




TO: Elizabeth Pauli, City Manager

FROM: Peter Huffman, Director, Planning and Development Services Department 

SUBJECT: **Tideflats Interim Regulations – Planning Commission Recommendation**

DATE: November 2, 2017

On Tuesday, October 17, 2017, the City Council held a public hearing on the Planning Commission's recommendation for the Tideflats Interim Regulations. On Tuesday November 7 staff will be presenting a summary of testimony and public comments. First reading of ordinance is scheduled for November 14, 2017. Staff is seeking direction at the upcoming study session from Council regarding potential amendments to the Planning Commission's recommendation in response to the public testimony. To facilitate discussion, staff has prepared a response to some of the frequently asked questions that have been raised through this process. These questions and responses are attached.

BACKGROUND

The City of Tacoma periodically accepts applications to amend the Comprehensive Plan and Land Use Regulatory Code. As part of the 2017-2018 Comprehensive Plan and Land Use Regulatory Code Amendment Application period, the City received multiple applications/requests for zoning and land use process changes in the Tideflats Area, including the Northeast Tacoma Buffer Zone application, the Council Consideration Request for implementation of the Container Port Element of the City's Comprehensive Plan, and the Director's Rule relating to Expanded Notification for Large Industrial Projects.

In response to the multiple amendment applications, on May 9, 2017, the Tacoma City Council adopted Resolution No. 39723 initiating a subarea planning process for the Port Tideflats. In addition, the Resolution requested that the Planning Commission consolidate the various applications/requests into the scope of work for the Tideflats Subarea planning process and to hereby consider the need for interim regulations in the Tideflats subarea while the subarea planning process is under way.

SUMMARY OF PROPOSED AMENDMENTS:

The Planning Commission's recommended Tideflats Interim Regulations consist of the following elements:

Category 1: Expanded Notification for Heavy Industrial Uses

- These amendments would expand notification of heavy industrial use permits to taxpayers and interested parties.
- The notification distances are expanded to 2500' from the subject parcel. For projects located within a designated manufacturing and industrial center, the 2500' notification distance is measured from the boundary of the applicable M/IC boundary.
- This expanded notification applies to all heavy industrial projects city-wide that require a discretionary permit or SEPA determination.

Category 2: Non-industrial Uses in the Port of Tacoma M/IC

- These amendments would pause certain new non-industrial uses within the Port of Tacoma M/IC. The amendments would apply to the M-2 Heavy Industrial and PMI Port Maritime Industrial zoning districts within the M/IC.
- The specific uses identified include, but are not limited to:
 - Destination/high intensity parks and recreation,
 - Agriculture,
 - Residential uses,
 - Hospitals,
 - Airports,
 - Schools (K-12),
 - Retail,
 - Cultural institutions, and
 - Care facilities.
- Existing non-industrial uses subject to the pause would be considered allowed uses subject to limitations on expansion per TMC 13.06.630 Nonconforming uses.

Category 3: Marine View Drive Residential Development Restrictions

- These amendments would pause all new residential platting and subdivision of land along Marine View Drive.
- New residential development in the interim would be required to provide notice on title disclosing the proximity of the residential units to industrial zoning districts.

Category 4: Industrial Special Use Restrictions

- These interim regulations would pause the establishment of the following heavy industrial uses:
 - Coal terminals and bulk storage facilities
 - Oil or other liquefied fossil fuel terminals, bulk storage, manufacturing, production, processing or refining
 - Bulk chemical storage, production or processing, including acid manufacture
 - Mining and quarrying
- Existing uses as noted above would be considered allowed with limited expansion of 10% storage, production, or distribution capacity during the interim period, subject to a conditional use permit. Other types of expansion and normal maintenance and repair would be allowed.

