

**TUMWATER CITY COUNCIL WORK SESSION**  
**MINUTES OF VIRTUAL MEETING**  
**Monday, March 11, 2024 Page 1**

**CONVENE:** 6:01 p.m.

**PRESENT:** Mayor Debbie Sullivan and Councilmembers Peter Agabi, Michael Althaus, Joan Cathey, and Kelly Von Holtz.

Excused: Councilmembers Leatta Dahlhoff, Angela Jefferson, and Eileen Swarthout.

Staff: City Administrator Lisa Parks, City Attorney Karen Kirkpatrick, Community Development Director Michael Matlock, Finance Director Troy Niemeyer, Police Chief Jon Weiks, Fire Chief Brian Hurley, Transportation and Engineering Director Brandon Hicks, Parks and Recreation Director Chuck Denney, Water Resources and Sustainability Director Dan Smith, Communications Manager Ann Cook, Planning Manager Brad Medrud, and Land Use and Housing Planner Erika Smith-Erickson.

**DAVIS MEEKER  
OAK:**

Director Matlock reported the Davis Meeker oak is a Garry oak species believed to be approximately 400 years old. The tree is historically significant to the City of Tumwater. Early settlers used the tree as a landmark, which is located on the branch of the Oregon Trail, the Cowlitz Trail. The tree was placed on the Tumwater Register of Historic Places on November 16, 1995. Previously, Thurston County Commissioners installed a marker near the tree on Arbor Day in 1999 naming the tree the Davis Meeker Oak.

Staff received many public comments concerning the tree with many understandably concerned about the health of the tree and future prospects of the tree. Director Matlock shared a picture of a tree branch that fell from the tree in June 2023. The branch is approximately 18 inches in diameter falling from one of the main stems of the tree located approximately 50 feet from the ground.

Director Matlock introduced Kevin McFarland, the City's Urban Forester and Tree Protection Professional. An area of the tree has rotted and is no longer providing structural support for the tree. Because of the recent damage, Transportation and Engineering staff commissioned Mr. McFarland to complete an assessment of the tree. Mr. McFarland completed a Level 3 assessment (detailed assessment) as well as hiring a climbing arborist to examine the tree and another company to complete a sonic tomography of the tree. A sonic tomography provides information on the inside of the tree to assess any rot conditions within the interior of the main stem of the tree. The test identified significant rot in the main stem and scaffold branches of the tree. The assessment indicated future failures of the tree would be likely.

Director Matlock shared a photograph of a cross section of the tree. He pointed out the area of the tree that has rotted. While the tree appears healthy from an outward appearance, structurally, the tree is deficient. Another slide depicted the area the tomography reflected as rotten and no longer providing sufficient structural support to the tree. The report considered an option of

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retrenchment pruning or a tree topping with the intent of removing branches from within a specific diameter of the tree. The pruning would be significant with the goal to remove weight from the tree and reduce its wind load. The option is considered a radical pruning but it would be an option to save the tree. The pruning would significantly alter the appearance of the tree. Some of the higher branches on the tree are 18+ inches in diameter and are equivalent to many small trees. When trimming the ends of the scaffolding branches, the new cuts would be exposed to weather and could introduce new avenues for potential rot in the tree. The option would involve a new retrenchment pruning every five years requiring the establishment of a budget in addition to scheduling a new tomography each year to ensure rot has not progressed to a point where removal would be necessary.

Mr. McFarland is recommending the removal of the tree. The tree is located adjacent to an airplane hangar along Old Highway 99 that supports 29,000 daily vehicle trips. As part of the assessment, the tree assessment was forwarded to the Washington Cities Insurance Authority (WCIA), the City's insurance carrier, to receive a recommendation on how to address the tree from a risk perspective. Following a review of the information, WCIA recommended removal of the tree rather than retrenchment pruning.

In terms of next steps and because the tree is listed on the Tumwater Register of Historic Places, the City's tree code allows for removal under hazard tree provisions. The City's process would include Mr. McFarland completing an assessment of the tree to determine whether the tree is hazardous. If determined hazardous, the City would issue a tree permit removal waiver to enable the removal of the tree. However, because the tree is listed on the historic register, the department is unable to issue a tree removal permit for the tree until the tree is removed from the register.

On March 21, 2024, the Historic Preservation Commission has scheduled a public hearing to consider delisting the Meeker Davis oak tree. The Commission will forward a recommendation to the City Council. Following a recommendation by the Commission, the Council would consider the Commission's recommendation at its April 2, 2024 meeting. If the Council agrees to delist the tree, the department would issue a tree removal permit.

