



ORDINANCE NO. 28180

1 AN ORDINANCE relating to the Comprehensive Plan and Title 13 of the Tacoma
2 Municipal Code superseding Ordinance No. 28034; authorizing the final
3 adoption of an updated Tacoma Shoreline Master Program, which amends
4 both the Comprehensive Plan and Land Use Regulatory Code, establishes
5 both new and modified environmental designations and zoning
6 classifications, amends zoning district boundaries, reclassifies certain
7 properties to the new and revised shoreline zoning districts, and adopts
8 revisions to Chapters 13.05, 13.06, and 13.11 of Title 13 of the Tacoma
9 Municipal Code.

10 WHEREAS the Growth Management Act ("GMA") was amended to add the
11 goals and policies of the Shoreline Management Act ("SMA") and to declare that the
12 goals and policies of a shoreline master program shall be considered an element of
13 the Comprehensive Plan and all other portions shall be considered development
14 regulations, and

15 WHEREAS development regulations include, but are not limited to, zoning
16 controls, area-wide zoning reclassifications, critical area ordinances, and other
17 similar official controls found in the Land Use Regulatory Code, and portions of the
18 Shoreline Master Program fall within the definition of development regulations, and

19 WHEREAS the Comprehensive Plan, as adopted in 1993 by Ordinance
20 No. 25360 and amended annually by ordinance thereafter, is Tacoma's
21 comprehensive plan, as required by the GMA, and consists of several plan and
22 program elements, including the Shoreline Master Program, and

23 WHEREAS the Shoreline Management Act of 1971 requires local Shoreline
24 Master Programs be updated to: (1) give priority to uses that require a shoreline
25 location; (2) promote public access and enjoyment opportunities; and (3) protect the
26 environmental resources of state shorelines, and



1 WHEREAS the 2003 Department of Ecology (“DOE”) guidelines, codified in
2 Chapter 173-26 of the Washington Administrative Code (“WAC”), include
3 substantive, procedural, and process requirements to be followed by local
4 jurisdictions in their comprehensive update to a shoreline master program, and
5 require the update to be based on scientific and technical information to assure no
6 net loss of shoreline ecological functions, and

7 WHEREAS the SMA was amended to establish a timeline for local
8 jurisdictions to adopt updated Shoreline Master Programs consistent with DOE
9 guidelines, and the adoption deadline for the City was December 1, 2011, and
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11 WHEREAS the City Council directed staff to initiate an update of the
12 Shoreline Master Program three years ahead of the state’s schedule in
13 RCW 90.58.080(4) in order to integrate critical areas protection with the Shoreline
14 Master Program, and

15 WHEREAS the City’s update process began in earnest in 2005 and included
16 the development of required supporting studies and implementation documents,
17 and said studies and documents were adopted under separate legislative actions of
18 the City Council as Resolution Nos. 38372, 38373, 38374, 38375, and 38376 on
19 November 29, 2011, as required by DOE guidelines, as part of the adoption of the
20 update to the Shoreline Master Program as a whole, and
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23 WHEREAS, prior to November 29, 2011, the Planning Commission
24 (“Commission”) recommended changes to the Comprehensive Plan (“Plan”) and
25 the Land Use Regulatory Code (“Code”), pursuant to the SMA, and consistent with
26 the GMA, and



1 WHEREAS, leading up to those recommendations being made, the
2 Commission held a public hearing on June 1, 2011, on a draft Shoreline Master
3 Program, draft Shoreline Restoration Plan, draft Shoreline Inventory and
4 Characterization, draft Public Access Alternatives Plan, draft Thea Foss Waterway
5 Design Guidelines, draft Cumulative Impacts Analysis, and draft changes to
6 Chapter 13.05, Land Use Permit Procedures; Chapter 13.06, Zoning; and
7 Chapter 13.11, Critical Areas Preservation, of the Tacoma Municipal Code ("TMC"),
8 and

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10 WHEREAS 41 citizens spoke at the public hearing and 52 written comments
11 were submitted by the close of the comment period on June 10, 2011, and after
12 review of said testimony, the Commission made modifications to the draft Shoreline
13 Master Program and associated draft supporting documents, and

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15 WHEREAS, pursuant to the State Environmental Policy Act ("SEPA"), the
16 City issued a preliminary Determination of Environmental Nonsignificance ("DNS")
17 and Adoption of Existing Environmental Document on May 2, 2011, based upon a
18 review of a completed environmental checklist, and, pursuant to WAC 197-11 and
19 Tacoma's SEPA procedures, the preliminary DNS, SEPA File
20 Number SEP2011-40000162367, was made final on June 17, 2011, and