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

PH:lw

Attachment

A. Frequently Asked Questions



Frequently Asked Questions

1. What is the impact from expanded notification?

- *How many taxpayers would be notified in and within 2500' of the Port of Tacoma MIC and South Tacoma MIC?*
Approximately 3800 taxpayers would receive notice of a permit application or SEPA notice within and around the Port of Tacoma MIC. Approximately 6500 taxpayers would receive notice of a project occurring in or around the South Tacoma MIC. These notices also include adjacent jurisdictions, neighborhood councils, and business districts.
- *What is the cost of a typical expanded notice?*
For a Port of Tacoma MIC expanded notice, the cost is approximately \$1350 plus an additional 10 hours of staff time to conduct the public meeting.
- *How many notices do we expect per year?*
Staff is estimating 10 projects per year, which would result in 20 notices (a second notice is sent of the decision).
- *Who pays for the notice?*
Typically these costs are incorporated into the permit fee. However, the expanded notification is currently being conducted under a Director's Rule and the costs have not been incorporated into the permit fee. The costs are currently borne by the General Fund.

2. How many permit applications has the City received for heavy industrial uses in the past five years? How many are associated with one of the proposed uses?

Data for the past 5 years is inconsistent due to a shift in permitting systems that occurred on January 1, 2016.

For the period since January 1, 2016, staff has received close to 300 permit applications for uses within the M-2 and PMI heavy industrial zoning districts. The majority of these permits are for mechanical, plumbing, or building alterations. These figures include non-industrial uses that may be located within these industrial zones and in some cases the permit applications may not have been completed or approved. The heavy industrial use categories subject to the interim regulations account for approximately 21 of these permit applications in the past year.

In the past five years, these specified heavy industrial uses account for approximately 160 permits. Again, the majority of the permit activity is for permits such as mechanical, plumbing and building alterations. Of these, U.S. Oil and Targa have been the most active applicants, accounting for approximately 110 permit applications over this time period. The high volume of permit activity for these uses appears to be generated by expansions of existing facilities or new building additions that then result in multiple permit applications for the various components of the new construction. Some of the existing uses did not have any documented permit activity over this time period.



3. When does a project becoming “existing”?

The proposed interim regulations distinguish between new and existing uses. This has resulted in questions about how the code would apply to projects either currently in the permit process or under construction. The City currently has multiple projects either in permit review or under construction including the Coski sand and gravel mine, U.S. Oil, and the PSE LNG plant.

The intent of the proposed regulations is that projects that have been permitted, are in the permit process, or are vested, would be considered “existing”. Therefore, the interim regulations would not halt the permitting or construction of a project currently in process. For example, the interim regulations would prohibit a new mine and place a limitation on expansion of “existing” mining and quarrying. In this case, Coski sand and gravel mine would be able continue under existing permits and permit timeframes. If, subsequently, the sand and gravel mine applied for a permit to expand mining operations, that expansion would be considered subject to the adopted interim regulations.

4. How many existing businesses would be potentially impacted by the limitation on expansion? And how many would not?

According to tax and license data, there are approximately 299 business licenses active within the Port of Tacoma MIC and the South Tacoma MIC. As part of the Weekly Report dated October 11, 2017, staff provided two maps and summaries identifying 17 businesses that would likely be impacted by the limitation on expansion.

The majority of businesses located in these industrial areas, and many of those who testified at the City Council hearing, would not be subject to these proposed regulations. These centers are home to diverse businesses including pulp and paper mills, metal fabrication, metal recycling, port container terminals and facilities, automobile rentals, lumber and construction supply, boat building, marinas, seafood preparation and processing, warehousing and storage, millwork, gas stations with convenience stores, business support services, marijuana production, and automobile repair, among many others.

5. The City Council heard testimony from current businesses in the Tideflats that the proposed interim regulations would detrimentally impact their planned investments or current activities. What impact does staff expect this to have on these businesses?

As part of the Weekly Report from October 11, staff provided a summary of businesses potentially impacted by the proposed interim regulations as well as some of the aggregate economic data.