If the tree is recommended for removal, the Tree Board and the Historic Preservation Commission would collaborate to consider ways to commemorate the historical significance of the tree and potential ways to reuse some of the wood. With respect to the importance of the historical tree, staff collected and planted acorns from the tree, which has produced many seedlings. Some of the seedlings would be planted at the new park at Trails End.

Director Matlock introduced Kevin McFarland and invited questions from the Council.

Councilmember Althaus asked about the possibility of the Historic Preservation Commission retaining the tree on the registry of historic places.

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It appears the major issue is the lack of strength within the tree, which does not provide adequate support for tree branches. He is aware that some trees on the Capitol Campus that have been treated using metal supports or rods to provide support to a tree's branch system.

Director Matlock said many comments were received from concerned residents. The common theme was that the proposed action to remove the tree was due to a proposal to expand the highway with some comments blaming the proposed action on the Port of Olympia to expand the airport. Neither of those situations are involved in the reason for the tree's removal. Although there are plans to expand the highway in the future, there are no plans to remove the tree to complete the project. The issue surrounds the health of the tree and risks to the public should a branch(s) fall from the tree.

Mr. McFarland acknowledged that some trees on the Capitol Campus have been supported using different support systems; however, the size of such a treatment for the oak tree and its location would preclude that option. The tree has two major co-dominant stems with one leaning towards the state hanger and the second leaning over Old Highway 99. He does not believe it would be possible to install a support system that would benefit or help support the two co-dominant stems considering the extent of the decay column of the stem protruding over Old Highway 99.

Director Matlock added that any recommendation rendered by the Historic Preservation Commission would be forwarded to the City Council for its action. The practical effect of not delisting the tree would result in the City not issuing a removal permit with staff exploring retrenchment/pruning options for the tree.

Councilmember Cathey cited the age of the tree, as it speaks to a preference to pursue a least evasive action rather than removal. She prefers beginning at preservation and moving to the least desired action rather than beginning with the removal of the tree. She referred to large trees removed in her neighborhood. The trees were examined by foresters after removal who indicated the trees could have been treated rather than removed.

Councilmember Agabi asked about the cause for decay within the tree. Mr. McFarland said based on his assessment, the tree suffers from *nonotus dryadeus*, a common wood decay fungus affecting hardwood tree species. Councilmember Agabi questioned the progression of the fungi stages. Mr. McFarland said he reviewed the extent of the current level of decay within the tree but did not forecast any progression of the decay. However, after conferring with another arborist with Tree Solutions, the arborist indicated that if the tree were to be retained and mitigation measures pursued, the tree should be monitored and re-assessed each year to determine the progression of decay particularly to the lower portion of the trunk.

Councilmember Von Holtz said her comments echo Councilmember Cathey's concerns. The tree is beloved within the community and based on feedback she has received, there is much community interest. She has similar concerns

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and prefers to pursue options to save the tree. She asked whether the issue has been previously addressed by the Council.

City Administrator Parks said the proposal is the first presentation to the Council; however, the issue surrounding the health of the tree has been a source of some informal conversations since last June by both the Tree Board and the Historic Preservation Commission. The decision would not be an easy. Staff has explored all sources of information to include information on the potential likelihood of future failures and potential severity of impacts if the tree should fail. Because of the tree's location and its health, the tree poses a high risk, which speaks to staff initiating the first discussion given the concerns raised by the City's insurance carrier. She asked Mr. McFarland to address why the recommendation speaks to removal versus treating the tree.

Mr. McFarland said he considered retrenchment options prior to speaking to representative from Tree Solutions, which completed the sonic tomography of the tree. He is familiar with the retrenchment method, as the process has been applied to many trees within the South Sound area. The method has been proven effective for smaller trees. Any retrenchment method for the Davis Meeker oak would not alleviate enough weight on the remaining scaffolding branches. To maintain the tree's health, it is important to ensure the tree has sufficient canopy area to survive. A fine line exists because the amount of crown reduction would be a minimum of 15 feet, which would result in excessive weight on the tree from the scaffold branches over the highway and near the adjacent hanger. He believes retrenchment would result in too much weight on the tree and could result in future loss of a large section of a co-dominant stem or a large scaffold branch. He does not believe retrenchment is a reasonable way to mitigate risk caused by the tree.

Councilmember Cathey asked whether the recent loss of a main branch was the first occurrence. Mr. McFarland responded that there are other indications on the tree that other scaffold branches have failed over the last 20 to 30 years. Councilmember Cathey reaffirmed her preference to treat the tree rather than removing the tree. She asked about the possibility of treating the tree with medicine or other ways to treat the tree, as she prefers preservation steps of retrenchment and pruning actions. Mr. McFarland advised that no medicine is available to treat the fungi infection; however, retrenchment could include some cultural measures to improve the tree's health to regain some of its lost canopy. It is possible to supplement the tree with fertilizers and placing wood chips around the base of the tree to help improve its condition.

