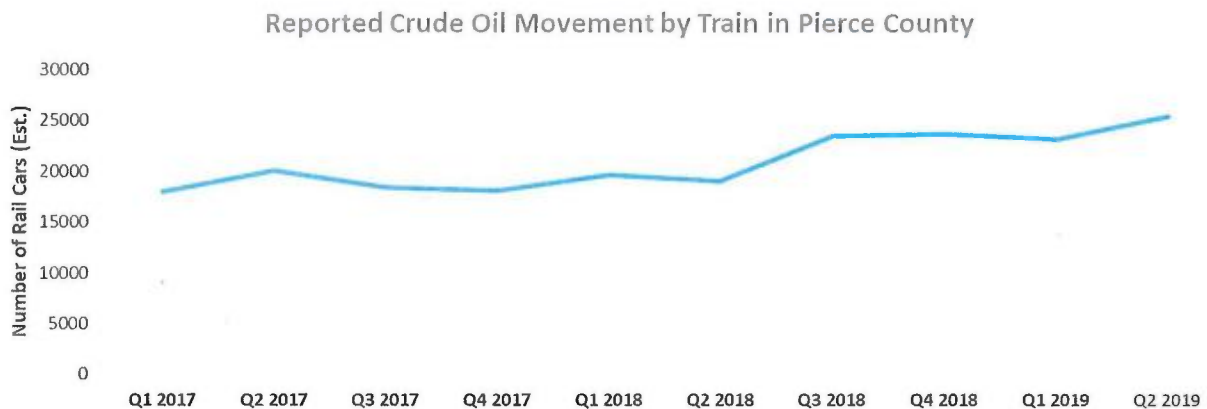


Mode	4th Qtr 2016	1st Qtr 2017	2nd Qtr 2017	3rd Qtr 2017	4th Qtr 2017	1st Qtr 2018	2nd Qtr 2018	3rd Qtr 2018	4th Qtr 2018	1st Qtr 2019	2nd Qtr 2019
Vessel (Inbound)	46.5%	44.7%	45.7%	47.7%	45.7%	46.0%	38.6%	46.8%	45.4%	45.1%	35.9%
Rail	25.1%	26.1%	26.8%	24.5%	24.8%	25.7%	28.7%	27.8%	26.5%	27.0%	36.8%
Pipeline	28.4%	29.2%	27.5%	27.8%	29.5%	28.2%	32.7%	25.4%	28.1%	27.9%	27.3%
Total %	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

*Note: The most recent biannual notices from pipelines were submitted to Ecology for the period from July 1, 2018, through December 31, 2018. For some quarters, Ecology estimated crude oil movement by pipeline for the period based on data provided in previous biannual notices.

Figure 4: Quarterly crude oil movement by mode, October 2016 – June 2019

The chart below depicts the volume of oil movements by train into and through Pierce County over the past couple of years. Consistent with the overall trends within the state, the data show that oil movements by train have been trending up during this time period.



Source: Washington Department of Ecology, Quarterly Crude Oil Movement by Rail and Pipeline reports (Jan. 2017 - June 2019)



Additional data collection may be feasible through City permit review as well as disaggregation of Department of Ecology data to more accurately assess the volume of crude oil transported through the City of Tacoma.

5. Have existing fossil fuel industries applied for permits during the interim period and if so, did the permit result in an expansion of storage or production capacity?

Seaport Sound Terminal (formerly Targa)

During the interim period, Seaport Sound terminal has been permitted for both a dock reconstruction/expansion as well as four new rail spurs on the Taylor Way property. These projects will improve operational efficiency, but are not expected to result in an increase in throughput exceeding that allowed by current clean air permits. However, the projects will likely result in an increase in the capacity of the facility longer term, subject to additional permitting.

U.S. Oil and Refining

Prior to the interim regulations taking effect, U.S. Oil and Refining applied for permits to convert a portion of the existing facility to ethanol production and mixing of biofuels. U.S. Oil permits during the interim period include a Commercial Alteration to install a new foundation, support structure and containment for two product transfer pumps.

NuStar Energy

No significant permit activity during the interim period.

Phillips 66

No significant permit activity during the interim period.

Puget Sound Energy, Inc. (PSE) – LNG Facility

PSE is in the process of constructing a natural gas liquefaction and storage facility in the Tideflats. The project was permitted prior to the interim regulations taking effect and as such is considered an existing use under the City's land use codes. Additional building and mechanical permits for the facility have been issued during the interim period, including an office conversion, interior remodel, right-of-way permits for fencing, and other operations.

For more information, please contact Stephen Atkinson, Principal Planner, at (253) 591-5531 or satkinson@cityoftacoma.org.