Interim regulations are intended to maintain the status quo, which includes, in this case the many businesses and jobs currently located in the Tideflats. The Planning Commission’s proposal was intended to minimize any detrimental impact and to reasonably allow for continued investment in existing businesses. Council did hear several specific examples of business concerns at the hearing. The following are examples of the types of uses and development that would not be impacted by the proposed interim regulations:



WestRock pulp and paper mill: A representative from WestRock provided testimony expressing concern about the impact of the proposed interim regulations on the company's expected and planned capital improvement projects. These projects included seismic upgrades and new scrubbers that control air emissions. First, pulp and paper mills are not subject to the proposed interim regulations. Second, the proposed interim regulations section 13.06.380.4.b expressly allows these types of investments to proceed during the interim period. Even a use subject to limitation on expansion could implement these types of improvements.

Port of Tacoma shipments: The City Council heard testimony expressing concern that the proposed interim regulations could potentially impact the Port of Tacoma's ability to ship automobiles, since automobiles are shipped with gas in the fuel tank. Other products may also contain or include oil and gas or derivatives. These types of shipments would not be impacted by the proposed interim regulations. The use restrictions relating to coal, oil, gas and chemical manufacturing is directed towards primary uses. A use in the tidelands may have propane or fuels on site that are ancillary to the primary use. These would not be subject to the limitation. There is a significant difference between a use that uses oil and gas products and one whose primary purpose is the refinement or storage of such products. This is the difference between a hardware store that sells propane tanks for barbecues, among many other items, and a use whose primary function is the bulk storage and distribution of propane.

U.S. Oil: U.S. Oil is currently applying to shift some of the existing production capacity to ethanol and other diesel fuel products. Two existing storage tanks would be converted to ethanol service. The project also requires additional piping and transfer pumps to separate the ethanol from other products. U.S. Oil has applied for permits and therefore, the development would not be subject to interim regulations adopted after the permit submittal.

It is important to note how the interim regulations might hypothetically apply in this scenario if they were to be adopted. First, ethanol is defined as part of the chemical manufacturing use category, so staff would be conducting a review under the proposed interim regulations. Second, the storage capacity appears unaffected as the ethanol production converts two existing tanks to a different product, rather than adding new storage tanks to serve the new product. Third, while the equipment and facilities needed to transfer the product are new additions, the purpose is to separate different products. It is also expected that the shift in product would also result in a change in transport and a need for new transport facilities. Transport would not be affected by the interim regulations if the improvements are merely serving existing output. Lastly, it is unclear at this time if the new facilities and conversion of storage to ethanol would increase the overall output capacity of the refinery (in terms of unit volume produced) or if the overall output capacity would remain consistent but with a different makeup in the types of product and modes of distribution.

6. How will City staff determine what is and is not a capacity increase?

First, the proposed interim regulations explicitly exempt certain types of development from this review, including: normal maintenance and repair, improvements to meet building code or environmental regulations, accessory uses and utilities. Many permits in the port are for projects



that would meet these exemptions, such as (these are based on real permit applications in the tideflats from the past year):

- Expansion of lunchroom and locker rooms,
- Wheel wash systems for haul vehicles,
- Biofiltration swales and stormwater detention,
- Installation of a ductless heat pumps,
- Dust collectors,
- Installation of a fire suppression system,
- Seismic retrofits,
- Fill and grade to replace and clean contaminated soils.

Generally, there are fairly established industry methodologies for calculating capacity. Current capacity can be thought of as a business's current output using existing equipment and scheduling. Output can be increased by improving operational efficiencies and scheduling. This type of capacity increase would not be subject to limitation. For example, an oil refinery may have 10 storage tanks on site. Even if only 5 of the tanks are in use, the "capacity" would be measured in accordance with the volume from all 10 tanks. In this case, the existing business could make use of all 10 storage tanks without limitation. As another example, a widget factory may have 50 machines and 50 employees using those machines for 8 hours a day. However, if demand for widgets was to increase the business could implement a second shift and increase output merely by scheduling longer production hours. This type of operational increase in output would not be subject to the interim regulations.

The other type of "capacity" is what the proposed interim regulations are intended to address – capacity increases as a result of physical, capital expenditures. If the oil refinery were to propose adding a new storage tank or to replace an existing tank with a larger one, then the addition would be subject to the proposed limitations as it is not part of the current capacity. If the widget factory had already maximized efficiencies with current equipment and staffing and wanted to expand from 50 to 100 machines, this would be subject to permits and reviewed within the limitations of the proposed interim regulations.