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22 WHEREAS the determination was made that this project does not have a
23 probable significant adverse impact on the environment, and

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25 WHEREAS the Commission then formally recommended changes to the
26 Comprehensive Plan and Land Use Regulatory Code on August 17, 2011, and
conveyed the same to the City Council, in the form of a proposed Tacoma



1 Shoreline Master Program (“TSMP”), which was intended to rescind and replace in
2 their entirety the City’s existing Master Program for Shoreline Development, an
3 element of the Comprehensive Plan, and Chapter 13.10 TMC, which are the
4 development regulations for shoreline areas, and

5 WHEREAS, in addition to adoption of the new TSMP, as referenced above,
6 the following supporting studies and implementation documents associated with the
7 TSMP were previously adopted by resolution:

- 8 • Shoreline Inventory and Characterization (Resolution No. 38372),
- 9 • Shoreline Restoration Plan (Resolution No. 38373),
- 10 • Public Access Alternatives Plan (Resolution No. 38374),
- 11 • Thea Foss Waterway Design Guidelines (Resolution No. 38375), and
- 12 • Cumulative Impacts Analysis (Resolution No. 38376), and

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14 WHEREAS, in addition to final adoption of the new TSMP, amendments are
15 being made by this ordinance to TMC 13.05, Land Use Permit Procedures;
16 TMC 13.06, Zoning; and TMC 13.11, Critical Areas Preservation, to achieve
17 consistency with the new TSMP, and

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19 WHEREAS, upon approval by DOE of the TSMP, the development
20 regulations for critical areas within the shorelines of the State located within the City
21 shall be the regulations contained in the TSMP and designed to assure no net loss
22 of shoreline ecological functions, and

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24 WHEREAS policies and development regulations for public access and
25 recreation have been developed consistent with the SMA and with DOE regulations
26 in Chapter 173-26 WAC, including provisions that recognize constitutional



1 limitations on regulation of private property and a process for the evaluation of
2 nexus and proportionality in the review of shoreline permits for development on
3 private property, and

4 WHEREAS past subarea plans for the Thea Foss Waterway and Ruston
5 Way, including the Point Ruston site, established area-wide public access
6 standards to establish a linear public access system in conjunction with more
7 flexible use and development regulations, and

8 WHEREAS the policies and development standards of the Thea Foss
9 Waterway Design and Development Plan have been integrated into the TSMP, the
10 design guidelines have been incorporated into the new Thea Foss Waterway
11 Design Guidelines, and additional revisions have been undertaken to respond to
12 public comments and to more effectively implement the vision for the Waterway,
13 and
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15 WHEREAS the policies and design guidelines of the Ruston Way Plan have
16 been integrated into the TSMP and additional revisions have been undertaken, and

17 WHEREAS policies and development regulations for public access and
18 recreation have been developed that promote and implement a comprehensive
19 public access system as envisioned in the Thea Foss Waterway Design and
20 Development Plan, Ruston Way Plan, Shoreline Trails Plan, and the Transportation
21 Element of the Comprehensive Plan, and
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23 WHEREAS existing and planned public access sites found in the Shoreline
24 Trails Plan, the Thea Foss Waterway Design and Development Plan, and the
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Ruston Way Plan have been identified and integrated into the Public Access

1 Alternatives Plan, and

2 WHEREAS it is appropriate to rescind the Thea Foss Waterway Design and
3 Development Plan (last amended in 2005), the Ruston Way Plan (1981), and the
4 Shoreline Trails Plan (1989) as elements of the Shoreline Master Program;
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6 however, they are to be retained as elements of the Comprehensive Plan and shall
7 remain in effect in that form and be applicable except when there is a conflict with
8 the Shoreline Master Program, Thea Foss Waterway Design Guidelines, Shoreline
9 Restoration Plan, or the Public Access Alternatives Plan, in which case the
10 Shoreline Master Program, Thea Foss Waterway Design Guidelines, Shoreline
11 Restoration Plan, or the Public Access Alternatives Plan shall prevail, and
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13 WHEREAS the Thea Foss Waterway Design and Development Plan
14 envisions the West side of the Foss Waterway as an area for retail commercial,
15 office, hotel, and residential uses in mixed-use configurations, with a strong
16 emphasis on residential development between South 15th and South 21st Streets,
17 and
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19 WHEREAS, since 1996, the mixed-use structures that have been built along
20 the West side of the Foss Waterway have struggled to sustain the preferred uses
21 on the ground level and have experienced high vacancy rates, and
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23 WHEREAS the expectations for build-out of the West side of the Foss
24 Waterway have changed significantly, and
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WHEREAS conflicting frontage and location requirements for mixed-use structures have created a hindrance to achieving the preferred build-out of the Foss Waterway, and