Councilmember Cathey said although the health of the tree has been a subject of some discussions by the City's advisory bodies, the presentation to the Council is the first instance the Council has learned about the seriousness of the issue. As the Council is responsible for rendering a decision, the Council should have been included in those earlier conversations to afford time to consider options and review the issue with the community.

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Councilmember Althauser asked whether the tree is located within City right-of-way. Director Matlock affirmed the tree is located in right-of-way.

Councilmember Althauser mentioned that the report speaks to a high risk of future failure by the tree. Should the Council determine retrenchment is the preferred option, he asked whether the risk of future failure would still exist. Mr. McFarland affirmed the statement based on his determination of the situation.

Councilmember Althauser asked whether the City would be subject to legal exposure if the City is aware of the risk associated with the tree. Director Matlock responded that the City has both the legal exposure and increased liability exposure because the City was aware of the problem with the tree.

Director Matlock, in response to the questions about the next steps, explained that the Historic Preservation Commission scheduled a public hearing to receive public testimony on whether the City should remove the tree from the register. The Commission will then forward a recommendation to the City Council. The Council can either remove the tree or retain the tree on the register. The Council's decisions sets the course for future action involving the tree. Should the Council elect to retain on the list, staff would explore options to support the tree's health. If the Council elects to remove the tree from the list, staff would process a tree removal permit and remove the tree.

City Administrator Parks emphasized that the delay in bringing the information forward about the tree was due to the necessary diligence by staff and the City's tree professional to thoroughly review and research all alternatives for the tree knowing that the 400-year old tree plays a significant role in the City's history as well as beloved and appreciated by many in the community. The Historic Preservation Commission will receive a briefing from staff as well as having all the information that was provided to the Council before it renders a recommendation following its public hearing. It was important to ensure the Council received as much information as possible on the different issues and perspectives that should be considered. She reiterated that the proposal is not connected to road maintenance, expansion of the airport, or the conceptual alignment plans and right-of-way for the future Old Highway 99 corridor improvement project. The issue was prompted because of the health of the tree and liability concerns surrounding the possibility of the tree failing.

**ORDINANCE NO.  
O2023-017, TMC  
18.38 FP  
FLOODPLAIN  
OVERLAY:**

Planner Smith-Erickson reported that approximately 300 towns, cities, counties, and tribes in the state participate in the Federal Emergency Management Agency's (FEMA) National Flood Insurance Program (NFIP) Continued enforcement of the City's floodplain management regulations (TMC 18.38 FP Floodplain Overlay) enables FEMA to make federally backed flood insurance available to property owners within the City. As a condition of participation in the NFIP, communities are required to adopt and enforce flood hazard reduction regulations that meet the minimum requirements of the NFIP.

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In May 2023, City staff completed a FEMA floodplain community assistance visit (CAV) with State Department of Ecology staff to review the City's participation in the National Flood Insurance Program. The CAV determined that TMC 18.38 FP Floodplain Overlay should be updated to reflect FEMA current standards.

On November 8, 2023, FEMA notified the City of the final flood determinations for Thurston County and its incorporated areas. The FEMA flood hazard determinations for the City are considered final. The Flood Insurance Study (FIS) report and Flood Insurance Rate Maps (FIRM) covering the City become effective May 8, 2024.

Prior to the May 8, 2024 effective date, the City is required to amend floodplain regulations for consistency with the Model Ordinance for Floodplain Management under the NFIP, the Endangered Species Act, and to maintain its eligibility in the NFIP.

The staff report includes summaries of the 15 proposed amendments, code sections to amend or add, and proposed amendment language.

Planner Smith-Erickson reviewed the 15 proposed amendments:

1. TMC 18.38.017 – Definitions: Clarify and add definitions as needed for enhanced interpretation of floodplain regulations. Eight new definitions address:
  - 1) Alteration of watercourse
  - 2) Area of special flood hazard
  - 3) Flood elevation study (FES)
  - 4) Floodplain administrator
  - 5) Flood proofing
  - 6) Highest adjacent grade
  - 7) Mean sea level
  - 8) Structure
2. 18.38.090 – Special Flood Hazard Areas: Updates language to reflect current versions of the FIS and FIRMs that are effective May 8, 2024. For consistency with the definitions section, Base Flood Elevation (BFE) was added.
3. TMC 18.38.100 – Flood Hazard Data: For consistency with the definitions section, FIRM is added as an acronym. Added reference to TMC 18.38.090 for BFE and Floodway areas when data has not been provided or is not available in the Flood Insurance Study and Flood Insurance Rate Maps.
4. TMC 18.38.130 – Floodplain Development Permit Required: Revised the section name for clarity. Eliminated passive language. Includes language that a permit is required in special flood hazard areas (SFHAs) as defined in TMC 18.39.090.