Staff recognizes that there can be difficulties in defining capacity in a way that is responsive to the variety of types of circumstances and businesses in the port/tideflats. The intent of the Commission's recommendation was to provide some greater predictability by expressly exempting certain types of activities and investments (i.e. normal maintenance and repair, building codes, et al) and thereby narrowing what types of activities would fall under the greater scrutiny of the interim regulations. The definitions could be amended to more clearly distinguish between operational changes that increase overall capacity and those that are more physical, capital investments. The Commission had also considered limitations based on parking quantity and trip generation but had determined that these were not as relevant to the issues.

7. Why is the capacity increase for existing uses limited to 10%?

This issue of expansion of existing uses was one of the central discussion points throughout the Planning Commission's review. While this issue had been discussed throughout the process, the



Commission initially released a public review document that included no limitations on the expansion of existing uses. The restriction was introduced by the Planning Commission after the 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;
- That expansion of existing uses can be so significant as to be equivalent to the introduction of an entirely new use;
- That a limitation on new uses while allowing unlimited expansion of existing uses could simply enable businesses to creatively circumvent the restrictions on new uses;
- That limiting expansion helps to preserve an existing baseline for environmental review.

The Commission grappled with the question of how much expansion should reasonably be allowed during the subarea planning process. Staff had initially proposed an option that would allow a 10% expansion by right, with an expansion of up to 20% subject to a conditional use permit. Ultimately, the Commission opted for a limitation on capacity as it would enable significant investments that are not capacity related. The 10% limit is based on established City allowances in the nonconforming use code. Staff recognizes that these numbers can seem arbitrary: they are more art than science. How much expansion could potentially pre-empt the planning process? How much expansion and investment in an existing use is reasonable during the subarea planning process over the next 2-3 years? At what point is the expansion of an existing use comparable to the establishment of a new use? The Commission recommended a 10% limitation on capacity subject to a conditional use permit but other options were discussed during the process including:

- 10% expansion outright, and up to 20% expansion subject to a conditional use permit;
- Unlimited expansion, subject to a conditional use permit;
- Limits on expansion based on parking quantity and trip generation;
- Unlimited expansion by right.

8. Are ethanol and other biofuels included in these proposed restrictions?

While commonly discussed within the oil, gas and liquefied fossil fuel use category, ethanol and biofuel production are defined within Chemical Manufacturing, under North American Industrial Classification System Group 325. As such, these uses would be subject to the interim regulations. The proposed interim regulations would prohibit the establishment of a new business producing ethanol and biofuels and would limit the expansion of existing uses.

9. Why are the South Tacoma MIC and other industrial districts included?

The interim regulations were first initiated directly pertaining to the Port/tideflats and the upcoming subarea planning process. During the Planning Commission's review, the Commission determined that the "need" for interim regulations was not strictly limited to the Port/tideflats. The issues the Commission focused on, the permissiveness of current heavy industrial zoning, community concerns regarding the effectiveness of transitions and buffers separating industrial and residential uses, and



the likelihood of development that could exacerbate current issues, were determined to have applicability beyond the tideflats. While the City has primarily heard comments and concerns from uses within the tideflats and residents in Northeast Tacoma, the Commission's recommendation reflects an interest in trying to prevent further conflicts in other parts of the City before they arise.

10. How are undefined uses classified in the code?

If a new use were to be proposed that was not directly or clearly defined within the City's land use classifications in TMC 13.06 Zoning, the code grants the Planning Director authority, under TMC 13.05.030.C, to determine whether such use would or would not be in conformity with the authorized permitted uses in the district. This provides the City with the ability to scrutinize whether the use is appropriate. In most of the City's zoning district unlisted uses are prohibited and subject to this Director's determination. However, in the City's industrial zoning districts, unlisted uses are currently permitted outright. The proposed interim regulations would modify this to be consistent with the City's practice for treating unlisted uses in other zoning districts.

In the review of these code references, an existing citation error was identified in TMC 13.06 Zoning. Staff will correct this error as part of the final ordinance for Council consideration.