WHEREAS the TSMP removes the design and development barriers for new mixed-use structures on the West side of the Waterway and allows non-water-oriented uses for a limited term until economic conditions improve to support the development of the preferred uses, consistent with the City's overall growth strategy as expressed in the Generalized Land Use Element for the Downtown Mixed-Use Center, the Downtown Regional Growth Center designation, and Plan policies to foster commercial and civic uses and attractions of regional scale and high-density residential development, and

WHEREAS the Commission recommended the establishment of new shoreline district zoning classifications and modifications to the boundaries of existing shoreline districts as well as the reclassification of properties within the new and modified districts, most of which recommendations were followed by the City Council in enacting Ordinance No. 28034 on November 29, 2011, and

WHEREAS, as referenced above, the Commission adopted Findings and Recommendations on August 17, 2011, and conveyed these to the City Council, and

WHEREAS Chapter 13.02 TMC requires the City Council to hold a public hearing before adopting any change to the Plan and Code, and

WHEREAS, on September 27, 2011, the City Council held a public hearing to receive public comments on the Commission's proposed TSMP, and



1 WHEREAS the City Council considered the testimony presented at the
2 September 27, 2011, public hearing and other comments submitted on the draft
3 TSMP, and also considered and generally concurred with the Findings and
4 Recommendations of the Commission dated August 17, 2011, and

5 WHEREAS the City Council's Committees for Economic Development and
6 for Environment and Public Works, after reviewing the draft TSMP recommended
7 by the Commission and all of the public testimony received, recommended
8 modifications to the draft TSMP, and

9 WHEREAS thereafter, on November 29, 2011, in compliance with the State
10 deadline referenced above, the Tacoma City Council provisionally enacted an
11 updated TSMP by City Ordinance No. 28034, and

12 WHEREAS, in accordance with RCW 90.58.090, the update to the Shoreline
13 Master Program was required to be submitted for review and approval by DOE prior
14 to becoming effective, and such submittal was made prior to the December 1, 2011,
15 deadline, and

16 WHEREAS after receiving comments, conducting its review, and completing
17 additional process, DOE issued its conditional approval of the City's proposed
18 updated TSMP on August 19, 2013, and

19 WHEREAS DOE's conditional approval included both required and
20 recommended changes, and

21 WHEREAS the required changes had to either be accepted by the City, or
22 the City had to propose alternatives that were acceptable to DOE prior to the
23 updated TSMP being made effective, and
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1 WHEREAS the required changes included several limited amendments to
2 use allowances and development standards for aquaculture, amendments to
3 specific definitions to bring them into alignment with the Washington Administrative
4 Code, and amendments to the S-9 Puyallup River Shoreline District and the
5 S-6/7 Schuster Parkway Transition Shoreline District, and

6 WHEREAS, by Resolution No. 38734, the City provided its formal notice to
7 DOE of the City's acceptance of all recommended changes and all required
8 changes except DOE's intent statement for the S6/7 Transition District, to which the
9 City proposed an alternative version, as allowed by RCW 90.58.090, and
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11 WHEREAS DOE has now provided the City with its written notice of final
12 action approving the City's TSMP including the alternative intent statement
13 proposed in Resolution No. 38734, and pursuant to RCW 90.58.090, the TSMP will
14 take effect 14 days from DOE's final action, and
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16 WHEREAS the TSMP, as presently constituted, has been developed in full
17 compliance with Chapter 13.02 TMC and the Revised Code of Washington's
18 procedural requirements for amendments to the City's Comprehensive Plan and
19 development regulations, and
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21 WHEREAS the TSMP appropriately balances the goals of the SMA and
22 incorporates the most current, accurate, and complete scientific and technical
23 information available, as per WAC 173-26-201, and
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25 WHEREAS, in concert with the implementation of restoration actions in the
26 City and other ongoing state and federal programs, the regulatory provisions of the



1 TSMP serve to maintain the overall condition of shoreline resources and in certain
2 circumstances will serve to improve their overall condition, and

3 WHEREAS the TSMP is consistent with the City's Comprehensive Plan,
4 including the overall goal to "[e]nsure conservation, protection, enhancement and
5 proper management of natural resources and shoreline areas, while providing for a
6 balanced pattern of development . . .," and