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5. TMC 18.38.140 – Floodplain Development Permit Application: Updates acronyms for consistency with the definitions section. Adds five subsections addressing additional elements required for applications.
6. TMC 18.38.180 – Records
  - Included code requirements for regulating development and collection of records
  - Updates acronyms
  - Clarifies information required to be obtained for recorded
  - Removes passive language
  - Provides a process for floodplain administrator to ensure proposed construction will be safe from flooding when elevation data is not available
  - Added a list of information the floodplain administrator shall obtain and make available to the public
7. TMC 18.38.210 – Development and Subdivisions: Clarified that short subdivisions, short plats, and binding site plans are subject to TMC 18.38.210. Updated acronyms. Subdivisions or developments with over 50 lots or 5 acres must provide base flood elevation data with the application.
8. TMC 18.38.184 – Flood Protection Standards:
  - In areas where the BFE data has been determined or obtained (A zones), all new development must be elevated at least one-foot above BFE
  - Materials used shall be resistant to flood damage
  - Construction methods that minimize flood damage
  - All structures, including manufactured homes and substantial improvements, shall be anchored properly
  - New construction and substantial improvement of any residential structure in an Unnumbered A zone and BFE is not available shall be raised two feet above highest adjacent grade
  - An attached garage constructed with the floor slab below the BFE, must be designed to allow for the automatic entry and exit of floodwaters
9. TMC 18.38.270 – Nonresidential Construction:
  - Reformatted the section
  - Created clear standards for non-residential development
  - In AE and A1-30 zones or other A zoned areas: New construction and substantial improvement of any commercial, industrial, or other nonresidential structure shall have the lowest floor, including basement, elevated one foot or more above the BFE
10. TMC 18.38.280 – Manufactured Homes:
  - Added clarifying requirements for anchoring of manufactured homes that minimize flood damage

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- States other anchoring requirements throughout TMC 18.38 are applicable
11. New Section: TMC 18.38.285 – Detached Accessory Structures:
- Adds standards to allow for structures to be built below the BFE for used solely for parking of vehicles or limited storage
  - Different flood zones have different requirements for detached structure such as size, elevation, materials, item stored, and anchoring
12. New Section: TMC 18.38.325 – Storage of Materials and Equipment
- The storage or processing of materials that could be injurious to human, animal, or plant life if released due to damage from flooding is prohibited in special flood hazard areas
  - Storage of other material or equipment may be allowed if not subject to damage by floods and if firmly anchored to prevent flotation, or if readily removable from the area within the time available after flood warning
13. TMC 18.38.360 – Floodway Standards:
- Encroachments, including fill, new construction, substantial improvements, and other development is prohibited unless a certification by a registered professional engineer demonstrating development would not result in any increase in flood levels during the occurrence of the base flood discharge
  - Clarifies that repairs, reconstruction, or improvements to a residential structure which do not increase the ground floor area may be allowed subject to outlined requirements
  - TMC 18.38.360(A)(1) is satisfied, or construction is allowed pursuant to TMC 18.38.360(A)(2), all new construction and substantial improvements in the floodway shall comply with all applicable flood hazard reduction provisions of TMC 18.38
14. New section: TMC 18.38.450- Penalties for Noncompliance:
- Ties into the civil and criminal enforcement processes in TMC Title 1. After a further review of state and federal standards, staff revised the language and removed references to jail penalty and fines as proposed in the model ordinance.

A 60-day Notice of Intent for Ordinance No. O2023-017 was sent to the State Department of Commerce on December 14, 2023. No comments were received. A SEPA Checklist for Ordinance No. O2023-017 was completed on December 13, 2023, and a Determination of Nonsignificance was issued on December 29, 2023. The process was completed with no comments received. FEMA is required to publish two notices in the newspaper of record for the communities affected by the map change. No appeals were submitted during the 90-day appeal period.

Draft FEMA maps are available online as well as the Thurston County Lakes Flood Map update and the Preliminary Hazard Map Update comparison.



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Staff requests the Council schedule the proposed ordinance for the Council's consideration at its March 19, 2024 meeting.

**MAYOR/CITY  
ADMINISTRATOR'S  
REPORT:**

There were no reports.

**ADJOURNMENT: With there being no further business, Mayor Sullivan adjourned the meeting at 6:56 p.m.**

Prepared by Valerie L. Gow, Recording Secretary/President  
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