7 WHEREAS the TSMP has been designed to increase the public's
8 opportunities to enjoy the physical and aesthetic qualities of the shoreline to the
9 greatest extent feasible, and

10 WHEREAS, pursuant to RCW 36.70A.370 and following the guidelines
11 prepared by the Washington State Attorney General pursuant to RCW 36.70A.370,
12 the TSMP was reviewed by the City Attorney to prevent against the adoption of the
13 changes resulting in an unconstitutional taking of property, and

14 WHEREAS enacting the TSMP is in the public interest and will benefit the
15 City as a whole, will not adversely affect the City's public facilities and services, and
16 advances and supports the general health, safety, and welfare of the citizens of this
17 City; Now, Therefore,

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20 BE IT ORDAINED BY THE CITY OF TACOMA:

21 Section 1. That the recitals set forth above are hereby adopted as the
22 Findings of the City Council and are by this reference incorporated herein as if set
23 forth in their entirety.

24 Section 2. That City Resolution Nos. 38372, 38373, 38374, 38375, and
25 38376, originally passed on November 29, 2011, are hereby incorporated by this
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reference into this ordinance for the purposes intended in each as supporting studies and implementation documents to the TSMP.

Section 3. That the City Council hereby adopts the Tacoma Shoreline Master Program as modified and approved by the Department of Ecology (superseding City of Tacoma Ordinance No. 28034) repealing and replacing Chapter 13.10 of the Land Use Regulatory Code; and that the goals and policies thereof replace the shoreline element of the Comprehensive Plan, as shown in Amended Exhibit "A," attached hereto, and substantially in the form of the amendments on file in the office of the City Clerk.

Section 3. That the City Council adopts the shoreline district classifications for S-1 to S-15 as the official shoreline zoning classification and boundaries as generally described and depicted in Amended Exhibit "B," attached hereto as listed below:

Exhibit B-1 S-1a Western Slope South Shoreline District Map and Boundary Description;

Exhibit B-2 S-1b Western Slope South Shoreline District Map and Boundary Description;

Exhibit B-3 S-2 Western Slope Central Shoreline District Map and Boundary Description;

Exhibit B-4 S-3 Western Slope North Shoreline District Map and Boundary Description;

Exhibit B-5 S-4 Point Defiance Natural Shoreline District Map and Boundary Description;



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Exhibit B-6 S-5 Point Defiance Conservancy Shoreline District Map and Boundary Description;

Exhibit B-7 S-6 Ruston Way Shoreline District Map and Boundary Description;

Exhibit B-8 S-6/7 Schuster Parkway Transition Shoreline District Map and Boundary Description;

Exhibit B-9 S-7 Schuster Parkway Shoreline District Map and Boundary Description;

Exhibit B-10 S-8 Thea Foss Waterway Shoreline District Map and Boundary Description;

Exhibit B-11 S-9 Puyallup River Shoreline District Map and Boundary Description;

Exhibit B-12 S-10 Port Industrial Area Shoreline District Map and Boundary Description;

Exhibit B-13 S-11 Marine View Drive Shoreline District Map and Boundary Description;

Exhibit B-14 S-12 Hylebos Creek Shoreline District Map and Boundary Description;

Exhibit B-15 S-13 Marine Waters of the State Shoreline District Map and Boundary Description;

Exhibit B-16 S-14 Wapato Lake Shoreline District Map and Boundary Description;



Exhibit B-17 S-15 Point Ruston/Slag Peninsula Shoreline District Map and
Boundary Description.

Section 4. That the City Council adopts changes to Chapter 13.05, Land
Use Permit Procedures, as shown in Exhibit "C."

Section 5. That the City Council adopts changes to Chapter 13.06, Zoning,
as shown in Amended Exhibit "D."

Section 6. That the City Council adopts changes to Chapter 13.11, Critical
Areas Preservation, as shown in Exhibit "E."

Section 7. That if any section, subsection, paragraph, sentence, clause, or
phrase of this ordinance, or its application to any person or situation, should be
held to be invalid or unconstitutional for any reason by a court of competent
jurisdiction, such invalidity or unconstitutionality shall not affect the validity or
constitutionality of the remaining portions of this ordinance or its application to any
other person or situation.



Section 8. That, pursuant to RCW 90.58.090, the Tacoma Shoreline

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Master Program takes effect after the passage of 14 days from the Department of Ecology's written notice of final action approving the same.

Passed _____

Mayor

Attest:

City Clerk

Approved as to form:

Deputy City Attorney